

ABSTRACT

The Act No. 22, 1999 concerning about Local Government has given powerful position to District/Local Legislative. The Act stated that in accomplishing its duties, the District/Local Legislative possesses the right to make inquiries from state official or any members of society for the sake of nation, state, government, and development. Anyone who refuses those inquiries may be charged maximally a year of punishment. This stipulation is supported by The Act No. 22, 2003 concerning about The Composition and Position of People Consultative Council, Indonesian Legislative Assembly, and District/Local Legislative. This Act contains the stipulation that states maximum 15 days of detention to those who refuses District/Local Legislative's inquiring. However, this stipulation give a chance to the District/Local Legislative to abuse its authority by misinterpreting any clauses in this Act in appropriate with his selfinterest.

There are two aspects that may become a prohibiting element from the abuse, District/Local Legislative's duty aspect and for the sake of state, nation, government and development aspects. Both aspects have to be accomplished cumulatively, if one aspect is missing then the District/Local Legislative losses its right to make inquiries. Duty aspects of District/Local Legislative have been included in the Act. Meanwhile, the blurring public necessity aspect can be restricted by investigating upon public necessities concept stated in the laws and in any real cases happened. Based on this investigation, we can derive the meaning of public necessity as the necessities of the nation, necessities of the state, necessities of the people and development related with law order, social order and national safety.

To deepen the investigation on District/Local Legislative's right to make inquiries, we have three cases provided here, first: the case neither of industrial relationship disputes, which actually not included as the duty of District/Local Legislative or as the public necessity concept. Hence, the District/Local Legislative does not have the right to make inquiries on the both disputing sides. Second, the case of providing sport facilities, which actually included as the duty of District/Local Legislative and in the line of public necessity concept. So, the District/Local Legislative has the right to make inquiries on the sides who has obligation to provide those facilities. Third, in the judicature case, which actually not as the duty of District/Local Legislative although sometimes there is a judicature case that being included as public necessity. In brief words, the District/Local Legislative does not have any authority to make inquiries in the judicature cases.

Finally, as a democratic institution, the District/Local Legislative has to act proportionally in the line of law stipulation. The District/Local Legislative's desire to solve any case faced to them, although it is not his duty, will overlap the accomplishment of this case. Beside of that, the main duty and obligation of District/Local Legislative will be neglected.