



## Legal Standing and Authority of the Regional Representative Council in the Indonesia Constitutional System

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### ABSTRACT

*The Regional Representative Council (DPD) as a regional representative institution is located as a state institution. The existence of the DPD reflects the principle of territorial or regional representation (regional representation). Therefore, as a representative institution, the DPD should ideally have the legislative, supervisory and budgetary functions as well as the House of Representatives (DPR). However, the DPD as a representative institution with these three functions actually has a very weak and soft function. The two chambers of the House of Representatives (DPR and DPD) do not have balanced authority. DPD and DPR are two rooms (houses, chambers) whose authority is not balanced, because it is classified as soft bicameral.*

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## 1. Introduction

In general there are two models of representative systems that develop in the practice of countries, a one chamber system and a two chamber system. The one chamber system is also called the unicameral legislature and the two chamber system is also called the bicameral legislature.<sup>4</sup> In generic terms, the first room is usually called the Lower House or the House of Representatives, and the second room is called the Upper House or Senate.

After the amendment to the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), it has substantially and fundamentally affected the changes in the structure of the Indonesian parliament. The UUD NRI 1945 after the change, the structure of the

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Indonesian parliament consists of three institutions namely the People's Consultative Assembly (MPR), the House of Representatives (DPR), and the Regional Representative Council (DPD). The DPR is filled by political parties through general elections, while the DPD is filled by regional representatives through general elections. The MPR consists of DPR members and DPD members. This means that MPR members consist of political representatives and regional representatives elected through general elections.

The formation of the DPD was originally intended to reform the structure of the Indonesian parliament into two bicameral units consisting of the DPR and the DPD.<sup>5</sup> With this bicameral structure, it allows relative representation of all the people to be distributed on a broader social basis.<sup>6</sup> The DPR reflects the principle of political representation, while the DPD reflects the principle of territorial or regional representation.<sup>7</sup> The presence of political representation and regional representation is intended so that the voices (aspirations and interests) of the people through the DPR and regional votes through the DPD can be collectively accommodated in national level parliaments.

## **2. Method**

This study used an normative juridical approach, which is a method or procedure used to solve problems by first examining existing secondary data, the research was methods were used with prescriptive analytical.<sup>8</sup>

## **3. Existence of Regional Representative Council in Indonesia Representative Systems**

### **3.1. Standing, Function, Authority and Duties of the Regional Representative Council**

The Regional Representative Council is regulated in Chapter VII Third Amendment of the UUD NRI 1945, Article 22C paragraph (1) states that Members of the Regional Representative Council are elected from each province through general elections. It was determined that the members of the regional representatives from each province had the same number and the total number of members of the regional representatives was not more than one third of the members of the People's Representative Council. The Regional Representative Council meets at least once a year. The composition and position of the DPD is regulated by law.

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Third Amendment to the UUD NRI 1945, provisions of Article 22D paragraph (1), paragraph (2), and paragraph (3) state that:

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<sup>5</sup> Asshiddiqie, Jimly. (2005). *Sengketa Kewenangan Antarlembaga Negara*. Jakarta: Konstitusi Press, p. n.p.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> Soemitro, R.H. (1998). *Metodologi Penelitian Hukum*. Jakarta: Ghalia Indonesia, p. 10.

- 1) The Regional Representative Council may submit to the House of Representatives a draft law relating to regional autonomy, central and regional relations of formation and expansion and merging of regions, management of natural resources and other economic resources, as well as those related to central financial balance and area.
- 2) The Regional Representative Council also discussed the draft law relating to regional autonomy; central and regional relations; regional formation, expansion and merging; management of natural resources and other economic resources, as well as central and regional financial balance; and giving consideration to the House of Representatives on the draft budget law for state income and expenditure and the draft law relating to tax, education and religion.
- 3) The Regional Representative Council can supervise the implementation of laws concerning: regional autonomy, formation, division and merging of regions, relations between the center and regions, management of natural resources and other economic resources, implementation of the state revenue and expenditure budget, taxes, education and religion as well as conveying the results of their supervision to the House of Representatives as a material for consideration to be followed up.

The Regional Representative Council (DPD) is a regional representative institution that is domiciled as a state institution. DPD has functions:

- 1) Submission of draft laws relating to regional autonomy, central and regional relations, formation and expansion and merging of regions, management of natural resources and other economic resources, as well as those relating to central and regional financial balance to the DPR;
- 2) Participate in the discussion of the draft law relating to regional autonomy, the relationship between the center and the regions, the formation, division and merging of regions, management of natural resources and other economic resources, and financial balance between central and regional governments;
- 3) Giving consideration to the DPR for a draft law on state revenue and expenditure budgets and a draft law relating to tax, education and religion; and
- 4) Supervision of the implementation of laws concerning regional autonomy, the formation, division and merger of regions, central and regional relations, management of natural resources and other economic resources, implementation of the state budget, taxes, education, and religion.

DPD has the authority and duties:

- 1) Submit draft laws relating to regional autonomy, central and regional relations, formation and expansion and merging of regions, management of natural resources and other economic resources, and relating to the balance of central and regional finances to the DPR;
- 2) Take part in discussing the draft law relating to the matter referred to in letter a;
- 3) Compile and submit a list of inventory issues of the draft law originating from the Parliament or the President relating to the matter referred to in letter a;
- 4) Give consideration to the DPR for the draft law on the state budget and the draft law relating to tax, education and religion;

- 5) Can supervise the implementation of laws concerning regional autonomy, the formation, expansion, and merging of regions, central and regional relations, management of natural resources, and other economic resources, implementation of the state budget, taxes, education, and religion;
- 6) Submit the results of supervision of the implementation of the law on regional autonomy, the formation, expansion and merger of regions, the relationship between the center and the regions, management of natural resources and other economic resources, implementation of the state budget, tax, education, and religion law to the DPR as consideration for follow-up;
- 7) Accepting the results of audits of state finances from the BPK as material for making consideration to the Parliament regarding the draft law relating to the State Budget;
- 8) Give consideration to the DPR in the selection of BPK members; and
- 9) Formulate national legislation programs relating to regional autonomy, central and regional relations, the formation and expansion and merging of regions, management of natural resources and other economic resources, as well as those related to central and regional financial balance.

The authority of the DPD established by the constitution along with the organic laws governing the DPD, in terms of the legislative function given to the DPD is very limited in that it can 'propose' draft laws relating to regional interests, and 'participate in discussion'. The 'consideration' and 'supervision functions' functions of the DPD are also very limited. The term 'can', participate 'denotes the authority of the DPD, is not a basic authority, but only a derivation of the authority of the DPR. According to Bagir Manan, this shows that the DPD is not a full legislative body.<sup>9</sup> The DPD does not have the authority up to the level of final decision making in the political process, the entire DPD authority only comes to the level of giving consideration.<sup>10</sup> The existence of the DPD is only as a complementary body of the DPR.<sup>11</sup>

The DPD can indeed submit a bill, but the bill proposed by the DPD does not appear to include the DPD's authority to participate in joint agreement with the DPR and the president, as referred to in Article 20 paragraph (2) of the UUD NRI 1945 which states that "Every Draft Bill is discussed by the House of Representatives The people and the president to get mutual agreement". On the basis of that provision, the DPD is not a medewetgever, although the constitution gives him the authority to participate in discussing a particular bill.<sup>12</sup> According to Jimly Asshidiqie in the field of legislation, the DPD's function is only as a co-legislator in addition to the DPR. The nature of its duties in the field of legislation only supports the auxiliary agency of the DPR's constitutional duties, so that the DPD can at most be called a co-legislator rather than a full legislator.<sup>13</sup> The legislative rights possessed by the DPD are so limited and highly dependent on the DPR.

In the context of supervision, the DPD can supervise the implementation of certain laws as well as deliver the results of that supervision to the DPR as material to be followed up (Article 22D paragraph (4) of the UUD NRI 1945). However, the constitution does not

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<sup>9</sup> Manan, Bagir. (2004). *DPR, DPD, dan MPR Dalam UUD 1945 Baru*. Yogyakarta: FH UII Press, p. n.p.

<sup>10</sup> Susanti, Bivitri. (2005). Bukan Sekedar Lembaga Pemberi Pertimbangan: Peran DPD dalam Proses Legislasi. *Jurnal Konstitusi Indonesia*, 3 (1).

<sup>11</sup> Manan, Bagir. *Op.Cit.*

<sup>12</sup> Marzuki, M. Laica. (2006). *Berjalan-jalan di Ranah Hukum*, Jakarta: Setjen dan Kepaniteraan MK-RI.

<sup>13</sup> Asshiddiqie, Jimly. *Op.Cit.*

specify that the results of supervision (findings) of the DPD must be followed up, unless the DPR can make the results of the supervision proposed by the DPD as consideration for follow-up.<sup>14</sup>

Basically, the main function of the parliament is the oversight function and the legislative function. An additional function that is closely related to the two functions is the budget function. The instruments that can be used by parliaments in carrying out the oversight function of the running of government effectively are (a) budgetary rights, (b) interpellation rights, (c) inquiry rights, (d) resolution proposals, (e) confirmation rights or the right to vote for candidates certain officials. In addition to institutional rights, each individual member of parliament is also guaranteed the right to ask questions and submit proposals and other rights such as the right to immunity and protocolary rights. Specifically with regard to the legislative function, parliament also has rights such as (a) the right of initiative, and (b) the right of amendment.<sup>15</sup>

As a representative institution, the DPD should ideally have the legislative, supervisory and budgetary functions as well as the DPR. However, the DPD as one of the representative institutions with these three functions, only has a very weak and soft function. The two chambers of the House of Representatives (DPR and DPD) are not equipped with the same powerful authority. DPD and DPR are two rooms (houses, chambers) whose authority is not balanced, because it is classified as soft bicameral.<sup>16</sup>

With the very limited constitutional authority of the DPD, the presence of the DPD as a representative body that is a regional representation (territorial or regional), is difficult to maximize its role of aggregating and articulating regional aspirations and interests in the formulation of policies and regulations at the national level.

### **3.2. Strengthening the Authority of the DPD, Towards Effective Bicameral**

Fatmawati said that the structure of parliament according to the UUD NRI 1945, if analyzed based on the function of the parliament that is limited in terms of the formation of laws (legislation in the strict sense) with the focus of studies on the mechanism of inter-room relations in the formation of laws, especially with regard to the mechanism of resolving differences between rooms in the formation of laws, it can be concluded that the Indonesian Parliament is a country that uses weak bicameralism because the authority of the DPR (first chamber) is very unequal to the DPD (second chamber) in the drafting of laws.<sup>17</sup>

The legislative function between the DPR and DPD will not occur checks and balances, bearing in mind that the DPD does not have the authority to delay, let alone the authority to reject the proposed bill by the DPR and the Government. Whereas the basic idea of a representative institution consists of 2 (two) chambers so that there is a mutual inspection mechanism between the chamber using the privilege of refusing legal products from other chambers.<sup>18</sup> The absence of a double check causes DPD to not be able to double check the DPR, especially on the draft bill and the supervision of the implementation of the draft bill which is oriented towards regional interests.

<sup>14</sup> Marzuki, M. Laica. *Op.Cit.*

<sup>15</sup> Asshiddiqie, Jimly. (2006). *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*, Jakarta: Konstitusi, p. n.p.

<sup>16</sup> Asshiddiqie, Jimly. (2005). *Op.Cit.*

<sup>17</sup> Fatmawati. (2010). *Struktur dan Fungsi Legislasi Parlemen dengan Sistem Multikameral: Studi Perbandingan antara Indonesia dan Berbagai Negara*. Jakarta: UI Press, p. n.p.

<sup>18</sup> Fatmawati. *Op.Cit.*

Given the basic idea of the formation of the DPD aims to increase the degree of representation (degree of representativeness) of the region. The presence of the DPD as a second chamber in parliament, is very important and strategic in the development of the Indonesian constitutional system, in order to realize the principle of mutual oversight and balance (checks and balances).

As a balancing body for the DPR and the President. The presence of the DPD is expected to oversee the implementation of regional autonomy and be able to bridge the interests of the center and the regions, as well as to fight for the prosperity of the region which is just and equal.

Along with the idea of the Fifth Amendment to the 1945 Constitution of the Republic of Indonesia which was driven by the DPD with one of its basic ideas to strengthen the two-room model in the structure of the representative body. With a bicameral system, a checks and balances mechanism will be formed between the two legislatures. Conceptual ideas about effective bicameral formation can only be carried out with changes to the 1945 Constitution of the Republic of Indonesia. According to Jimly Asshidiqie in the future, the constitutional position of the People's Consultative Assembly underwent a very fundamental change. The MPR is a legislative body consisting of two parliamentary chambers, namely the DPR and DPD. In other words, the MPR as a joint trial forum between the DPR and DPD.

#### **4. Conclusion**

The presence of the DPD as a new institution in the Indonesian parliamentary structure is an idea to strengthen the function of checks and balances. The bicameral system will be effective if one of the chambers in parliament acts as a revising chamber for decisions taken by other chambers. However, the implementation turned out to be the dominance of the DPR in legislative power which actually weakened the function of the DPD. The legislative function between the DPR and DPD will not occur checks and balances, bearing in mind that the DPD does not have the authority to postpone, let alone the authority to reject the proposed bill by the DPR and the Government. The absence of checks and balances results in the DPD not being able to double check the DPR, especially for bills that are oriented towards regional interests.

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**Conflict of Interest Statement:**

The author declares that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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