

Accountability and Oversight in the Structure State System in Indonesia

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Abstract: *The Implementation function of control of Parliament and Financial Audit Board in assessing Governmental accountability according to Indonesian constitutional system not yet used standard measuring rod so that still often happened to differ opinion between Parliament with Financial Audit Board, and also Internal Audit Institution is including enforcer government officer punish to act findings result of inspection of Financial Audit Board. Follow-Up result of inspection of Financial Audit Board by Parliament to about state's finance accountability disagree with body politic grounds namely rule of law and is same treatment ground in front of law, because Parliament only acting finding cases of Financial Audit Board which have direct importance to Parliament.*

Keywords: Accountability, Oversight, The Structure State System

1. Introduction

As a consequence of the principle of state law, both according to the concept of rule of law and rechtsstaat (democratische rechtsstaat), then the Government should be responsible (Responsible) to what is to be the attitude, behavior, and actions to the people within the framework of carrying out the functions of Government. At the same time, Indonesia as a legal state in it the sense of the recognition of the principle of supremacy of law and constitutionalism, which is essentially that in the state of law, the law should be the determinant of everything in accordance with the doctrine of the rule of law. Within the framework of the rule of law, the law must be believed to be the recognition that the law has a top notch (supremacy of law), the equality in law and governance (Aquality before the law) and the enactment of the principle of legality in all its forms in practice (due process of law).

On the other hand, there must also guarantee that the law is created and enforced based on the principles of democracy or sovereignty of the people, (democratische rechtstaat), from the central to the local level, and the government as the organizer of the state must fulfill its constitutional mandate that public accountability.

One of the most important elements in the delivery of state or government is accountability and oversight. A.D. Belifante (et al) say “*Niemand kan een bevoegdheid uitoefenen zonder verantwoording schuldig te zijn of zonder dat of die uitoefening controle bestaan*”. [A.D. Belifante, et al., *Beginselen van Nederlandse Staatsrecht*, Alpen aan den Rijn, 1983, hlm. 21] This case the presidency is a position in the structure of state law and therefore there should be accountability and oversight. Therefore it is natural, if the Government as power holders who have used the power and financial resources that come from the people, should be accountable to the people. Thus any government personnel should be able to account for all its policies to the public during their duties, powers and responsibilities given to him. Account of personality traits, attitudes, behaviors, and policies within the framework of implementing the tasks and responsibilities to the public, referred to accountability

(accountability). [Joko Widodo, *Good Governance*, Insan Cendekia, Surabaya, 2001, hlm. 148]

The provisions in Article 1 (2) of the 1945 Constitution (after the third amendment) assert that sovereignty is in the hands of the people and carried out according to the Constitution, can be construed as a legal basis for accountability, in the sense that any holder of power in the state system in Indonesia must be accountable for the implementation of power within the limits of the constitution.

One form of arrangement accountability in are the provisions of Article 7 A of the 1945 Constitution which states that the President and the Vice President can be dismissed for an offense that is betrayal of the nation and the state, corruption, bribery, other felonies or misconduct, or if it is proven not longer qualifies as President and Vice President, and in practice the constitutional showed "understanding responsibility" is not just a means of supervision, but also included the dismissal of the President from office.

To implement these provisions is very difficult, especially about the substance of "treason against the nation, felonies and misconduct. Although this provision is quite reasonable to base dismiss (impeachment) President and Vice President, however, the term felonies and misconduct is a concept that is abstract and vague, it could lead to differences in interpretation. [Anonymous, *Reposisi Lembaga Tinggi Negara (Sebuah Upaya Menuju Indonesia Baru)*, Puslitbang Kemasyarakatan dan Kebudayaan – LIPI kerja sama dengan Hans Seiden Foundation, Jakarta, 2001, hlm. 81]

Here is a difficulty to explain about accountability as proposed by Dawn Oliver & Gavin Drewry, “*One difficulty in considering accountability is to determine the criteria against which a person is to be held accountable. If we take accountability to mean the duty to give explanations of justifications for action and then to make amends if it should turn out that something has gone wrong, the mechanism will be weak if the criteria are nor articulated, as is often the case in relation to political or administrative accountability.* [Dawn Oliver & Gavin Drewry, ‘*Ministerial accountability: What and where are the parameters?*’, in D. Butler, V. Bogdanor, R. Summers (Eds.), *The Law, Politics*

and the Constitution (pp. 78-101). Oxford: Oxford University Press, 1999, hlm.35]

There are three important elements of accountability, namely: *The release of information, whether through a duty information; The existence and clarity of criteria for evaluating conduct. These are lacking, for instance, in relation to the accountability of ministers to parliament, and The availability of sanctions or remedies if fault is found; [Ibid]*

Analytically accountability can be seen in terms of subjective and objective (cursive writer), subjectively spiritual accountability can be identified as a person, in this relationship of accountability is a form of liability of any person to his God.

In the context of structure state system, shows that the accountability of the Government consisting of vertical accountability that is accountable for the management of the fund to a higher authority, it can be understood from the provisions of Article 17 paragraph (2) of the 1945 Constitution which states that "ministers are appointed and dismissed by the President ". This also meant that ministers are to be subject to and accountable to the President, while the horizontal accountability (horizontal accountability) is accountable to the general public or to Parliament.

2. Government Accountability

Accountability is a broad concept by requiring that the Government provide a report on the control over public funds and their use as intended. Besides, the government must be accountable to the people regarding the excavation / voting public sources and intended use, which is in line with the content of Article 23 paragraph (1) of the 1945 Constitution (Third Amendment 2001) that: "Budget of the state as a form of financial management the state is set every year by law and carried out openly and responsibly for the welfare of the people

The Government Accountability is based on the concept of democracy means that the people have the right to know, so that the financial reporting is essential to meet the obligations of the Government in providing accountability. [Sugijanto, Majalah Triwulan BPK-RI, Pemeriksaan, Nomor 73, Januari, 2000, hlm. 53] Financial reporting in a democratic country the government plays a central role in fulfilling the Government's obligation to provide publicly accountable (to be publicly accountable.

Clear accountability is attached to a position closely linked to the system of government. In a parliamentary system of government Cabinet Ministers are accountable to Parliament, is in a Presidential system of government like the State of Indonesia, the minister responsible to the President and not to Parliament [Ismail Suny, *Pergeseran Kekuasaan Eksekutif*, Jakarta 1965, hlm 206]

Robert D. Lee, say "An a democracy, budgeting is a device for limiting the powers of government. Two issue in the evolution of modern public budgeting as an instrument of accountability to whom and for what purposes. [Robert D.

Lee, & Johnson, Ronald W, *Public Budgeting System, Cet. Ke 2 Tokyo, 1997, hlm.4]*

In this case there is a connection between the state budget accountability, because the budget is a tool (as an instrument) of responsibility (accountability). (accountability). [Arfin P. Soeria Atmadja, *Op Cit*, hlm. 45] Next Robert D. Lee, say "Basically, responsibility in a democratic society entails holding elected officials answerable to their constituents. Elected executives and legislative representatives at all levels of government are, at least in theory, held accountable for their decisions on programs and budget" [Robert D. Lee, *Op. cit.*, hlm. 4-5] recognized Robert D. Lee that its responsible to the voters (constituents) are only theoretically, given that they do not know exactly the implementation of the budget approval by Congress..

That the separation of powers which is held in the state system directed to the responsible government, which is accountable to both to Parliament and to the people . This is because the actual state budget problems by A.E. Buck is a purely legislative function.[Buck, A.E., *Public Budgeting*, New York, 1929, hlm. 17; Wirjono Prodjodikoro *Azas-azas Hukum Tata Negara di Indonesia*, cetakan ke-3, hlm. 108] There is disagreement about the nature of this determination is according Buys begrooting entry executive power, according to incoming Kranenburg legislative power, the author agrees with Arifin P. Soeria Atmadja that, nature is in the midst between executive and the legislature ". And therefore it is only fitting if the President is accountable to the legislature on the implementation of the state budget, especially when the state budget as stated by J.B. Kan Jr. is eene jaarlijkse machtiging. , In such case, the Government should have been authorized by Parliament accountable to the authorizing him.. [Kan Jr., J.B., hlm. 3.] Burkhead stated that development of modern budget gives the impression of two main issues that are important about budget accountability, stating that:

" *First, the budget system developed as an instrument for democratic control over the executive.... Second, the budget system requires the development of two- way pattern of responsibility, centering on the executive. One line of responsibility runs from the executive to the administrative agencies.*

The executive must be charged with general supervision of administrative affairs; executive authority must be able to control administration. The second line of responsibility in a budget system runs from executive to the legislature. In every democratic government the legislature may approve or reject the proposals of the executive; in some government the legislature may also modify executive proposals. In the exercise of this authority the legislature must be able to hold the executive accountable- both for the execution of last year's financial plan and for the comprehensiveness of this year's program". [Burkhead, Jesse, hlm. 83-84]

If the explanation put forward by the Burkhead studied further, then the state budget accountability centered on the executive, and then translated into the two grooves accountability :

- (a) one line of responsibility runs from the executive to the administrative agencies;
- (b) the second line of responsibility in a budget system runs from executive to the legislature;

In almost all countries, both of which are fully adhered to the separation of Trias Politica, or not fully embrace the principle, has a responsibility of the state budget, as noted above. First, due to the implementation of the budget problems the state is not only the competence of public authorities solely, but also the scope of authority of the people's representatives as giving authorization. Second, government and administrative agencies in the environment, in implementing the state budget is bound by the provisions of the applicable legislation, and for that the executors of the budget (agencies) should be accountable to the head of government (executive) [Arifin P. Soeria Atmadja, *Op. cit.*, hlm. 83] Second, government and administrative agencies in the environment, in implementing the state budget is bound by the provisions of the applicable legislation, and for that the executors of the budget (agencies) should be accountable to the head of government (executive) [*Ibid.*, hlm. 84.].

Especially with regard to accountability of the "financial state", there are two things that need to be put forward, namely the sense of accountability that have been raised about the definition of "financial state" in the narrow sense and in a broad sense. The description of this liability associated with the financial terms of the country so that the scope of this responsibility is always limited by the definition of "financial state"

From the above description indicates that at a minimum there are three elements of accountability, namely:

- 1) The transparency (openness), which means that any policy of the Government should be able to access the public interest and government policies that should be accessible to the public.
- 2) The presence and clarity of criteria for an evaluation, which mengantdung sense that any government policy requires a clear benchmark, making it easier to do evaluation.
- 3) Availability of sanctions or repair if an error is found, meaning that every government policy is not at risk, or in other words if the government wrong in taking a policy must be justified legally or politically.

3. House of Representatives Oversight Functions

Parliament oversight function is the function performed by the Parliament in overseeing the executive on the implementation of laws which include monitoring the implementation of the State Budget and public finance management and oversight of government policies. 1945 gives a strong position to Parliament in carrying out oversight functions.

Thus Parliament has a continuing obligation to carry out the oversight function of the government, because the function of oversight by the Parliament is one of the hallmarks of a democratic constitutional state. This means that the supervisory function of the Parliament on the Government intended that the Government act and make policy or do not

deviate from the constitution. Bagir Manan in his commentary states that "can not be known for certain purpose to be achieved from the provisions of Article 20 A paragraph (1) because of this provision is not only overlapping but also cause confusion. In Article 20 (1) clearly states, the Parliament holds the power to make laws, and in Article 20 A of paragraph (1) appears provisions on the functions of budgets and control in addition to the legislative function. In this case the mention of the legislative function is not consistent with the power to make laws, in addition to overlapping, understanding legislation is more comprehensive understanding of the law, the power to make laws is the only legislative function of Parliament [*Ibid*]

In carrying out its oversight functions other than through the Working Meeting, Hearing, Public Hearing and working visit, also held by the Board through the use of Parliament's rights such as the rights to ask for information to the President.

Although the presidential system adopted in the constitutional system of Indonesia, the rights of Parliament in asking for information to the President still obtain a solid foundation to be used. Article 33 paragraph (3) of Law No. 4 of 1999 which re-regulated in Law Number 22 Year 2003, included one of the rights of Parliament in carrying out its duties and authorities are about to ask for information to the President further provided in the Rules of Procedure of the House of Representatives set regarding the procedures for use of such rights as follows In the next plenary meeting after the proposal request for information to the President accepted by the leadership of the House of Representatives, the Chairman of the Meeting informed the Members about the influx of inquiries proposal to the President, and the proposal is then distributed to the Members. In the Consultative Council meeting held to determine the time of the proposal talks inquiries to the President of the Plenary Meeting, to the proposer is given the opportunity to provide an explanation of the proposal. Plenary Meeting has been determined, the proposer provides an explanation of the purpose and objective of the proposal to the President of the inquiries. Plenary Meeting referred to in paragraph (3), or another Plenary Meeting decided to approve or reject the proposal.

4. Conclusion

Supervisory functions Parliament as stipulated in the 1945 Constitution and in Law Number 22 Year 2003 theoretically in classified in terms of supervision, namely: First, supervision as a command (*control as command*), which implies the supremacy of Parliamentary as required Article 30 of Law No. 22 of 2003 which provides that:

- 1) the Parliament in carrying out its duties and authorities entitled to ask state officials, government officials, legal entities or citizens to provide information about something that needs to be addressed for the sake of the nation.
- 2) Each state officials, government officials, legal entities or citizens required to meet the demand of the House.
- 3) Each state officials, government officials, legal entities or citizens who violate the provisions referred to in

- paragraph (2) shall be enforced in accordance with paraturan call legislation.
- 4) In the event of a forced call referred to in paragraph (3) are not fulfilled without a valid reason, the question may be held hostage maximum of fifteen days in accordance with the legislation.
 - 5) In the case of officers being held hostage as referred to in paragraph (4) the outgoing or resignation, concerned released from hostage by law.

[7] Robert D. Lee, & Johnson, Ronald W, *Public Budgeting System*, Cet. Ke 2 Tokyo, 1997

Two, supervisory functions House, connotes influence (*Control as influence*), it is often found in the constitutional norm, that Parliament holds the power to make laws (Article 20 (1) of the 1945 Constitution), and Article 23 of the Third Amendment of the 1945 Constitution which states that " the draft law budget revenue and expenditure submitted by the President to be discussed with the House of Representatives by taking into consideration the Regional Representatives Council.

House Oversight in the sense of influence can also be seen in terms of official institutions of higher state, for example, Article 23F Paragraph (1) 1945 (third amendment 2001) asserted that the Audit Board Members elected by the House of Representatives by taking into consideration the local council, inaugurated by the President.

Besides supervision in the sense of "ex post" (check) or checks arranged with respect to the constitutional rights of Parliament as provided for in Article 20A of the 1945 Constitution which states that (1) The Council of Representatives has the legislative function, the function of the budget and monitoring functions. (2) In performing its functions the Parliament has the right of interpellation, the right of inquiry and the right to express opinions.

In the end the House's monitoring shows that the Parliament has become hostage institutions (*gijzeling*) and additional authority beyond the power of Parliament is an act that should be redundant functions in the state system that should not be interfered with by the Parliament.

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