

KEY OF ROLE AND FUNCTION OF THE REGIONAL REPRESENTATIVE COUNCIL ON BICAMERAL SYSTEM IN INDONESIA

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ABSTRACT

The amendment of the 1945 Constitution gave birth to new constitutional systems one of which is the establishment of the Regional Representative Council (DPD) institution as the representation of regional representatives. The institution is intended to reform the structure and function of the Indonesian parliament that was one chamber (unicameral) into two chambers (bicameral) consisting of the Parliament and the Regional Representative Council. By applying the bicameral system, it is expected that there will be a double check system in organizing the legislative process between DPR as political representation and DPD reflecting territorial or regional representation. DPD, in the concept of bicameralism, is expected to be able to capture all the aspirations of the people and strengthen the parliamentary system in Indonesia. The establishment of DPD is expected to strengthen parliament's role in Indonesia in carrying out the legislative functions, oversight and budget. The bicameral system in the Indonesian legislature is expected to establish a mechanism of checks and balances in all policies issued, so that it will create positive effects for the country's progress and eventually good government will be achieved as the country's ultimate goal.

Keywords: Regional Representative Council (DPD) existence, bicameral, check and balances

INTRODUCTION

One of the constitution reform results is the establishment of a new state institution in the legislation, namely the Regional Representative Council (DPD) as mentioned in the 1945 Constitutions as the product of annual session of the People's Consultative Assembly (MPR) in 2001. The council set out in the third-year change of the Third Amendment of 1945 Constitutions despite the re-composition of the members of the Assembly especially those in Regional and Group Envoys started to be initiated in the first Ad Hoc committee session of Operational Board of the Assembly on October 7, 1999. The new state institution will work side by side with and strengthen the existing legislative institutions namely, the House of Representatives (DPR) in fighting for the peoples' interests and aspirations. The House of Representatives (DPR) is a political representation of their respective political party constituents, while the members of DPD are individuals representing a region or an area. The responsibilities, functions, and authority of DPD are closely related with the promoting and harmonizing the aspirations, interests, and the existence of various areas and regions in Indonesia while maintaining and valuing the unity of the Republic of Indonesia (NKRI) (United Nations Development Programme, 2003).

The constitutional foundation of the establishment of DPD as a part of MPR through the amendment of the 1945 Constitutions is viewed as a shift of statehood and government constitutional strategy, as well as one of the dimensions and constitutionalism triggered by the constitutional reform in Indonesia (Lubis, 2003). The board is aimed to be one of the representation institutions for the people to build bridges for the policy, and nationwide regulations by the central government in one hand and regional government on the other. There is a strategy transformation in the interest representation pattern of the regions from regional envoys in the Assembly to regional representatives constitutionally assigned to promote their regional interests. Their duties are described in detail in the articles of the 1945 Constitutions, unlike the Regional Envoys that we know so far (Chapter VII A article 22C *Juncto* article 22D). Even DPD is stationed in the central government, it is inseparable from the regional contexts, situations and conditions, including constitutional frame which serves as the juridical constitutional paradigm for the regional governments.

The amendments of the 1945 Constitutions of the Republic of Indonesia on the state administration are conducted by emphasizing on the power and authority of the state institutions, highlighting on the power limits of the institutions and order them on the basis of the functions in the state administration. The system which is intended to be created is a relationship on the basis of check and balance targeting to limit each respective state institution in accordance with the 1945 Constitutions. The Regional Representative Council (DPD) is a state institution which is established due to the amendments of the 1945 Constitutions. Its establishment serves a constitutional effort to better channel regional's aspirations as well as to give the regions roles to play.

The 1945 Constitutions puts DPD in an equal position as the House of Representatives (DPR) and the President, as stated in the provision of article 22D paragraphs (1), (2), and (3) of the 1945 Constitutions. The paragraph (1) states that the Regional Representative Council is able to propose bills on certain fields (ones related to regional autonomy, central and regional relationship, formation, regional expansion and aggregation, natural resources and other economic resource management, as well as the balance of central and regional finance). The paragraph (2) states that the council can participate in the passing of bills (RUU) on certain fields and provide consideration on the bills that are related to tax, education and religion. The paragraph (3)

mentions that the council can perform an oversight on the implementation of regulations on certain fields which are related to tax, education, and religion. Further regulation concerning the authority of the Regional Representative Council can be found in the act no. 27 in 2009 on People's Consultative Assembly, House of Representatives, Regional Representative Council and Regional Legislatures (MD3 Acts) which later was revised with Act No. 17 in 2014, which was issued in August 2014 and Act No. 12 in 2011 on the Formation of Regulation Legislation (UU P3). In both acts, the regional representative council's authority in legislation has been reduced that it contradicts with the 1945 Constitutions.

The bills from the regional representative council and the house of representative are then harmonized in Legislation Board (Baleg) of the House of Representatives and later was claimed to transform as The House of Representatives' bills. It also happens in the participation of regional representative council in the bill review on certain fields. The council is not given enough articulation space in the bill review in the House of Representatives. The position of regional representative council as a state institution is comparable to that of fraction or instruments of the House of Representatives in reviewing the bills in the House of Representatives. From October 2004 to March 2013, the regional representative council has proposed 39 bills, 184 viewpoints and opinions, 60 considerations and 110 oversight findings. There was no follow up concerning to the bills, viewpoints and opinions, and considerations made by the council just as mandated in the 1945 Constitutions to involve the council in the process of bills' proposal, review, and consideration.

As a new legislation institution, regional representative council can be considered as one of the bodies in the tripartite parliaments as practiced by several countries. The three elements are Monocameral Parliamentary System, Bicameral Parliamentary System, dan Tricameral Parliamentary System (Karsayuda, 2011). The dissenting views and commentary is due to the difference in translating a clause in the constitution which article 2 paragraph (1) of 1945 Constitutions which assert that: "The People's Consultative Assembly consists of members of the House of Representatives and the Regional Representative Council appointed through a general election and further regulated by the laws". One of the content materials in the framework of third amendment of the 1945 Constitutions regarding the position of the People's Consultative Assembly that it is no longer the highest state institution in the constitutional system of Indonesia after the general election in 2004.

Viewed in the historical development context, the regional representative council is a territorial representation in a parliament system typology in Indonesia. Nowadays, the council can be considered to be an institutional effort to provide regional representation in the tripartite parliament system. From the historical perspective, the council is not a new institution since the 1945 Constitution had adopted a term of regional envoy. The difference was that the envoy was not institutionalized. Efforts to institutionalize the regional representative council in the People's Consultative Assembly parliament resulted to the creation of bicameral parliament which is extraordinarily imbalanced. The imbalances lie in three aspects like the structure of the members, authority, and decision making mechanism. As it is already understood that the number regional representative council members should exceed one third of that of the House of Representatives. The imbalances are more obvious when related to the working mechanism of the council in a joint session between the council and the house. Being a minority in the session (one third of overall members of the house of representative even less), the council does not a strong position when providing their opinions and viewpoints. They need to "beg" in order to be heard by the members of the House of Representatives since the imbalanced number of members. The council possesses legislation function or authority, consideration function, and oversight function. However, the functions lack in binding capacity. Consequently, the political representation efforts made by the council in giving opinions, viewpoints, and law oversight are far from being maximum.

Constitutionally, the council's position is not comparable to the immense political authority possessed by the house of representatives. As a result, the position of the council is as a quasi-political representation institution that only serves as consultative board in every process of legislation. Furthermore, the council is overshadowed by the House of Representative since they have wider, clearer, and more powerful authority. Although the members are elected though general election in 2004, the council's role in the national political stage seems to be complementary since the bargaining in the post new order national political maps is harder between the House of Representatives and the government (President). The House of Representatives' authority as stated in the constitution is equal to that of the executive. Even, the Legislatives has a powerful position since it is authorized to set up, issue and legalize bills together with the government.

With the issuance of Constitutional Court No. 92/PUU-X/2012, it is clear that the position of Regional Representative Council in legislation affairs is equal to that of the House of Representatives and President. Therefore, the council is entitled and/ or authorized to propose certain bills that is to arrange national legislation program in the environment of the council and to discuss the bills from the beginning to the final stage. However, the council does not have an authority to agree or pass the bills to be laws. The consequence of the Constitutional Court's decree is the establishment of model tripartite legislation process (the House, the Council, and the President) especially for certain bills which are related to regional autonomy, central regional relationship, regional formation, expansion and merger, natural resource and other economic resource management, as well as the balance of regional and central finance.

However, in reality the House of Representatives still practice old provisions, way, format that have been prevailing in the formation of the Acts (DPD group in MPR, 2013). There is no earnestness from the House of Representatives to submit and adhere to the decision of the Constitutional Court. The weak power possessed by DPD bicameralism system cannot run ideally in Indonesia. Therefore, the strengthening of the position of the duties and functions of DPD in the constitutional system of Indonesia and the parliamentary institution with a strong bicameral system.

DISCUSSION

The Authority of DPD in the Constitutional System of the Republic of Indonesia

DPD was established as a result of the 1945 Constitution amendment precisely on the third amendment in 2001. There are many factors to consider in the abolition of the Regional Representative Group (other than DPR) of which the first, democratic transition and reform gave birth to the freedom to be more autonomous even codified in the Act. Second, the regional delegates have been considered less aspirational against the interests of the region because they were appointed instead of being elected. Third, the concept of bicameral that is expected to be a balancing force for the Parliament which had been seen tends to have a political content instead of representing the people. As a result, the laws passed by the House have more political nuances (Dewan Perwakilan Daerah, 2009).

The 1945 Constitution amendments were aimed at realizing the Indonesian constitution which enable the implementation of a modern and democratic state. The spirit of constitutional change that appears are in the form of constitution supremacy, the necessity and importance of power restriction, setting relationships and power between the branches, more powerful state, strengthening the system of checks and balances among the authorities, strengthening the protection and insurance of human rights, the implementation of regional autonomy and the arrangements of fundamental matters in various areas of public life. All of them are reflected as a political consensus of the nation which is outlined in the amendment of the 1945 Constitution of the Republic of Indonesia.

The DPD existence is always associated with the presence of the House, as seen in the working relationship the two state institutions in which all the duties and authority of the DPD is not completed within himself, but they are always connected with the duties and authority of the House. In terms of legislation, oversight and consideration, all of the duties and authority are eventually processed in DPD members in the House. In addition to its organic linkages as MPR elements, the close relationship can be seen in their working relationship of some sort (Robert Endi Jaweng, 2005).

Article 20 of the 1945 Constitutions stated the establishment of legislation is under the authority of the Parliament as such:

- (1) The House of Representatives holds the power to make laws.
- (2) Every draft discussed by the House of Representatives and the President for approval together.

Settings Organization Regional Representative Council according to the Constitution of 1945 the results of the third amendment to that set out in Article 22 C are:

- (1) The members of the Regional Representatives Council are elected from their respective province through a general election.
- (2) The number of the members of the Regional Representative Council of each province is the same and the total number of the council members should exceed one third of the number of members of the House of Representatives.
- (3) The Regional Representative Council will convene at least once a year.
- (4) The structure and position of the Council shall be regulated by the law.

The Article 22D of the amended 1945 Constitutions governs the responsibilities and authority and the terms of office of the Regional Representative Council, namely:

- (1) The Regional Representative Council may submit to the Parliament bills relating to the regional autonomy, the central regional relationship, the establishment and expansion and merger of regions, management of natural resources and other economic resources, as well as those related to the financial balance of central and regional government.
- (2) Regional Representative Council will participate in the bill review relating to the regional autonomy; relationship between the central and regional governments; formation, expansion and merger of regions; management of natural resources and other economic resources, and financial balance between the central and regional governments; as well as giving considerations to the Parliament on the national budget bills and bills relating to taxes, education, laws, and religion.
- (3) Regional Representative Council can exercise oversight over the implementation of laws concerning: autonomy, establishment, expansion and merger of regions, central and local relations, management of natural resources and other economic resources, the implementation of the national budget, tax education, and religion and to submit the findings of oversight to the House of Representatives to be considered for further action.
- (4) The members of the Regional Representative Council may be dismissed from the office using the terms and of procedures stipulated by the laws.

Based on the Article 2 paragraph (1) of the 1945 Constitutions of the Republic of Indonesia, the People's Consultative Assembly consists of the members of the House of Representatives and Regional Representative Council elected by the General Election. Both institutions are separate, and the Assembly is not a combination of the House of Representatives and the Regional Representative Council. Indonesia's constitution does not mention explicitly the existing number of chambers in the legislature, and the Regional Representative Council shall not be referred to as the Senate of Indonesia. Consequently, Indonesia does not recognize the Upper House and the Lower House based on the 1945 Constitution of the Republic of Indonesia.

The authority of the Regional Representatives Council although elected through the election, is more limited than when applying the senate system, although the Senate member is not elected but appointed. Therefore, the quality of the legitimacy of the Regional Representatives Council should match with the quality of the authority, as the peoples' representation. The authority of the Regional Representatives Council can be seen in the article 22D of the 1945 Constitutions of the Republic of Indonesia, namely in paragraph (1), (2) and (3) relating to legislation, consideration and oversight.

The Regional Representative Council can exercise oversight over the implementation of laws concerning: autonomy, establishment, expansion and merging of regions, central and regional relationship, the management of natural resources and other economic resources, the implementation of the national budget, taxes, education, and religion and convey the findings of oversight to the House of Representatives to be considered for further action. The constitutional system that created by the amended Assembly is to accumulate power in the House, with inadequate control from other institutions on the work of the Parliament. Supposedly, the control system in the House of Representatives may be held by the Assembly. However, a conflict of political interests of the Assembly in which the majority members are also the members of the Parliament, causes an engineered constitutional reform that is profitable for the Parliament (Indrayana, 2008).

Seeing the relationship of the Parliament, the President, and the Council in the legislative function associated with the authority of the Council, the 1945 Constitution does not authorize the Council to alter and reject a bill that has been passed jointly by the President and the Parliament. Moreover, the Council does not have the authority to postpone the ratification of the Bill which has been passed jointly by the Parliament and the President.

The only chance of the Council to engage more intensively in the bill review is by "participating in the review" as stated in Article 22D Paragraph (2) of the 1945 Constitutions. Compared with the authority of Parliament and the President, the phrase "participate in the review" implies that the Council is complementary in the legislative function. Because of the phrase, the Council's role in the legislative function to a particular bill is more accurately described as co-discussant for the main discussant are still the Parliament and the President (Isra, 2010).

The legislative function with respect to the authority to determine rules that bind citizens with the binding and restrictive legal norms (Fatmawati, 2010). In the process of the formation of a statute or legislation, the Council has no power to decide or influence the decision-making process at all because of several reasons. First, the Council basically does not possess the power to make laws. Second, the Council is only authorized to design certain laws relating to local government. Third, the council is not independent in formulating a legislation, because the phrase "participate in the bill review" indicates that the House is the one in power to pass the laws. In fact, the constituent requirements to become a member of the Council is much heavier than that of the Parliament. This means that the quality of the legitimacy of the Council members is not comparable with the quality of the authority as the regional representatives).

The Regional Representative Council can also oversee the implementation of the law on regional autonomy, the formation, expansion and merger of regions, central and regional relationship, the management of natural resources and other economic resources, the implementation of the national budget, tax, education and religion, both received from the Monetary Audit Board or requested by the government.

When referring to the essence of a strong and effective bicameral system, and to our constitutional system, there are at least four roles of the Regional Representative Council, namely: First, the Council should further reinforce its position as 'the peoples' messengers'. We should understand that the Council as a regional representative needs to point out that their existence is not just for task division between domestic and foreign affairs, as practiced in the Parliament of the United States, but they also have to fight for the regional aspirations, particularly with regard to regional interests in National level.

Second, the Regional Representative Council acts as a balancing institution of the House of Representatives in order that the checks and balances function in the parliament can run. As stated before, the position of the House of Representatives that is too strong and dominant when establishing the relationship between the Legislative and the Executive. In addition, because of the checks and balances, the Parliament's product will be more comprehensive.

Third, the role of the Regional Representative Council is to ease the workload and the responsibilities performed by the House of Representatives. Since the various products to be produced, the partner agencies are necessary to review bills or issues related to the duties and responsibilities of the parliament. As already known, any unfinished effort in passing the bills as targeted reflects the attempts to dominate conducted by the parliament.

Fourth, the Regional Representative Council must take the initiative in various issues relating to nation, both regionally and nationally. This ability should be adhered to the Regional Representative Council and the House of Representatives. This role becomes an integral part to prove that the Council plays an active role in the national politics.

Other legal sources associated with the authority of the Regional Representatives Council stipulated in the Act No. 22 in 2003 which was later replaced by the Act No. 27 in 2009 and the latest is the Act No. 17 in 2014 concerning the composition and position of the Assembly, the House, the Council, and the Regional House and Act No. 12 in 2011 on the establishment of legislation. The legislation that regulates the Council states that there are eight legislation functions of the Council regarding to the stages of formation of the legislation as stipulated in the Act No. 12 in 2011, namely: planning, preparation, discussion,

approval or stipulation and promulgation.

The newest positions, duties, and functions settings of the Regional Representatives Council is Act No. 17 in 2014 on the People's Consultative Assembly, the House of Representatives', the Regional Representative Council and the Regional House of Representatives. The article 248: (1) states the Regional Representative Council has the following functions:

- a) to propose bills related to the regional autonomy, the central and regional relationship, the regional establishment and expansion and merger, the management of natural resources and other economic resources, as well as those related to the central and regional financial balance to the House of Representatives;
- b) to participate in the bill review related to the regional autonomy, the central and regional relationship, the regional formation, expansion and merger, the management of natural resources and other economic resources, and the financial balance between the central and regional governments;
- c) to give consideration to the Parliament on the bills on the national budget and bills related to taxes, education, and religion; and
- d) to oversee the implementation of the law on regional autonomy, the regional formation, expansion and merger, the central and regional relationship, the management of natural resources and other economic resources, the implementation of the national budget, tax, education, and religion.

The Regional Representative Council in Indonesia's Bicameral System

This model essentially idealizes the necessity of a bicameral system in the representative institutions. This doctrine is derived from the classical theory of Aristotle and Polybius who argue that good government is a combination of the principles of democracy and oligarchy. Then, as stated by Robert L. Madex, Jeremy Bentham was the first to use abicameral legislature term. Referring to the opinion of R. Allen Ball and B. Guy Peters, most modern parliaments apply bicameral system.

The option to apply a bicameral model in people's representative body as described C.F. Strong while quoting the opinion of Lord Bryce that no lesson of constitutional history has been more deeply embodied than that which teaches the uses of second chamber. Following argument, Lord Bryce said that the second chamber has four functions, namely:

- a. revision of legislation,
- b. initiation of noncontroversial bills,
- c. delaying legislation of fundamental constitutional importance so as to enable the opinion of nation to adequately expressed upon it, and
- d. public debate.

Because of the second chamber, the monopoly of the legislative process in a single room can be avoided. The two-chamber legislative bodies enable the prevention of the passage of defective or careless legislation. The arguments supporting the importance of two chambers in the legislature also raise another debate, especially related to the relationships between the chambers. Giovanni Sartori divides the bicameral model into three types, namely:

- a. an asymmetric bicameralism/ soft bicameralism that is when one chamber is far more dominant than the other.
- b. a symmetric bicameralism or strong bicameralism that is when the power between the two chambers are almost equally strong.
- c. a perfect bicameralism is if the strength of the two rooms is truly balanced

In connection with the three bicameral models proposed by the Giovanni Sartori, Denny Indrayana argued: a weak bicameralism should be avoided because it will remove the bicameral goal itself, namely the mutual control between the two chambers. This means that the dominance of one chamber leads to a weak bicameralism which is similar to another form of system unicameral assembly (unicameral). On the other hand, a perfect bicameralism is not really an ideal choice, because the power that is perfectly balanced between the Lower House and the Upper House promises the smoothness of the control function between the chambers in the parliament but it actually also potentially causes a deadlock in the Parliament's tasks. Therefore, the best choice is to create a strong bicameral system.

Besides the three bicameral models which are based on the degree of their power, Giovanni Sartori also distinguishes bicameral into three types based on the composition of the membership of both legislature chambers, namely:

- a. same element bicameralism (similar bicameralism),
- b. somewhat different element bicameralism (likely bicameralism),
- c. bicameralism with very different elements (differentiated bicameralism).

Because the two bicameral models of the same element tend to shift to the unicameral model, while when the two chambers are completely different will lead to deadlocks in the legislative process, it is preferable to opt to likely bicameralism. Referring to the bicameral types proposed by Giovanni Sartori, Denny Indrayana argued that the ideal bicameralism should lead to the combination of strong bicameralism and likely bicameralism. In contrast to Giovanni Sartori, the relationships between the strong and the weak (strong versus weak bicameralism) defined by Arend Lijphart, there are three aspects. First, the first

important aspect is the formal constitution power that two chambers have. In this aspect, added by Arend Lijphart, the common pattern taking place is that the second chamber tends to be subordinate of the first chamber. For example, in the process of proposing legislation, negative vetoes from the second chamber is often neglected by the first.

Second, the actual political importance of second chambers depends not only on their formal power but on their method of selection. In this case Arend Lijphart explains, the whole members of the first chamber are directly elected while the second chamber members are not directly elected. Because of these differences, the chambers that are not selected will experience the lack of democratic legitimacy. In contrast, the direct election of the second chamber can be compensated for the increase of power due to the restrictions. Because of the legitimacy obtained by the method of the election, the bicameral system is classified into symmetrical or asymmetrical.

In this case Arend Lijphart confirms, symmetrical chambers are those with equal or only moderately unequal constitutional powers and democratic legitimacy. Asymmetrical chambers are highly unequal in these respects. Third, the crucial difference between the two chambers of bicameral legislature is that second chambers may be elected by different methods or designed so as to overrepresented certain minorities. In that case, Arend Lijphart added, the compositional differences of the chambers are called bicameral incongruent. The most obvious example occurring in the second chamber is used in the federal chamber to represent the smaller components in the federation.

If we analyze the functions, duties, authority of the Regional Representatives Council more closely, we will find out that there is no equal position between the Regional Representative Council and the House of Representatives. This is different from other countries in which the House of Representatives and Regional Representative Council has a parallel role. The parallel role (equally strong/ strong bicameralism) takes place when the second chamber of the assembly/ the upper house (in Indonesia is called the Regional Representatives Council) in the representative body is elected directly by the people as in the United States. Other countries where the role between the chambers is not parallel (soft bicameralism) are Britain, France and Germany, because they are not elected directly by the people but was sent by the state (Germany), was appointed because of the nobility (UK) and sent by provinces (France).

A concern that bicameral system is only suitable for a federal state does not have a solid foundation and can be accounted for, because according to a research finding by the International Institute for Democracy and Electoral Assistance (International IDEA) the practice of bicameralism in fact, are also conducted by the countries of unity. Out of forty one unitary democratic states, at least 22 countries adopt a bicameral system, and all of them have big population, a large region and democracy. Even the research conclusion of International IDEA states that each federal state has two chambers in the system of representation, one of 11 federal states, there are three countries that implement a soft bicameral system, namely Canada, Austria, and India and from the 10 countries that follow presidential system, no country applies soft bicameral system. While out of 40 countries that adopt the system of parliamentary government there are 14 countries that adopt the soft bicameral system for examples Thailand, Poland, Canada, Jamaica, India, Austria, Barbados, and South Africa.

In order to implement the principle of checks and balances in the legislative system between the House of Representatives and the Regional Representative Council, it is necessary to create balance position between the two. Consequently, there are some necessary constitutional efforts in order to strengthen the position of DPD as a people's representative body.

The future system of representative institutions in Indonesia should lead to a strong bicameral system of representative institutions (strong bicameralism). Attempts to further amend the 1945 Constitution to realize a strong bicameral representative institution are instances of the legal-political agenda that must continue to be advocated and realized.

CONCLUSION

1. The authority of the Regional Representatives Council within the constitutional system of the Republic of Indonesia is very limited. Because the authority is so limited, the council cannot be said to have a legislative function. Given such powers contained in the constitution of Indonesia today, the council as an institution representing the people of the region in expressing the aspirations of the people's interest does not meet the goal of the establishment of this institution, therefore the reform with the amendment of the 1945 Constitution need to take place.
2. The bicameral representative system adopted by Indonesia in the composition of Indonesia representative institutions can be categorized as soft bicameral. Inequality of responsibilities and authority occurs between the Parliament and the Council. The council's functions that should serve as the counterweight in the check and balances mechanism for the House of Representatives but it does not work properly.

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