

Constitutional Redesign Of Legislation Function Regional Representative Council In The Indonesian Constitutional System

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Abstract: The design of the Indonesian parliamentary system is a weak parliamentary system (soft bicameralism). The position and authority of the Regional Representative Council are weaker than the authority of the House of Representatives. In carrying out the function of legislation, the Regional Representative Council only a complement to the House of Representatives. Therefore, it is necessary to redesign the function of the Legislative Council of regional representatives in the Indonesian constitutional system. This research is normative research using secondary data. Based on the results of the research, the efforts of the Regional Representative Council to strengthen condemning function is to apply for judicial review of the Law on the establishment of legislation, and the law on the arrangement and position of the people's Consultative Assembly, the House of Representatives, the Council of regional representatives, and the regional House of Representatives. However, the redesign efforts are not enough to change only the laws about the functions of the Legislative Council of regional representatives, but it must be in the change of the 1945 Constitution of the Republic of Indonesia.

Keywords: constitutional redesign; legislation function; regional representative council

I. INTRODUCTION

Amendment of The 1945 Constitution stipulated by the People's Consultative Assembly (hereinafter referred to as *MPR*) raising new institutions in the Indonesian constitutional structure, one of them is Regional Representative Council (hereinafter referred to as *DPD*). With the institution of *DPD* so the Indonesian Parliament is developed into two-room (bicameral). They are the House of Representatives (hereinafter referred to as *DPR* and Regional Representative Council. The *MPR* is retained as the name of the Joint Conference Forum between the two rooms (*DPR and DPD*) since the 1945 Constitution of the Republic of Indonesia, members of the *MPR* consist of members of parliament and senator of *DPD*.

DPD as one of the rooms in the Indonesian Parliament has limited authority. Although they are a legislative body, the *DPD* can not form its laws along with the president as the *DPR*. To form the Act, the *DPD* must submit the draft legislation to the *DPR*, then the only *DPR* submit the draft law to the president to be discussed together. Similarly, the contents of the bill that can be submitted by the *DPD* is limited to the content of materials relating to regional autonomy, central and local relations, regional formation, management of natural resources and other economic resources, as well as related to the division of Central and local authorities. *DPD* can not submit a draft law outside of the specified material

Whereas DPD is a state institution that has high legitimacy because it is appointed directly by the people of the prospective individuals. It also should be balanced with strong authority. Thus, it is necessary to be redesigned against the DPD institution. Based on the explanation above, this paper will discuss the constitutional design of DPD's legislative functions in the Indonesian constitutional system.

II. METHODS

Legal research is a process for discovering legal rules, legal principles, and legal doctrines to address legal issues [1]. This research is a normative law study, which examines the rules or rule of law as a building system related to a legal event [2]. This research will compile and compare the positive legal norms relating to the parliamentary system that has been in place in Indonesia for analysis which is then presented descriptively.

III. RESULT AND DISCUSSION

1. Bicameral Parliamentary System

There are two rooms in the bicameral parliamentary system, the upper house, and the lower house. In general, the High Council represents the interests of functional groups, while the lower Tribunal represents the interests of the people. Members of the Upper Tribunal were elected by virtue or territory, while lower-tribunal members were elected based on the number or proportion of politics or population. Practically this representation was appointed through a political party competing in an election to determine the formation of parliamentary institutions [3]. The two-room parliamentary system is intended to be able to supervise each other (checks and balances) within the parliamentary authority itself.

The bicameral parliamentary system is usually applied in federal states. However, it is likely that the unitary State applying the bicameral system in consideration that one assembly can compensate and restrict the power of the other assembly. The unitary state of the bicameral parliamentary system, e.g. Dutch (Eerste Kamer and Tweede Kamer), Japan (House of Representatives/Shung-in and House of Councilors/Sangi-in), France (National Assembly and Senate), Cambodia (National Assembly and Senate), Philippines (Senate/Senado and House of Representatives/Kapulungan Ng Mga Kinatawan). It is feared if implementing a unicameral system will provide opportunities to misuse power since it is easily influenced by the political situation [4]. There are several reasons why a country implements the bicameral parliamentary system, as follows [3]:

- a. The failure of a political party to aggregate all political aspirations and interests in a country.
- b. Essentially a representative agency must be able to reflect three representations, which is the representation of the population, the representation of the region, and representation of a particular political description.
- c. It will not be relevant if bicameralism is only associated with a federated state form.

Bicameral systems can be divided into two, namely strong bicameralism and weak bicameralism or soft bicameralism. The main measure for determining a strong bicameral parliamentary system or a weak bicameral parliamentary system is the power given to each of these rooms by the Constitution. In general, if both rooms in the parliament have the same power, the system of parliamentary control is strong, and if the power given to the two rooms in the parliament is different, the system of parliamentary Parliament is weak. This bicameral parliamentary system has the advantage or benefit of the member's as follows [5]:

- a. Represents a variety of voters (e.g. state, territory, ethnic, or group);
- b. Facilitate a deliberation approach to the drafting of legislation
- c. Preventing the dissolving of legislation that is defective or sloppy; and
- d. Perform supervision or better control over the Executive Board.

While its weakness is the problem of efficiency in the process of legislation, because it has to go through two rooms, it is assumed that the bicameral system will interfere with or inhibit the smooth making of legislation. To overcome this weakness, each country has a way to overcome the problem, among others, by forming a conference committee to resolve the difference between the two assemblies, so that the system weakness can be overcome.

2. *The Bicameral Parliamentary System of Indonesia*

The Indonesian parliamentary system was initially idealized with a single room (unicameral) based on the concept of the sovereignty of the people fully held by the MPR as the highest institution of the country. However, on the third amendment of the 1945 Constitution, the idea arose to form a bicameral parliament, which in turn changed the structure of the Consultative Assembly which originally consisted of the DPR, the regional envoy, and the envoy of the class then became composed of the members of parliament and *DPD* [6].

DPR and DPD in the membership of the MPR are understood that the DPR has broader authority than the authority of DPD. As regional representatives, DPD has no significant authority. According to the provisions of article 20 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the House of Representatives holds the authority to form the law. In the establishment of the Act, the DPR can not do so alone, but together with the President as the holder of executive power, as the provisions of article 20 paragraph (2) that each draft legislation is discussed by the House of Representatives and the President to obtain mutual consent. From the provision as if there is no involvement of DPD in the discussion and approval of the draft law. It is reasonable to say that DPD has no authority to form law.

The 1945 Constitution of the Republic of Indonesia provides a role to the DPD in the process of forming law limited to the law with certain payload material, involving regional autonomy, central and regional relations, regional formation, management of natural resources and other economic resources, as well as related to the financial balance of the central and local areas. It is different from the Senate in the United States. State satisfaction in the United States does not merely have representatives in Congress, but how the Senate's position and position as a balanced state representative with the House of Representatives.

In the United States, a law will only be valid if approved by the Senate and the House of Representatives. While in Indonesia, DPD is not more just a complement and formality only. To align the DPR and DPD should be built effective bicameral system, it means that the check and balances are dynamic between the DPR and DPD in carrying out the duties and powers that have each. In the bicameral parliamentary system, the keyword is mutual control between the upper Tribunal and the lower Tribunal to create a political balance within the Parliament itself. Because check and balances it does not only happen between the legislature and the executive but inside the legislative body itself. Therefore, it is necessary for strengthening the role and function of DPD, to create a system of checks and balances.

3. *Constitutional Redesigning Of The Legislative Function Of The Council Of Regional Representatives In The Indonesian State Administration System*

The history of the Indonesian constitutional State records that the national legislation program compiled by the DPR and the government has never been completed. The achievement of the establishment of the law annually is under the target stipulated in the national legislation program. Currently, there is a discrepancy of position and authority between the DPR and DPD, one of which is the authority in the field of legislation. The function of DPR legislation with DPD is not balanced, so the DPD can not run the condemning function optimally. The function of DPD legislation is not expressly stated in the 1945 Constitution of the Republic of Indonesia. This is indifferent terms to the DPR which is expressly stated in article 20A clause (1) that the DPR has a function of legislation, supervisory function, and budget function.

DPD as a representative institution whose members are directly elected by the people through elections, he should have a position as strong as the house. To position the DPD as strong as the DPR is by evaluating the function of legislation. The efforts that DPD has made about the function of condemning is first, encouraging the change again to the 1945 Constitution of the Republic of Indonesia. The DPD ambition is difficult to realize due to the provisions of article 37 of the 1945 Constitution of the Republic of Indonesia, the proposed change of the Constitution of the articles of Law can be scheduled in the assembly of the MPR if submitted by at least 1/3 of the number of MPR members. At present, the DPD has not received support from the members of the MPR DPR, while the total number of DPD members shall be entirely not more than 1/3 members of parliament. Although all DPD members support the proposed change of the Constitution, the amount is not eligible for 1/3 members of the MPR.

The second attempt is through a constitutional interpretation by the Constitutional Court by filing a judicial review of Law Number 12 of 2011 on the establishment of legislation and Law Number 27 of 2009 on the MPR, DPR, DPD, and DPRD. Judicial review applications were partially granted with the verdict of the Constitutional Court Number 92/PUU-X/2012. However, when the Law Number 17 of 2009 was revoked and replaced with Law Number 27 of 2014, and Law Number 12 of 2011 was amended by Law Number 15 of 2019, the authority of the DPD legislation did not change significantly. The change only occurs in the case of DPD involvement in drafting the national legislation Program.

To strengthen the function of legislation DPD and also the rights turned out not enough just by changing the law only, but it must be based on changes in the 1945 Constitution of the Republic of Indonesia. This is applied for the DPD to have strong legitimacy in carrying out condemning function. Therefore, it is necessary to redesign the DPD institution in the Indonesian Constitution. Redesigning of legislative functions of DPD is also applied to adjust the original will of the establishment of DPD institutions.

Redesigning of legislative functions of DPD

Design of DPD	Redesign of DPD
Article 22D (1) The House of regional representatives can submit to the House of Representatives in the draft legislation	Article 22D (1) The Regional Representative Council holds the power of forming legislation (2) The House of Representatives has a function of

<p>relating to regional autonomy, central and regional relations, formation and expansion and regional merger, the management of natural resources and other economic resources, as well as related to the financial balance of the central and local areas.</p> <p>(2) The Regional Representative Council also discussed the design of legislation relating to regional autonomy; Central and local relations; Regional formation, expansion, and merger; The management of natural resources and other economic resources well as the central and local financial balance and; and to consider the House of Representatives on the draft laws of the state budget and expenditure law and the bill relating to taxes, education, and religion.</p> <p>(3) The House of regional representatives can supervise the implementation of legislation on regional autonomy, formation, expansion, and merger of areas, central and local relations, the management of natural resources and other economic resources, the implementation of State budget and expenditure, taxation, education, and religion and delivering the results of its supervision to the House of Representatives as a material consideration to be applied.</p> <p>(4) Members of the Council of regional representatives may be discharged from their positions, whose terms and procedures are governed by the law.</p>	<p>legislation, supervisory function, and budget function</p> <p>(3) The Regional Representative Council has the right to propose to the House of Representatives the draft legislation relating to regional autonomy, central and regional relations, formation and expansion and regional merger, management of natural resources and other economic resources, as well as related to the financial balance of the central and local.</p> <p>(4) The Regional Representative Council also discussed the draft legislation relating to regional autonomy; Central and local relations; Regional formation, expansion and merger; Management of natural resources and other economic resources, as well as balances of the central and local finances; and to consider the House of Representatives on the draft laws of the state budget and expenditure law and the bill relating to taxes, education, and religion.</p> <p>(5) The Regional Representative Council supervises the implementation of legislation on regional autonomy, formation, expansion, and merger of areas, central and local relations, management of natural resources and other economic resources, implementation of State budget and expenditure, taxation, education, and religion and delivering the results of its supervision to the House of Representatives as a material consideration to be applied.</p> <p>(6) Members of the Council of regional representatives may be discharged from their posts, whose terms and procedures are governed by law.</p>
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Amendment of article 22D of the Constitution of the Republic of Indonesia year 1945 shall be followed immediately by the establishment of legislation relating to the function of DPD legislation. By redesigning the function of legislation of DPD, then the target that is to be achieved in the national legislation program will be increasingly increasing to meet the legal needs of the community.

IV. CONCLUSION

Based on the above Uraian can be concluded that the current Indonesian bicameral parliamentary system is soft bicameralism that puts the DPD as a weak state institution compared to the DPR. The

design of the DPD legislation currently does not place the DPD as a state institution whose legitimacy is strong because it is chosen through elections. The involvement of DPD in the establishment of legislation is not significant. It can even be said that the establishment of legislation without involving the DPD does not cause such legislation to be void. Redesigning the function of the DPD legislation to have a strong position as the house is not enough to change or replace the law only, but it must be based on changes in the Constitution. Thus, it is necessary to change article 22D of the Constitution of the Republic of Indonesia year 1945, so that the existence of the DPD institution not only as a compliment, please settle completely in line with.

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