



Legal reconstruction of the regional house of representatives ethical code enforcement by the honorary council based on justice value

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Abstract

The aim of the research is to examine and analyze the weaknesses of regulations on The Regional House of Representatives Ethical Code Enforcement By The Honorary Council, and how to reconstruct the regulations based on justice value. This research was conducted using socio-juridical research which is a legal research method that functions to see the law in its real sense and examines how the law works in a society that is analytically descriptive using primary and secondary data and using the theory of Pancasila justice as a grand theory.

The weakness of the regulation of the Regional House of Representatives Honorary Council (BK DPRD) members largely comes from the deeply-rooted culture of courtesy, especially to higher and older members, commonly known as Ewuh Pakewuh that caused the member to become less independent in making decisions. Whereas the provisions requiring the BK DPRD to carry out investigations, verification, and clarification after receiving complaints from DPRD leaders, DPRD members, and/or the public have resulted in the BK not responding to cases without complaints which have an impact on weakening honor, dignity, the image and credibility of DPRD members. Therefore, the Legal Reconstruction of regulations for enforcing the code of ethics by the DPRD BK, namely PP No. 12 of 2018 Article 55 paragraph (1) and Article 55 paragraph (3) is reconstructed with the provision that the recruitment of BK DPRD members must not only come from DPRD members, but also from external elements, namely academics, community leaders, religious leaders, and legal practitioners who have integrity and competence in their fields. The number of BK DPRD members from elements of society is more in number compared to the number of BK DPRD members from faction elements. Article 56 paragraph (1) letter (c) is reconstructed with regulations that examination of violations of the code of ethics by the BK DPRD can be carried out on complaints and without complaints.

Keywords: legal reconstruction, bk DPRD, ethical code, justice value

Introduction

The Regional House of Representatives Honorary Council (BK DPRD) as one of the complementary tools of the DPRD has a role to increase and uphold the honor of DPRD members and institutions because it concerns the honor of the people's representatives who sit as members of the legislature and are representatives of the people they represent, therefore the existence of the BK-DPRD is very important to maintain and support integrity as a DPRD member and DPRD institution. In essence, the existence of the BK-DPRD is to answer the need to optimize the implementation of the duties and functions of the DPRD, considering that many DPRD members after being elected as members of the legislature do not carry out their duties and functions as they should and it is as if no one else is watching them. DPRD members who do not carry out their duties and functions as DPRD members who after being elected as members of the legislature generally rarely serve as DPRD members, rarely attend sessions or meetings, or commit disgraceful acts that have an impact on the dignity of the DPRD as an institution, and even commit Act against the law. Even though in DPRD meetings many matters are discussed relating to the interests of the people or constituents, from the phenomenon described, of course, this will have an impact on the image of the DPRD as a government institution in the eyes of the public.^[1]

The DPRD BK is tasked with upholding the moral and professional commitment of council members contained in the code of ethics so that these tools are seen as very useful for DPRD members. The DPRD BK plays a role not only as a guardian of the morale and integrity of DPRD members but also as an internal mechanism to uphold the DPRD's code of ethics. The code of ethics is a tool to guarantee the performance process of DPRD members.

Nonetheless, in South Sumatra, the performance of the BK DPRD has not been optimal as can be seen from the response of the BK DPRD to public complaints regarding alleged cases involving members of the DPRD in South Sumatra Province who violated the code of ethics by Lucianty. Lucianty has been named as a suspect in the bribery case at the DPRD Musi Banyuasin concerning the 2014 Accountability Statement Report and the ratification of the 2015 Regional Revenue and Expenditure Budget. Lucianty is a member of the South Sumatra Provincial DPRD for the 2014-2019 period.^[2]

After a long wait, there was no visible sign of the BK DPRD's initiative to address the case. As a reaction to this case, the public submitted a report to the BK DPRD, with the intention that the BK DPRD took concrete steps to address actions that could humiliate the dignity and honor of the council. The report submitted was not seriously followed up by the BK DPRD of South Sumatra Province.

Another case that occurred in South Sumatra Province was the incident of being caught red-handed by the Corruption Eradication Commission (KPK) against 2 (two) members of the Musi Banyuasin Regency DPRD, South Sumatra Province, along with 2 (two) officials from the Regional Government of Musi Banyuasin Regency in June 2021, relating to allegations of bribery in the discussion of the 2015 Musi Banyuasin Regency RAPBD. In this case, the Musi Banyuasin Regency DPRD Ethics Council did not make any attempt to summons in the framework of research into violations of the code of ethics committed by the two Members of the Musi Banyuasin Regency DPRD, even though the two DPRD Members referred to has clearly committed an ethical violation and even committed an unlawful act in this case the alleged crime.

Likewise, what happened in Muara Enim Regency, South Sumatra Province was almost the same as what happened to the Musi Banyuasin Regency DPRD member mentioned above. 15 (fifteen) members of the Muara Enim Regency DPRD were investigated concerning alleged bribery. The fifteen members of the Muara Enim Regency DPRD consist of 10 (ten) DPRD members for the 2014-2019 period and 5 (five) DPRD members for the 2019-2014 period. The involvement of the 15 (fifteen) members of the Muara Enim Regency DPRD was the result of the development of a corruption case involving Muara Enim Regent Ahmad Yani who was also involved in the Arrest Operation by the KPK on August 3 2019 regarding a project at the Muara Enim Regency Public Works Office. In this case, the Ethics Council of the DPRD of Muara Enim Regency did not attempt any subpoenas to investigate the violations that had been committed by the members of the DPRD in question.

Another incident also occurred in Empat Lawang Regency, South Sumatra Province, where several members of the Empat Lawang Regency DPRD had not physically attended the Plenary Meeting more than 3 (three) times in a row. In the DPRD Empat Lawang District Rules of Conduct that if a DPRD Member does not attend a Plenary Meeting or a similar physical meeting 3 (three) times in a row without the permission of the faction leader, it is a violation of the DPRD rules of conduct and can be categorized as a violation of the code of ethics. Regarding this incident, the Honorary Board of the Empat Lawang Regency DPRD as a disciplinary enforcement agency for DPRD members did not take any action under its position and function.

In early August 2022, there was an incident of persecution committed by a member of the Palembang City DPRD with the initials "MSZ" against a woman in a public area. After receiving reports from the BK community. The Palembang City DPRD conducted an investigation/research into the events that occurred, but only for clarification, not for enforcing the code of ethics.

Based on the description above, the root of the problem that has resulted in the BK DPRD of South Sumatra Province not being able to work as expected by the people needs to be found as soon as possible. Therefore, Based on this description, the author is interested in conducting research and examining the problem in a scientific paper titled " *Legal Reconstruction Of The Regional House Of Representatives Ethical Code Enforcement By The Honorary Council Based On Justice Value* " where the main problem discussed in this article is as follows:

1. What are the weaknesses of The Regional House of Representatives Ethical Code Enforcement By The Honorary Council in Indonesia currently?
2. How is the Legal Reconstruction of The Regional House of Representatives Ethical Code Enforcement By The Honorary Council Based On Justice Value?

Method of research

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables.^[3]

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of:^[4]

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

Research result and discussion

1. Weaknesses of the regional house of representatives ethical code enforcement by the honorary council in Indonesia currently

The duties of the honorary body as explained in Article 56 paragraph (2) are to maintain the morale, dignity, honor, image, and credibility of the DPRD. From these provisions, the BK DPRD is required to be proactive in supervising council members so that they do not take actions that violate the code of ethics. If DPRD members violate the code of ethics, steps to enforce the code will be taken immediately. Violations of the code of ethics urgently need to be processed and resolved so that legislators can return to carrying out their duties as representatives of the people. And of course to create a deterrent effect for those who violate the code of ethics.^[5]

The success of the BK DPRD in upholding the code of ethics has not only restored the behavior of DPRD members or created a deterrent effect, but has also indirectly assisted the people in solving their life problems because the DPRD's task is to improve people's welfare.

The BK DPRD regulations have provided clear and detailed authority regarding the mechanism for carrying out the duties of the BK DPRD. The mechanism for examining DPRD members who are suspected of violating the code of ethics is formulated in such a way that the ethical justice process runs well and decisions are made based on clear and objective considerations.

The authority of the BK DPRD is stated in the regulation of the DPRD South Sumatra Province number 94 of 2021 article 72 wherein in carrying out their duties, as referred to in article 71 the Honorary Board has the authority to:

- a. Summon DPRD members who are suspected of violating the code of ethics and/or regulations to provide clarification or defense of the alleged violations;
- b. Request information from reporters, witnesses, and/or other related parties, including requesting documents or other evidence; And
- c. Imposing sanctions on DPRD Members who are proven to have violated the Code of Ethics and/or DPRD Rules of Conduct.

Even though the regulations on the duties and authorities of the BK DPRD for the province of South Sumatra have been neatly arranged and seem systematic, their performance has not materialized as expected. BK DPRD has not worked optimally and has not carried out investigations, verification, and clarification of indications of violations of the code of ethics committed by DPRD members. The obstacle faced by BK DPRD members in carrying out their duties and responsibilities is that the DPRD Standing Regulations for the Province of Sumatra were drawn up based on Government Regulation Number 12 of 2018.

The inhibiting factors for the performance of the BK DPRD South Sumatra Province are from Government Regulation Number 12 of 2018 concerning guidelines for drafting regulations for the provincial, regency, and city regional people's representative council's article 55 paragraph (1) and paragraph (3) and article 56 paragraph (1) letter (c). Government Regulation Number 12 of 2018 concerning guidelines for the preparation of regulations for provincial, regency, and city regional parliaments, article 55 paragraph (1) and paragraph (3) and article 56 paragraph (1) letter (c) respectively read as follows:

- a. Article 55 paragraph (1) "*Honorary members are elected and by DPRD members...*"
- b. Article 55 paragraph (3) "*Members of the honorary body are elected and determined in a plenary session based on the proposal of each faction.*"

This condition often makes DPRD BK members unable to freely carry out their duties objectively, because efforts made to uphold the code of ethics for violations committed by DPRD members are intervened by party leaders. Moreover, the members of the DPRD who committed the violation were members of the DPRD in the same faction as members of the BK DPRD or members of the DPRD who were in the same coalition as them. Membership Independence of the BK DPRD BK DPRD Membership is

not independent. It can be said that BK was born with congenital defects. This is because the membership of the BK is elected by DPRD members which makes it difficult for the BK to carry out the oversight function independently. In a situation where the faction which is the representative of a political party has a different mission from that of the BK, the BK often becomes powerless.

Disobedience to the will of the party can have the effect of being subject to sanctions from the party, either in the form of dismissal from members of the BK DPRD or other sanctions. The position of the faction is not a complement to the DPRD, but the faction is an extension of the party in the legislature. Or in other words, factions are a means of party struggle in the legislature. The existence of factions within the institution of the House of Representatives as a form of institutionalization of political parties has both positive and negative implications.^[6] Every member of the legislature carries a mandate from the people to carry out the oversight function of government performance. However, through factions, it is not uncommon to weaken or even override this mandate to monitor and uphold the code of ethics. Each DPRD member must comply with the rules of the game of political parties through factions, otherwise, the party can easily attract or dismiss these members which in itself can remove their position from honorary Badak membership, even as members of the legislature. In carrying out its authority, the Honorary Board may be influenced by outsiders, bearing in mind that the Honorary Board is a faction representative and can be withdrawn by its faction at any time.

This has often happened through a recall or dismissal mechanism based on the proposal of the party of origin. Such practices result in the transfer of popular sovereignty to party sovereignty because against violations of popular sovereignty, there is no direct mechanism for imposing sanctions, usually only moral and political sanctions or only having an impact on popularity but if it conflicts with party policy it will have fatal consequences.

In addition to the large amount of interference by factions in carrying out the functions of the DPR, it turns out that factions also greatly determine the composition of membership, propose names of members and replace members. Therefore, Ramlan Surbakti believes that the provisions regarding factions regulated in the Rules of the House of Representatives are one of the sources of political power for factions (Surbakti, 2007). To maintain and strengthen relations within the institution of the People's Representative Council, rules are made in such a way that factions can easily continue to exist in interfering in people's household affairs through the people's representatives in the Regional People's Representative Council. Actions by factions based on political deals weaken oversight. Supervision often collides and even fails due to political constraints. Each of certain groups often covers for each other the weaknesses of a program because of certain political deals or bargaining so sometimes those who carry out supervision are not optimal in carrying out this supervision.^[7]

The Honorary Board has so far been framed by the DPRD regulations which are restrictive. The position of the Honorary Board is set as an internal supervisor which is sterile and passive because it does not have the authority to carry out initiative work. In the DPRD rules, the Ethics Council can only work if two conditions have been met,

namely a complaint report from the public regarding alleged violations of the DPRD member's code of ethics and if there is an order from the DPRD leadership.

The limitation on the performance of the BK DPRD causes the BK to be unable to conduct examinations of cases of violations of the code of ethics committed by DPRD members. Even though the case tarnished the image of DPRD members and harmed the people. In Tana Toraja, for example, there was an experience that occurred in the 2014-2019 period, because there were no complaints, the Honors Board seemed not to be working on a corruption case involving members and leaders of the Tana Toraja DPRD at that time.

Likewise Tiara Rezki's primary discovery. In his research, it was found that related to fraud and immoral violations, it was acknowledged by the head of the BK when interviewed, the source said that this matter could not be processed because there were no complaints from the public or people who felt aggrieved. This was what made BK unable to process related to these violations.^[8]

Even though there have been complaints from the community, BK does not necessarily process them. Incoming reports are often not following existing provisions. As a result, people are reluctant to file complaints because the rules for filing complaints are considered complicated. The complainant who is difficult to contact is also an obstacle or obstacle for the BK to carrying out their duties. This is because, for some of the complaints that come in, it is often difficult to contact the complainants. When the incoming complaint is under the procedure, the BK in following up needs direct information from the complainant. However, when the complainant is difficult to contact, the BK becomes hampered in following up. The BK cannot follow up when there is no further information from the complainant, because like it or not the BK has to follow the existing procedural guidelines. If it is not following the existing guidelines and procedures when following up on complaints, BK can be prosecuted.

Thus, public complaints that want BK to work on allegations of ethical violations by members of the council have not been fully fulfilled. On the other hand, some people also do not have the sensitivity to violations of the code of ethics. This means that the majority of the community does not play a role in the process of supervising the members of the council they choose, because basically, they do not care about the behavior of the members in question. This is of course because the community considers that behavior that is not good for the members of the council has no direct influence on them.

2. Legal reconstruction of the regional house of representatives ethical code enforcement by the honorary council based on justice value

BK DPRD has a big role in maintaining the dignity, honor, image, and credibility of each DPRD member so that he does not fall into self-interested actions and his group. Because the existence of the DPRD institution is very important and strategic in carrying out its functions to fight for the interests of the people it represents. In carrying out its functions as a member of the legislature, it is necessary to always prioritize the moral and professional commitments contained in the DPRD's code of ethics.

Therefore, the construction of regulations for enforcing the DPRD's code of ethics contains the values of Pancasila

justice, namely fair and civilized humanity and achieving social justice for all Indonesian people.

Reconstruction of regulations on enforcement of the code of ethics is carried out by Government Regulations concerning amendments to Government regulations Number 12 of 2018 concerning Guidelines for Drafting the Standing Orders of Provincial, Regency and City Regional People's Representative Councils as referred to in Government Regulation concerning amendments to Government regulations Number 12 of 2018 concerning Guidelines Article 55 paragraph (1) and article 55 paragraph (3) of the provincial, district and city Regional People's Legislative Council Rules of Conduct are reconstructed with provisions regarding the recruitment of BK DPRD members from faction members and from the community, such as academics, religious leaders, community and legal practitioners, Then related to the process of examining cases by BK DPRD only after receiving complaints it needs to be reconstructed with regulations that accommodate inspections can be carried out either by complaint or without complaint, especially in certain cases, such as members of the Council those caught red-handed, cases both circulating in print and electronic media, decency cases etc.

The General Election Honorary Council (DKPP) is an institution formed to maintain the independence, integrity, and credibility of the KPU and Bawaslu so that the elections certainly run properly and correctly. In terms of DKPP membership structure, before the Constitutional Court decision No. 81/PUU-IX/2011, DKPP members totaled 15 (fifteen) people. However, as a result of the Constitutional Court's decision, in the end, the DKPP membership, which was originally 15 (fifteen) people, ended up becoming 7 (seven) people, consisting of 1 (one) member of the KPU, 1 (one) member of the Bawaslu, and 5 (five) community leaders, as explained in Article 109 paragraph (4) of Law Number 15 of 2011.

Likewise with members of the Judicial Commission. The reasons for the formation of the idea of a Judicial Commission include the following ^[9]: 1. Intensive monitoring of judicial power is weak because monitoring is only carried out internally. 2. no institution acts as a liaison between government powers, in this case, the Ministry of Justice and Judicial Power. 3. Judicial power is deemed not to have adequate efficiency and effectiveness in carrying out its duties if it is still preoccupied with non-legal technical issues. 4. The low quality and lack of consistency in the decisions of the judiciary because they are not monitored intensively by a truly independent institution. 5. The pattern of recruitment of judges is too familiar with political issues because the institutions proposing and recruiting them are political institutions, namely the President and parliament.

Based on Law No. 18 of 2011 concerning Amendments to Law Number 22 of 2004 concerning the Judicial Commission, the Membership Structure of the Judicial Commission has 7 (seven) members. 4. Members of the Judicial Commission are state officials. 5. Membership of the Judicial Commission consists of a. 2 (two) former judges; b. 2 (two) legal practitioners; c. 2 (two) legal academics; and D. 1 (one) community member. 1. The leadership of the Judicial Commission is elected from and by members of the Judicial Commission. 2 Provisions regarding procedures for selecting the leadership of the Judicial Commission shall be regulated by the Judicial Commission.

Initially, the existence of the Judicial Commission as an institution enforcing the code of ethics of judges was within the structure of the Supreme Court. However, due to the development of the needs of the times, and also due to the influence of developments in the world in the late 20th and early 21st centuries with the emergence of ideas for the establishment of judicial commissions as 'external institutions' within the court environment in many countries, Indonesia adopted The idea of the Judicial Commission is to include its presence in the 1945 Constitution.^[10]

Article 56 paragraph (1) letter (c) "The honorary body has the task of Carrying out investigations, verification, and clarification of complaints from DPRD Leaders, DPRD Members, and/or the public." Article 56 paragraph (1) letter (c) makes it difficult for members of the BK DPRD to act when they witness or receive warm information in the community about behavior violating the code of ethics by DPRD members. But the BK feels powerless, because of the BK's authority to process a case based on a complaint. Meanwhile, complaints whether coming from council leaders, council members, the public, and/or voters were not at all in the hands of BK.

Conclusion

Based on the results of the research, the following conclusions can be drawn:

1. The Weaknesses in the Regulations for The Regional House Of Representatives Ethical Code Enforcement By The Honorary Council is that the DPRD BK members that consist of DPRD members have a deeply-rooted culture of courtesy, especially to higher and older members, commonly known as Ewuh Pakewuh that caused the member to become less independent in making decisions. Whereas the provisions requiring the BK DPRD to carry out investigations, verification, and clarification after receiving complaints from DPRD leaders, DPRD members, or the public have resulted in the BK not responding to cases that have an impact on weakening the honor, dignity, and credibility of DPRD members.
2. The Legal Reconstruction Legal Reconstruction of regulations for enforcing the code of ethics by the DPRD BK, namely PP No. 12 of 2018 Article 55 paragraph (1) and Article 55 paragraph (3) is reconstructed with the provision that the recruitment of BK DPRD members must not only comes from DPRD members, but also from external elements, namely academics, community leaders, religious leaders, and legal practitioners who have integrity and competence in their fields. The number of BK DPRD members from elements of society is more in number compared to the number of BK DPRD members from faction elements. Article 56 paragraph (1) letter (c) is reconstructed with regulations that examination of violations of the code of ethics by the BK DPRD can be carried out on complaints and without complaints therefore able to accommodate inspections to be carried out either by complaint or without complaint, especially in certain cases, such as members of the Council who were caught red-handed, cases circulating in both print and electronic media, and decency cases.

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