



Role of the Regional Representatives Council on Bicameral Parliament System

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Abstract

After third amendment of the Constitution of 1945 (UUD 1945), the Regional Representatives Council (DPD) has been formulated. The amendment directly changed the parliamentary system in Indonesia, from unicameral into bicameral. The authorities of DPD in bicameral system still not clear enough. Although it is stipulated on Article 22D of UUD 1945, the authorities is still limited if compared with House of Representatives (DPR). This paper would discuss and examine the role of regional representative council as a second chamber from representative board in Indonesian. The paper would distinguish beside the authorities also the mechanism applied by DPD and DPR.

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INTRODUCTION

THE REGIONAL Representatives Council has formulated after third amendment of the Constitution of 1945 (UUD 1945) on 2001. This amendment endorsed to fulfill demands and justice of society, especially for regional communities. The third amendment also directly changed the representative and parliamentary system in Indonesia, from unicameral to bicameral system. Bicameral or two chamber system was the government's practice that used two chamber legislatures or parliaments.

The authority of DPD specifically regulated on Art. 22D of UUD 1945, that DPD can endorse draft of bill (RUU) to House of Representatives (DPR) in the context of regional autonomy issues; join discuss RUU related to regional autonomy; and give the consideration to the question of the state financial, RUU on tax issues, education, and religion. DPD can also conduct surveillance to the implementation of regulation relating to the regional autonomy and state financial that the results are submitted to the DPR.

Those provisions emphasized that authority of DPD still very limited if compared with DPR. All tasks and authorities of DPD limited to the aspects related to regional issues. Not aligned position between DPD and DPR can be seen from the execution of tasks and authorities of DPD that still have to involve DPR and the non-participation of DPD on decision making process concerning their tasks and authorities.

Although there is specific law that regulated more specific concerning to the distribution of power and authorities between DPD and other state institutions, on Law No. 22 of 2003 concerning Structure and Position of MPR, DPR, DPD, and DPRD that has been modified by Law No. 17 of 2014 concerning People's Consultative Assembly (MPR), House of Representatives (DPR), and Regional House of Representatives (DPRD), still cannot clearly ask the main question of the DPD authorities and power.

This paper would discuss and examine how the role of Regional Representatives Council (DPD) as two chambers on bicameral parliament system in Indonesia. The paper used some theories especially concerning to Bicameral Theory and State Structure Theory.

AN OVERVIEW OF BICAMERAL THEORY

BICAMERAL system described by Simambura (2011) as a system consisting of two different chambers and usually called as *Majelis Tinggi* or Upper House and *Majelis Rendah* or lower house. Each chambers politically, territorial and functionally reflects the representation of the public interest from every groups. The distinction of representation basically to avoid the occurrence of double representation.

Conceptually, the authorities of each chambers is equal but in the development, there is an effort to reduce the authority of one of the chambers. This is become an effect of growth of strong bicameralism and soft bicameralism concept. Strong bicameral has an equality degree of authorities both two chambers, while there is non-equality degree between two chambers. Strong bicameral with the same strong authority both two chambers aims to create and endorse check and balances mechanism, but the practice in some countries often found their strengthening efforts to one of the chambers—*Majelis Tinggi* (Upper House)—even though the *Majelis Rendah* (Lower House) will also has a right to provide feedback or consideration, especially in the context of legislation function.

Arend Lipjhart as quoted by Simambura (2011) stated that there were three characteristics that distinguish between parliament with a strong bicameral and weak bicameral system, namely: *First*, the authority granted formally by constitution to two chambers. *Second*, how the selection method of memberships usually affected to the legitimate of democracy of these chambers. *Third*, a strong difference between two chambers on legislative bicameral is both two chambers may have a way or a different design also representatives (over represent) a particular minority/special.

Bicameral in State System in Indonesia

In the early days of its establishment in 1945, Indonesia is a adopting a single chamber (unicameral), this chamber recognized as a total manifestation of people sovereignty named People Assembly (MPR). Thus, this institution then idealized be the highest state institution that is infinitely powerful. This view stipulated on Art. 1 (2) and further described in the Explanation of the 1945 Constitution as it was concluded by Soepomo at the First Session of the Meeting of the Preparatory Committee for Indonesian Independence on August 18, 1945.

The authorities of the Committee includes: (1) determine the Constitution; (2) establish the State Policy; and (3) vote for the President and Vice President. Therefore, the hierarchical position of the President is under MPR, pursue the State Policy that has been set by MPR. According to Soepomo, the President should not have its own politics, but have to run the State Policy Guidelines established by the MPR, where the MPR consist elected DPR that represent the people and delegates from the regions and factions, in particular economic groups which the recruitment system is different from DPR.

The position of MPR itself is higher than other State Agencies, including the President, while the position of DPR is equal to the position of President (*nebangordnet*). But, actually, DPR today has a strong position, and cannot be dissolved by the President and could always control the actions of the President. Even, if the President violate the State Policy that stipulated by Law or MPR, the DPR could invite the President to attend the MPR Special

Session to hold the President. This description concerning to unicameral system that adopted by Indonesia in the early days of its formation. Indonesia ever been applied bicameral system at the time when United Republic Indonesia (*Republik Indonesia Serikat/RIS*) era in 1949 with RIS Constitution as the highest constitution.

In RIS Constitution, Chapter III Article 98-121, besides stated concerning DPR, also there is Senate that stipulated in Chap. II Art. 80-97, that each Senate represents the region and each region have their members in the Senate.² Senate members are appointed by their Regional Government and have three candidates for each seat. If required for two seats, the Government concerned is free to use as a single one.³ Concerning to the duties and powers of the Senate and DPR today, stipulated in Chap. IV concerning to the Government, especially on Part I concerning General Provision and Part II concerning Laws and Regulations.⁴

The weakness of bicameral system applied in RIS era, is there is no provision concerning to the exclusion of the term of office for DPR RIS members and members of Senate. In RIS Constitution, there is only regulated concerning to the holding of general election to formulate the directly elected DPR. Art. 111 par. (1), states that:

“Within one year after the Constitution comes into force, then around the Indonesia, Government ordered to hold general elections based on free and secrets principle to prepare the directly elected DPR.”

In addition, this provision also stipulated in Article 84 that did not mention exactly the term of office for Senate. “Members of the Senate always allow to resign, and they should be with a letter to the Chairman.”

DISCUSSING TO THE ROLE OF REGIONAL REPRESENTATIVES COUNCIL AS SECOND CHAMBER FROM REPRESENTATIVE BOARD IN INDONESIA

POST Reformation, the imagination to reform and fix the state structure and practices growing stronger and as the final, amendment of Constitution has been endorsed through four steps, since August 2000 to August 2002. On third amendment on May 9, 2001, Regional Representatives Council (DPD) stipulated on Chapter VIIA, Article 22C and 22D. The authorities and power of DPD further regulated by Law No. 22 of 2003 and modified by Law No. 17 of 2014 concerning MPR, DPR, DPD, and DPRD. According to this law

² See Art. 80 pars. (1) and (2) of RIS Constitution

³ See Art. 80 pars. (1) and (2) of RIS Constitution

⁴ Jimly Ashiddiqie, 2005, *Implikasi Perubahan UUD 1945 Terhadap Pembangunan Hukum Nasional*, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konsitusi, Jakarta, pp. 13-15

(Law No. 17 of 2014) can be summarized that structure and position, functions and power of DPD, as follows:

1. Membership of DPD
Member of DPD voted from every Province on general election of each province. The member of each provinces are same and all member of DPD were cannot allowed more than one per third of their member.
2. Power an authorities of legislative, that DPD can endorse Draft of Bill (RUU) and join to discuss and examine RUU related to regional autonomy issues, central and regional relationship, regional establishment, expansion and merging, management of natural resources, and other economic resources, and financial balancing between central and regional.
3. Giving the consideration that DPD gives consideration to DPR concerning to RAPBN, RUU related to tax, education and religion, and giving a consideration to appointment of members of BPK (Audit Board of Indonesia).
4. Control and supervise to the implementation of law related to the regional autonomy issues, central and regional relationships, regional establishment, expansion and merging, natural resources management and other economics resources, and all issues related to financial balancing between central and regional, state budget (APBN) related to tax, education, and religion, and presenting the result of controlling and supervising to DPR as material consideration to be followed up.

Fourth amendment of the Constitution on 2002 has been reconstructed the power and authorities of MPR especially in part of position, power and authority, and composition. Regional representatives and groups was eliminated and then reformulated a new board, namely Regional Representatives Council (DPD). MPR member's composition consisted of member of DPR and DPD. The existences of DPD can be stated that parliament system in Indonesia has been changed and close to two chamber system. But, this system (bicameral/two chamber) is still not perfect and clearly stated because of discrepancy of authority of DPR and DPD. The discrepancy in this context means that as follows:

1. *The composition of membership*

The provisions of article 22C UUD 1945 arranged that the number of members of DPD shall not exceed one third of the members of DPR. In the other words, it can be concluded that nature of DPD members is limitative. Surely, this provision indicates that there is an absence of a balance power between DPR and DPD. It will be implicated for decision making on MPR, and automatically with a dominant number, DPR can affects and masters the majority of votes in MPR. As stipulated on Art. 14 par (3) of Law No. 17 of 2014, states that the session of MPR was officially legitimate if attended by:

- a) At least three fourth from total amount of MPR members to vote a DPR suggestion to impeach President and/or Vice President.

- b) At least two third from total amount of MPR members to change and enact the Constitution.
- c) At least fifty percent plus one from total amount of MPR to other sessions as regulated on par (a) and (b).

According to that provision, concerning the composition of votes, it can be stated that majority votes on MPR only political votes and political interests, and it feared that resulting decisions are political only.

2. *Legislation Function*

Art. 22D of UUD 1945 not clearly regulated the limitation of DPD authority in the context to examine of RUU, do not set the extent of the involvement of DPD in the discussion and examination of RUU.

3. *Position*

Art. 22C and 22D, and Law No. 22 of 2003 just only place DPD as watchdog institution of DPR either in legislation function or controlling and supervising function. Position of DPD cannot regulated clearly in the Constitution or any other specific laws. This condition, merely, may threaten the position and existence of DPD.

The weakness of power and authorities and position of DPD sparking strong protest from DPD itself and other experts to urge the strengthening of the existence of DPD on Indonesian constitutional system with the expectation that DPD can optimally acts as counterweight of national interests and regional aspirations. Therefore it needs to endorse the expert study to avoid double representation. Because the bicameral system basically has always distinguished between first chamber and second chamber.

According to Rod Hague and Martin Harropas quoted by Jimly Ashiddiqie, that “The main justification for having to (or occasionally more) chambers within an assembly are first, to preset destiny interests within society and secondly to provide check and balances within the legislative branch”.⁵

Thus, the differences between parliament with two chambers—DPR and DPD— may be determined by two factors which could be indicators of distinction, are:

a. Recruitment system of membership

Recruitment system between DPR and DPD should be distinguished, in the context of procedure and representation of people’s aspiration. According to Jimly Ashiddiqie, in the context of people’s representation, DPR represents people in general with the orientation of national interests. Besides, DPD shall represent people in the context of regional with the orientation of regional interest.⁶ With regard to the scope of the procedure on member election both institutions, it should be distinguished.

⁵ Jimly Ashiddiqie, 2011, *Hukum Tata Negara dan Pilar-Pilar Negara Demokrasi*, Sinar Grafika, Jakarta, p. 18.

⁶ *Ibid.*, p. 19

As for, the members of DPR that directly elected by the people through a proportional system that used for strengthening the national political institution building. While, the DPD directly elected by the people through district system, by selecting the known figure in the area concerned base on the calculation of *the winner takes all*.⁷

b. Distribution of power between DPD and DPR in carrying out the duties of Parliament.

To avoid overlapping in terms of powers and authorities between DPR and DPD in central level can be minimized by explaining duties of parliament by detail in area of legislation, controlling and supervising and also budgeting. With regard to the functions of budgeting actually has encompassed of all legislation function in terms of its regulations and supervision function as far as concerns its function as watchdog institution to government performance.

a) Supervisory Function

Jimly Ashiddiqie argued that in the context of function of supervision, the Parliament doing some supervision activities as follows:

1. Determining the appointment and dismissal of public officials.
2. Surveillance against the implementation of the Constitution and laws.
3. Determining and supervising budget and financial of the State.
4. Protecting the property of rights and wealth of the citizens from the imposition of the State.
5. Conducting of public debate concerning government policy issues.
6. Approving the government planning and ratified its implementation.
7. Organizing the hearings.
8. Set the problem of war and peace.
9. Approving the general amnesty.
10. Organizing the government together (co-administration).
11. Organizing the tasks that are semi-legislative and semi-judicial.
12. Request of liability to the Head of Government.⁸

Specifically for the first task *i.e.* determination of the appointment dismissal of public officials, should be given to DPR, and for the last task *i.e.* asking the accountability to the Head of Government, the function of prosecution was conducted by DPR, while DPD participate in determining the punishment verdict in the trial of MPR. On the contrary, specifically for the function to the protection of property rights and wealth of the citizens from the imposition by the State should be left to DPD because this institution represents the people in areas that represent layers of society until the bottom layer in more possible to get complaints from

⁷ *Ibid.*

⁸ *Ibid.*, p. 22

the community who feel burdened by the Government. Regarding other tasks can be done simultaneously.⁹

b) Legislative Function

Legislative function covers several activities, including reviewing, designing, discussing, and signing legislation. Opinion growing among the experts is not necessary to distinguish of scope on legislative function that becomes the concerns of both institutions. It just enough formed the Secretary General of DPR and DPD which combined into one division and completed with Legislation Board that led and composed of representatives of DPR and DPD plus experts from outside parliament.¹⁰

The mechanism of acceptance of proposed RUU that will be processed by this Legislation Board *i.e.* if the proposed RUU comes from the President, and then this Board will determine who has the right to discuss and review it, whether the DPR or DPD. However, if the proposed RUU comes from the DPR or DPD, then the board of representatives who first proposed that reverses the right to discuss and review it. “But, at the same time, also determine the relationship of checks and balances between the two chambers, namely by setting up the existence of veto rights”.¹¹

When RUU has been passed by a chamber within 30 days but got rejection from other chamber, then RUU should be discussed again by the chamber who discussing it before to get more approval, *i.e.* two third multiple two third ($2/3 \times 2/3$) of total number of its members (overwrite). However, if a RUU has been approved by two institution such as DPR and DPD but vetoed by the President, then the verdict of settlement should be taken in the Session of MPR with the support of two third multiple two third ($2/3 \times 2/3$) of the combined amount of the DPR and DPD. Specific regarding to the determination and change of the Constitution may be decided upon in the Session of MPR based on suggestion proposed by DPR or DPD.¹²

There are other problems with regard to the implementation of two chamber system. Some experts argued that bicameral system was more suitable for federal state like the United States of America. While this argument not clear, because the bicameral system is also applied in a unitary State such as the Netherlands (*Tweede Kamer*) or United Kingdom (*House of Lords*). Besides, also there are five countries which been applied a bicameral system *i.e.* US, Germany, Switzerland, the United Kingdom, and the Netherlands that have a distinction of functions and roles between two chambers.

The Senate (Upper Chamber) of USA, Germany, and Swiss relatively has same political power, whereas in UK political power of House of Lords or

⁹ *Ibid.*, p. 24

¹⁰ *Ibid.*

¹¹ *Ibid.*, p. 25

¹² *Ibid.*

Upper Chamber is weaker, and so are the Netherlands which *Erste Kamer* or the first chamber in Senate also has the weak political power.¹³

According to political power in democracy system, Institute for Democracy Assistance (IDEA) has been released the map of democracy system in 54 countries recognized as democratic countries (at the time, Indonesia not listed), that about 32 countries were bicameral system and 22 countries used unicameral system. While, in the context of development of number of bicameral state, at the first decade of 1970's there are about 45 countries with bicameral system, and today this amount increase significantly, not least from 70 countries used this system. Furthermore, in South East Asian Countries (ASEAN), there are 10 countries of ASEAN used the bicameral system, seven of them (Malaysia, Thailand, Philippines, Cambodia, Laos, Singapore, and Indonesia) used democracy system, and the other countries (Brunei Darussalam, Myanmar, and Vietnam) used different system. Seven of countries used democracy system and five of them applied the bicameral system such as Malaysia, Philippines, Cambodia, Thailand (before military coup) and the last is Indonesia.¹⁴

Those all strong reasons as remarked earlier, for today DPD should not only posited as a complementary institution in parliament system of Indonesia, but also need a concrete and clear measures and systematic to strengthen the power of authorities of DPD. According to Efriza Syafuan Rozi, there are some steps for this strengthening, are:

1. Amendment of the Constitution.
2. Revise the Law No. 22 of 2003 as modified by Law No. 17 of 2014 concerning Structure and Position through political package.
3. Strengthening DPD by synchronization of the rules of procedure.
4. Strengthening DPD through the Specific Law.
5. Revise the Law No. 22 of 2003 as modified by Law No. 17 of 2014 concerning Structure and Position through Judicial Review
6. Strengthening DPD through constitutional convention.¹⁵

CONCLUSIONS

INDONESIA adopted a weak bicameral parliament system that the system requires one of the chambers in parliament has the power and authority or position more less. In the other side, in the context of Indonesian constitutional system, a parliament which has less position represented by Regional Representative Council (DPD). With the implementation of this weak bicameral system, it will automatically have an impact on non-

¹³ Efriza Syafuan Rozi, *Loc. Cit.*, p. 380

¹⁴ *Ibid.*, pp. 411-412

¹⁵ *Ibid.*, p.433

represented people aspiration in regional, the mastery of the parliamentary votes by the elite political interests and the lack of internal check and balances in representative institutions.

Finally, at the concluding remarks, Author suggest that is need to rearrange of the functions between DPD and DPR that can be endorsed by some ways, such as, amendment to the Constitution, revise of Law No. 17 of 2014 concerning MPR, DPR, DPD, and DPRD through political package or judicial review, strengthen the DPD by synchronization of rules of procedure, and by establishing specific law or by constitutional convention.

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