



Right Of Immunity Of Members Of The House Of Representatives (Case Study Of Immunity Rights Of Langkat Regency DPRD Members)

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ABSTRACT

Paradiqma democracy demands that every form of legislation and various decisions get the approval of the people's representatives and as much as possible attention to the interests of the people. Although the authority to form a law is in the hands of the DPR together with the president and does not involve the sovereign holder, namely the people in the process of its formation, but currently the role of the people in influencing a policy to produce a law and to assess the implementation of a law cannot be underestimated. The research aims to provide immunity rights for members of Parliament/DPRD as public officials in terms of carrying out their duties and authorities. The research method used in this research is normative juridical law research by using the approach of legislation and doctrine applied to a legal problem and is prescriptive that is expected to be applied in society. The results of the study concluded that members of the DPR / DPRD in performing their duties and authorities need to be protected properly and honorably in accordance with the level of Honor as elected representatives of the people and each member of the DPR must also reflect the personal and behavior of the honorable and leading in law enforcement.

INTRODUCTION

Indonesia is a state of law, according to Article 1 Paragraph (3) of the NRI Constitution of 1945. Based on the article which states the rule of law as the basis in every order of life of the state and nation, the Republic of Indonesia must provide shelter or protection to every citizen in accordance with the inherent rights and obligations based on the provisions of laws and regulations established by the people through their representatives in state institutions such as the DPR (legislative body) and the government (Z. A. Hoesein,2012). The state of law as said by Oemar Seno Adji is a state that views the

principle of legality as an essential characteristic, acting through, based on and in accordance with the law. Thus the rule of law implemented by the state of Indonesia as a major power organization, must always put the law as the main foundation in organizing the life of the state in every field of life (M. Budiardjo,2000).

This was also once reminded by Aristotle, a philosopher of Ancient Greece, that something of power should be derived from the laws established by the state, and therefore the law must also be the basis and foundation of State Life both governing and governed so that both parties have the same legal position (J.H. Rapar,1993).

The House of Representatives (DPR) has a very important position in accordance with the principles of democracy that we profess. The DPR has functions and rights that largely determine the administration of the state. Article 20a paragraph (3) of the NRI Constitution of 1945 (Undang-Undang Dasar 1945) contains provisions on the rights inherent in individual members of the House of Representatives (DPR) that every member of the House of Representatives has the right of immunity.

Immunity is an individual right of members of Parliament. The existence of these privileges is expected to be able to become a legal umbrella for DPR members when carrying out their functions, duties, and authorities as representatives of the people. Related to the right of immunity, a member of the House of Representatives cannot be prosecuted before the court and replaced between times because of statements, questions and or opinions submitted either orally or in writing in a meeting or outside a meeting of the House related to the functions, authority and duties of the House of Representatives, in addition, a member of the House of Representatives cannot be prosecuted before the court because of attitudes, actions and activities in a meeting or outside a meeting of the House of Representatives solely because of the constitutional rights and authority of the House of Representatives and or members of the House of Representatives.

The right of immunity of DPR members in detail is regulated in Article 224 of Law No. 2 of 2018 concerning the Second Amendment to Law No. 17 of 2014 concerning the people's Consultative Assembly, the House of Representatives, the House of regional representatives and the House of regional representatives consisting of 4 points which succinctly states that the DPR cannot be prosecuted before the court because of the statement submitted either orally, or in writing. Then in Article 245 it is explained that summons and requests for information to members of the DPR in connection with the occurrence of criminal acts that are not related to the performance of duties as intended in Article 224 must obtain written approval from the president after consideration from the Court of honor of the Council.

In the provisions regulating the immunity rights of DPR members, where there is a link between the immunity rights of DPR members and the functions, duties and authorities inherent in DPR members that apply whether DPR members are in the meeting or outside the meeting of DPR. This means that as long as a member of the DPR puts forward a statement, questions and/or opinions expressed either orally or in writing inside or outside

the DPR meeting cannot be prosecuted before the court.

The function and authority of the DPR in carrying out its institutional duties is regulated in Law Number 2 of 2018 concerning the Second Amendment To Law Number 17 of 2014 concerning the people's Consultative Assembly, House of Representatives, House of regional representatives and House of regional representatives (hereinafter referred to as Law Number 2 of 2018 concerning the Second Amendment To Law Number 17 of 2018 concerning MD3).

The latest case related to the right of immunity of DPR members, is the case of the arrest of Langkat DPRD members who were reported to the Langkat police by one of the employees of PT. Raya Padang Langkat (Rapala) which states Zulihartono, as a member of the Langkat DPRD is suspected of inciting or provoking the public by saying that PT. Rapala has dared to incorporate public facilities into its Hak Guna Usaha (HGU) with the construction of a portal at the entrance area of Block 09 a HGU PT. Rapala in Hamlet III Mendilingan Pasiran Village, District Gebang, Langkat. So that the speech caused a commotion where people protested over the installation of the portal.

However, in reality Zulihartono came to the location at the request of the people of West Pasiran where their livestock could not pass because of the portal installed by PT. Rapala. So, to mediate between the residents and the Plantation, a hearing was held at the Langkat DPRD office with the results of the meeting stating that PT. Rapala will open the portal. However, on September 7, 2022, Zulihartono was arrested at his home in Gebang District under Article 160 of the Criminal Code which states that anyone who in public verbally or in writing incites to commit an act that is punishable, against public power by violence or so that he does not want to according to the rules of law or legitimate orders given according to the rules of law, is sentenced to imprisonment for up to six years or a fine of Rp. 4.500,-

In the above case, it is clear that Zulihartono's immunity rights as a member of the DPRD have been violated because of the opinions he expressed either orally or in writing in the DPRD meeting or outside the DPRD meeting relating to his functions and authority and duties as a member of the DPRD which have been regulated in Article 224 of Law No. 17 of 2014 Paragraph (1) (Hutomo,2023).

A member of the House of Representatives is protected by the right of immunity when issuing a statement but the statement is still related to the functions, duties and authorities of members of the

House of Representatives. Regarding the provisions governing its implementation, it is true that the right of immunity of DPR members is indeed allowed as a form of the constitutional rights of DPR members. Where members of Parliament in submitting statements, questions, and/or opinions are given protection against claims to the court and intertemporal replacement of statements, questions, and/or opinions expressed (Bagir Manan,tt)

However, the right to immunity cannot necessarily be assumed to be inherent in members of the DPR. The implementation of this right needs to look at the context of the functions, duties and authorities of DPR members so as not to disturb the sense of Justice of the community with the right to immunity of DPR members (Legowo,2005)

Based on this background, the authors are interested in researching the issue of "implementation of immunity Rights Case Study of DPRD members of Langkat regency".

METHOD

The research methods used in preparing this article are normative juridical research methods or library studies (library research)and empirical methods in which the theory of literature is combined with facts in the field (Ariman Sitompul,2023).

RESULTS AND DISCUSSION

Right of immunity as an effort to maintain the honor of the council and not to protect members of the House of Representatives from legal problems. In Law No. 17 of 2014 concerning the people's Consultative Assembly, the House of Representatives, the House of regional representatives, and the House of regional representatives, it is stipulated that members of the DPR cannot be subject to legal sanctions while performing their duties, but the right of immunity does not apply if members of the DPR are involved in Special Crimes (Gunawan Markus,2008).

In other words, the existence of the right of immunity makes DPR members able to carry out their duties and authorities effectively so that in applying the right of immunity in the Indonesian House of Representatives institutions is limited , it must remain within the corridors of applicable statutory provisions so that there is no abuse of power, meaning that DPR members can be examined by the court if the immunity rights they have violate the provisions of the Constitution or law (AlQadr,tt).

The implementation of the right of immunity, the provisions of which are regulated in Article 224 paragraph (1), (2) and (3) of Law Number 17 of 2014, is inseparable from the rules of Procedure and

also the Code of ethics of the institution. In addition, members of the Legislature have an equal position in front of the law and the government, so in terms of asking questions and statements must be done with the procedures to heed the ethics of politics and government and always use manners, manners, norms and customs of the nation's culture.

The provisions governing the rules and codes of conduct in the implementation of the right of immunity of members of the House of Representatives are contained in the House of Representatives Regulation No. 3 of 2016 concerning the Second Amendment to the House of Representatives Regulation No. 1 of 2014 concerning the rules of Procedure and in the House of Representatives Regulation No. 1 of 2015 concerning the Code of ethics of the House of Representatives of the Republic of Indonesia.

This case began on February 11, 2022 with a report to Zulihartono as a member of the NasDem Langkat faction DPRD by the West Pasiran community because of a closed portal so that their livestock could not pass. The Portal was installed by PT. Raya Padang Langkat, hereinafter abbreviated as Rapala, in the entrance area of Block 09 a HGU PT. Rapala located in Hamlet III Mendilingan Pasiran Village, District Gebang, Langkat. The installation location of the portal is installed in public facilities that become roads that people use to pass.

Then, Zulihartono came to the location and mediated between the people of West Pasiran and the plantation of PT. Rapala and bring this conflict to be resolved through a hearing, hereinafter abbreviated as RDP, in the Langkat DPRD building by officially inviting the people of West Pasiran and PT. Rapala. Based on the results of the hearing on March 14, 2022, stating that PT. Rapala will open the portal they have installed and also provide livestock machinery.

However, after the implementation of the hearing, there was a report that went to the Langkat Police Station by one of the employees of PT. Raya Padang Langkat (Rapala) which stated that Zulihartono, as a member of the Langkat DPRD from the Nasdem faction, was suspected of inciting or provoking the community by saying that PT. Rapala has dared to incorporate public facilities into its Hak Guna Usaha (HGU) with the construction of a portal at the entrance area of PT HGU. Rapala so that over the speech there was a commotion where people protested over the installation of the portal (Detik.com, 2022).

PT. Rapala sued Zulihartono and reported him to the Langkat Regional Police on charges of sedition and imposed Article 160 of the Criminal Code which

states that anyone who in public verbally or in writing incites to commit an act that is punishable, against the public power by force or that he does not want to follow the rules of law or legitimate orders given according to the rules of law, is sentenced to imprisonment for up to six years or a fine of Rp. 4.500,-.

Then, the police conducted an examination of 12 witnesses, examination of criminal experts and defense experts. Before Zulihartono was arrested and detained, Langkat police had tried to mediate with both parties. However, the reporter continued his report. So, on September 7, 2022, Zulihartono was arrested at his home in Gebang District and imposed Article 160 of the Criminal Code.

On September 8, 2022, precisely on Thursday night, Zulihartono was released through the chairman of the Nasdem North Sumatra DPW, Iskandar, who said this was a form of commitment by the Nasdem Party to protect its cadres from alleged criminalization efforts by the Langkat police.

Nasdem Party Secretary of North Sumatra, Syarwani accompanied by Vice Chairman of advocacy and law, Suryadi Bahar, his party has reported the Langkat police to the head of the Indonesian National Police (Kapolri) and the head of the professional and Security Division with allegations of abuse of authority and criminalization for arresting their cadres who are absorbing the aspirations of the people as members of the Langkat DPRD in Pasiran village, Gebang District, Langkat regency who have problems with PT Rapala (Rechtin Hani Ritonga,2023).

North Sumatra Regional Police Chief, Inspector General of RZ Panca Putra Simanjuntak has also examined a number of Langkat police personnel related to alleged procedural errors in the arrest of Zulihartono as a member of the Langkat DPRD who violated the rules of Law and has issued a warrant for termination of detention (SP3) to stop the investigation against Zuliharto.

This action is clearly a form of criminalization because law enforcement officers have abused their authority and violated the right of immunity of a member of Parliament in accordance with Article 388 of Law Number 17 of 2014 Paragraph (1) which reads, "members of the district/city parliament cannot be prosecuted before the court because of statements, questions, and/or opinions expressed either orally or in writing in the meeting of the DPRDkabupaten/kota or outside the meeting of the DPRD kabupaten/kota relating to the functions and powers and duties of the DPRD kabupaten / kota." The task in question is to accommodate and follow

up the aspirations and complaints of the public in accordance with Article 373 of Law No. 17 of 2014.

The legal process undertaken by members of the Langkat DPRD is also not in accordance with the procedure. Investigators from the Langkat police did not make a summons to Zulihartono that the summons should have been through the Honorary Board of the Langkat DPRD (BKD) which has been clearly regulated in Article 403 of Law Number 17 of 2014 concerning the people's Consultative Assembly, the House of Representatives, the House of regional representatives and the House of regional representatives, namely, or the organization may file a complaint with the Honorary Board of DPRD kabupaten/kota in the event that it has sufficient evidence that there are members of DPRD kabupaten/kota who do not carry out one or more obligations referred to in Article 373 and / or violate the Prohibition provisions referred to in Article 400.

CONCLUSION

The legal case of Langkat regency members in the right of immunity of DPR members is a form of rights granted to individual members of the DPR to ensure the implementation of the functions, duties, and authority of members of the House of Representatives as representatives of the people. But of course with the limitations of the implementation of the functions, duties and authorities of the members of the DPR itself. Where the implementation of the functions, duties and authorities are framed by the rules and codes of conduct of members of the House of Representatives as stipulated in MD3 Law and DPR Regulation No. 1 of 2015 concerning the Code of ethics of the House of Representatives.

REFERENCES

- Gunawan Markus,2008 Buku Pintar Calon Anggota &Anggota Legislatif, Transmedia Pustaka,Jakarta Selatan.
- Hutomo, Dimas,2023, "Haruskah Izin MKD untuk Menyidik Anggota DPR yang Terlibat Tindak Pidana?", diakses dari <https://www.hukumonline.com/klinik/a/haruskah-izin-mkd-untuk-menyidik-anggota-dpr-yang-terlibat-tindak-pidana-lt5b7e6f7da3e80>, diakses pada tanggal 19 Januari 2023 pukul 20.43
- J.H. Rapar, 1993*Filsafat Politik Aristotele*, Jakarta: Raja Grafindo Persada, pp.78-79
- Janedri M. Gaffar,2012, *Demokrasi Konstitusional; Praktik Ketatanegaraan Indonesia Setelah*

Perubahan Undang-Undang Dasar 1945,
Jakarta: Konstitusi Press, 2012, pp. 60

Legowo T.A,2005, Lembaga Perwakilan Rakyat di
Indonesia: Studi dan Analisis Sebelum
dan Sesudah Perubahan UUD 1945,
Jakarta.

M. Budiardjo, 2000, *Pengantar Ilmu Politik*,
Gramedia, 2000, pp. 65

Manan Bagir, DPR, DPD, dan MPR dalam UUD
1945, Yogyakarta, FH UII Press, Cetakan
pertama.

Siregar Syahminul,2012, Dewan Perwakilan
Rakyat Menurut UUD 194 (perubahan),
Jurnal ilmiah abdi ilmu. Vol.5 No. 1.

Sitompul A. Alternative Dispute Resolution
Criminal Acts Of Money Politics In
Elections In View Of Normative Law.
International Asia Of Law and Money
Laundering (IAML). 2023; 2(1).

Witianti Ratnia Solihah Siti,2016, "Pelaksanaan
Fungsi Legislasi Dewan Perwakilan Rakyat
Pasca Pemilu 2014: Permasalahan dan
Upaya Mengatasinya", Vol. 2 No. 2.

Z. A. Hoesein., 2012, *Pembentukan Hukum dalam
Perspektif Pembaruan Hukum*, Jurnal
Rechts Vinding: Media Pembinaan Hukum
Nasional, pp. 307-327

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