

Proportionality of the Regional Representative Council in Legislative Function

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ABSTRACT

The Regional Representative Council (DPD) was born in the era where changes to the 1945 Constitution occurred and new problems appeared in the representation system in Indonesia. Based on the provisions of the Constitution of the Republic of Indonesia (UUD) NRI Article 22 C Year 1945, DPD members that are elected through elections and DPD members from each province consist of the same number that is four members, this shows the same provisions without considering the territorial territory and the population of each province. In UUD NRI Article 22 D Year 1945, the regional representative council does not hold any power to form a law. The regional representative council can only submit a draft law to the regional representative council, thus they are unable to make a final political decision. The limited authority of the legislative function of DPD has become a necessity for its reconstruction. Legally, the improvement of this legislation can be done by regularly developing the UUD NRI Year 1945. This is to avoid the implementation of the function of the regional representative council, which does not reflect the spirit of democracy and as one of the mandates of popular sovereignty.

Keywords: *proportionality, the Regional Representative Council, legislative function*

1. INTRODUCTION

Talking about the life essence in regards to the nation and state, there are some fundamental issues that need to be considered, namely the rule of law, democracy, popular sovereignty, nationalism, humanity and social justice. To understand these fundamental problems, it often requires guidance from philosophers. Philosophers with dissimilar thoughts are affected by their diverse backgrounds, similarly; the implementation of democracy will differ from one and another. But of course, there are also reasons as to why countries are considered to be democratic or undemocratic. For a country to be recognized as a democratic or an undemocratic state is by taking a look at their popular sovereignty [8].

In some research found that, public servants or civil servants like DPD member must have an understanding about democracy, and should be realized into his decision/act daily. Creating any responsive regulation is needed to increase the affectivity of government [9]. Soekarno, in his speech at the session of the Investigators' Board of Preparations for Indonesian Independence (hereinafter referred to as BPUPKI) on June 1, 1945 mentioned the sovereignty of the people through the concept of representation, stated that:

"... That basis is the basis of consensus, the basis of representation, the basis of consultation. The country of Indonesia is not one country for one person, not one country for one group even though the group is rich. But we founded the state "all for all", "one for all, all for one". I am sure, that the

absolute condition for the strength of the Indonesian State is deliberation, representation. "

In line with Soekarno's thoughts, Muhammad Yamin in the BPUPKI session stated that "people's consultations are the highest form of popular sovereignty, and the people's sovereignty is a requirement for direct representation of the people and regions". Muhammad Yamin's thought that describes the idea of the constitution is very much in accordance with the conditions of Indonesian nationality and the rules of life in the modern state of society. The institution that holds people's sovereignty is a combination of the public and regional representatives who are directly elected by the people.

The basis of the Indonesian State adheres to people's sovereignty; this can be seen in the 4th Point of Five Principles (Pancasila), it is "*The democracy led by understanding wisdom among honorable representatives from the parliament house*". Based on the Preamble of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia), the fourth paragraph states that '*... then the Indonesian independence was drawn up in an Indonesian Constitution, which was formed in the state of the Republic of Indonesia based on Believe in the one supreme GOD, Justice and civilized humanity, The unity of Indonesia, and The democracy led by understanding wisdom among honorable representatives from the parliament house, and the realization of a Social justice for all of the people of Indonesia*".

The amendment to the 1945 Constitution of the Indonesian Republic of Indonesia clearly states that the Unitary State of the Republic of Indonesia is a country that adheres to the principle of popular sovereignty. The sovereignty of the people indeed animates the Unitary State of the Republic of Indonesia and the people's sovereignty that's adopted by Indonesia must be in accordance with the philosophical and juridical foundation of the state, namely Five Principles (*Pancasila*). Article 1 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that "*sovereignty is in the hands of the people and carried out according to the provisions of the constitution*". The implementation of people's sovereignty is fully handed over the constitutional mechanism, namely the Constitution. This is the latest development of the manifestation of the principle of popular sovereignty in the new 1945 Constitution, as the basis for the process of implementing the Indonesian State democracy in the future [1].

In the state administration practices that occur, the phenomenon that has been running for the past four decades shows the tendency for a more severe state system to be regulated (executive heavy). The position of president as head of state at once [10]. If further examined, the constitutional system in Indonesia changes in line with the reform movement, one of which is an effort to guarantee the protection of human rights for Indonesian citizens. The change in the constitutional system has been manifested in the Amendments to the 1945 Constitution which are the basic rules of the country (*staatsgrundgesetz*) Indonesia [11].

The sovereignty of the Indonesian people based on the provisions of the constitution (constitutional democracy) is held directly and through a system of representation. The sovereignty of the people is manifested in three branches of power which are reflected in the People's Consultative Assembly (hereinafter referred to as MPR) consisting of the House of Representatives (hereinafter referred to as DPR) and Regional Representatives Council (hereinafter referred to as DPD) as legislative power holders, President and vice President as executive power holders, and the Supreme Court and the Constitutional Court as judicial power holders.

The DPD was formed to increase the participation of regions in Indonesia in the management of the State, especially the formation of laws and supervision as well as part of the idea of forming two rooms (bicameral). Bicameral itself is interpreted by (Arrend, Lijphart: 1999) is a dichotomy of the category of representative institutions by naming each institution or different representative rooms. In the context of Indonesia, the first room is called the House of Representatives (DPR), while the second room is called the Regional Representative Council (DPD) [12].

The Regional Representatives Council which was born through amendment of the 1945 Constitution has caused a new problem based on Article 22 of the 1945 Constitution of the Republic of Indonesia. Article 22 C regulates the composition and procedures of the Regional Representatives Council members and Article 22 D regulates the duties and authorities of the Regional Representatives Council. Based on the provisions of Article 22 C of the 1945 Constitution of the Republic of Indonesia, that the Regional Representatives Council members are elected through elections and the Regional Representative Council Members from each province are the same, namely 4 (four) members, this shows the same provisions without considering the territorial territory and the population of each province. The provisions of article 22 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia basically do not hold the power to form a law. The Regional Representatives

Council can only submit a Bill to the House of Representatives, thus the Regional Representatives Council does not have the power to make a final political decision.

The Regional Representative Council's dilemma can actually be predicted from the results of the amendments to the 1945 Constitution, which is considered by many people to be patchy. All of this stems from the lack of consistency of politicians when rearranging the government and the representation system. This also contradicts from the idea behind the formation of the Regional Representative Council. Therefore, this study examines the new construction of the legislative function of the House of Representatives in strengthening the function of the popular sovereignty.

2. BACKGROUND

The Regional Representatives Council is a representation of the population in an area that will represent regional interests in important political decision-making processes at the national level. As a legislative body, the Regional Representatives Council also becomes a control institution for the running of the government, so that the Regional Representatives Council truly becomes the people's representative institution. As a matter of fact, the presence of the Regional Representative Council is an empirical representation of people's interest in the regions, which is actually the face of Indonesian democracy [2]. Indonesian democracy still stands on the sovereignty reality since people the soul of its implementation.

The position of Regional Representative Council as a representative institution cannot be separated from the democracy concept. This democracy concept consists of a fundamental principle where the sovereignty of the people determines the governmental implementation. The realization of this principle in daily life is reflected in the participation of people in deciding government policies. Regional Representative Council as the regional representative institution which represents regions has a broader character than House of Representatives. It happens since the representation dimension is based on the people in those regions. Therefore, the management of Regional Representative Council which positions as the regional representative institution and functions as a state institution which embodies Article 1 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia should be the principles in formulating the Regional Representative Council position. However, the Regional Representative Council position as stated above does not actually suit the idea of Regional Representative Council formation in the process of reforming the structure of Indonesian representative institutions. Regional Representative Council as a state institution does not have independent authority relating to legal decision making in carrying out its legislative functions.

As Jimly Asshidiqie [3] stated that the function of the Regional Representative Council is merely a "co-legislator," meanwhile the House of Representatives is responsible for supporting the constitutional duties. In the process of establishing a law or legislation, the Regional Representative Council is not authorized to decide or take part in the decision making process at all. In fact, the requirements to become Regional Representative Council members are much harder than the criteria to become the House of Representative members. It means that the quality of authority does not adequately balance the legislative quality of the Regional Representative Council members as regional representatives.

Furthermore, Jimly Asshiddiqie [4] argued that the branch of the legislative power firstly reflects the sovereignty of the people. Nation life activity is mainly to regulate mutual nation life. Therefore, the authority to set out the regulation must first be given to people's representative institutions or the parliament or

legislative institutions. Legislative institution or legislature reflects one of the functions of that institution which are to legislate or set out the laws.

Saldi Isra mentioned that the Regional Representative Council does not have a legislative function. The legislative function must be comprehensively concerned, starting from the submission process to approving the draft laws [5]. The inequality of legislative functions has become increasingly apparent since the power to set out the law is in the hands of the House of Representatives. By using the *contrario* method, Regional Representative Council as the part of a people's representative institution does not have a legislative function [6] even though it can submit and participate in discussing particular fields of draft laws stated in article 22 D paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

Deddy Ismatullah stated that even though the Regional Representative Council has legislative power, especially regarding the specific bills, however its function is not referred to as a legislative function. The *DPD* (Regional Representative Council) only functions limited to giving advice, considerations, or opinions, as well as conducting supervision that is not binding in nature. Therefore, the *DPD* is not entirely a legislative body. Its existence is only supporting the function of the *DPR* [7].

From the considerations mentioned, as a representative institution, it should evidently be able to carry out people's sovereignty by applying democratic values in order to fight for people's aspirations. However, regarding its position and function, the *DPD* encounters several problems with philosophical, juridical and theoretical aspects, namely as follows:

First, philosophically the purpose of forming *DPD* is predominantly driven by political interest in generating more fruitful policies made by the national government by providing new space for the interests of the regional community. Consequently, the philosophical problems arising are ontological problems, epistemological problems and axiological problems. Ontological problems question the meaning of the popular sovereignty principle in the formation of the Regional Representative Council. Epistemological problems question how the formation of the Regional Representative Council is based on the popular sovereignty principle and axiological problems, how the construction of the new position and function of the Regional Representative Council based on the principle of popular sovereignty is.

Second, the issue within the juridical problem is the absence of consistency between the constitutional authority of the *DPD* and the *DPR* (People's Representative Council). The Article 22 D of the 1945 Constitution of the Republic of Indonesia is inconsistent with Article 20 Paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia. At that stage, the legislative function takes place in the process carried out by the *DPR*, the President and the *DPD*. However, when the process has been further discussed and made joint agreements, the *DPD* is no longer involved because the legislative process is returned back to the *DPR* and the President. The *DPD* does not have the constitutional power to compete, because the *DPD* does not actually have the authority to the decision-making level. The fact that *DPD* as a regional representative institution located as a state institution is not in accordance with the idea of forming a *DPD* which is essentially to strengthen national integration and to increase aspirations in the context of national policy formulation for the interests of the state and regions as well as an effort to improve regional empowerment in all regions of Indonesia.

Third, the theoretical problem: (1) that the principle of popular sovereignty in Representative institutions is not yet in line with the principles of constitutional democracy. In the concept of

democracy, indeed all forms of decision making are in people's hands. Democracy is only interpreted as procedural democracy, and does not pay attention to the substantial aspects of the concept of democracy, so far it has been too preoccupied with the phrase "as long as it corresponds to the procedure". That democracy is not only a place to seek profits, but more than that, democracy should be a series of concepts on governance that uphold people's sovereignty, (2) As regional representative institutions, they should be able to apply democratic values and absorb and fight for the aspirations of the people and regions in accordance with the demands of the development of the life of the nation and state, but the position of the *DPD* as a state institution does not have independent authority relating to legal decision making in carrying out its legislative functions. The existence of the *DPD* is to establish a mechanism of checks and balances in the legislature itself, in addition to branches of state power (legislative, executive, judicial). Besides that, there is also no double checks between the *DPR* and *DPD*, so there is no process of mutual balancing and mutual control between the two. Therefore, checks and balances in the legislature are not implemented, instead the domination of *DPR* becomes increasingly stronger constitutionally. With the domination of *DPR* over *DPD*, it indicates that these two institutions cannot work in the corridors of equality and balance. In a constitutional democratic system, there are checks and balances among state power institutions. This system provides restrictions on the power of each state institution that neither of institutions is the highest or the lowest. This system also helps avoid the domination of one institution over other institutions since all of them is regulated based on their respective functions according to the constitution.

DPD as a new institution born after the amendment to the 1945 Constitution, is expected to apply democratic values, accommodate and fight for aspirations of people and regions in accordance with the demands of the development of national and state life that upholds popular sovereignty. However, in institutional practices, theoretically and judicially, in Indonesia, there is still an inconsistency in *DPD* based on the principle of popular sovereignty. Nevertheless, the principle of popular sovereignty has not been entirely carried out in Indonesia, resulting in Regional Representative Council as a representative of local community does not perform well, effectively and efficiently.

Therefore, a restriction on the form of authority in the field of legislation, that is only to propose the bills, participate in examining and giving advices, is clearly a deviation from the status and conditions desired by the formation of the Regional Representative Council that is as a representative institution.

It is unfortunate when the amount of the State budget used up in the process of drafting the bills, giving advices and supervisions in *DPD* does not bring benefits to the people. In addition, it is also difficult for *DPD* members to be morally and politically accountable to their voters and constituencies. Hence, an affirmation is then needed that the amendments to the 1945 Constitution can be rescheduled, and has logical reasons, which is to improve the quality of democracy, to strengthen regional aspirations and to re-establish a system of checks and balances which become one of the initial ideas for the formation of *DPD* in Indonesia.

As in the primary consideration of letter A of Republic of Indonesia Law Number 17 of 2014 about People's Consultative Assembly, House of Representatives, Regional Representative Council, and Regional House of Representative states that:

"to implement popular sovereignty on the basis of democracy guided by the inner wisdom in the unanimity arising out of deliberations amongst representatives, it is necessary to realize people's consultative institutions, people's representative institutions and regional representative institutions that are able

to embody democratic values and accommodate and fight for the aspirations of people and regions in accordance with demands of the development of national and state life".

In Law Number 17 of 2014 about MD3, DPD obtains additional authority and duties that is compiling and submitting an inventory list of the bills originating from DPR or President and compiling a national legislation program. Thus, with the addition of new authority, DPD, starting from 2015 - 2019 proposes a bill to DPR, consisting of four bills, namely the Creative Bill, the Archipelago Insight Bill, the Islands Region Bill and the Regional Languages or Traditional Languages Bill. The four bills have yet to be finished. And the bills proposed by the House of Regional Representatives (DPD) should be aspirational and responsive whilst the bills are substantially needed and are very beneficial to the society.

Based on the Decision of the Constitutional Court (MK) Case No. 79 / PUU-XII / 2014, on September 22, 2015 examining Act No. 17 Year 2014 on MD3, it was affirmed that the Regional Representative Council (DPD) has the authority to involve in submitting and examining drafts of law (bill) with an academic script related to regional autonomy, formation/expansion, management of natural resources and independence of the Regional Representatives Council budget.

However, the contents of the Constitutional Court's decision did not have many significant changes regarding the position of the Regional Representative Council (DPD) in regional representative institutions, which is still subordinate to the House of Representatives (DPR) in terms of carrying out its function. The limitation of the Regional Representatives Council's (DPD) role in the legislative function is actually not only covered by the MD3 Law, but also in Act No. 12 Year 2011 on the Establishment of Legislation. In order to improve the deficiencies in Act No. 17 Year 2014, the Republic of Indonesia Law No. 2 Year 2018 on the Second Amendment to Act No. 17 Year 2014 on the People's Consultative Assembly (MPR), the House of Representatives (DPR), the Regional Representative Council (DPD) and the Regional People's Representative Assembly (DPRD) was created. Within this Law, new additions on authority and duty are displayed as stipulated in Article 249 (1) letter j, "Monitoring and evaluating the regional regulations drafts and regional regulations". This provision brings new problems because it collides with the authority of another institution, the Ministry of Home Affairs. Moreover, the additional authority is not to carry out the Regional Representative Council's (DPD) legislative function.

Speaking of the position of the Regional Representative Council (DPD) as a representative institution, such function cannot be separated from the concept of democracy. In the concept of democracy there is a basic principle, namely the people's authority determines the course of government. The realization of this principle within the government is reflected in the participation of the people in deciding government policies.

The Regional Representative Council (DPD) as the regional representative institution, though represents smaller regions, basically has a broader character of representation compared to the House of Representatives (DPR), because its dimension of representation is based on all the people in the said regions. For such reason, regulations regarding the Regional Representative Council's (DPD) position which is a regional representative institution and functioned as a state institution, as an embodiment of Article 1 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia, should be the basis for formulating the position of the Regional Representatives Council (DPD). However, the position of the Regional Representative Council (DPD) as stated above is essentially not in accordance with the idea of forming the Regional Representative Council (DPD) in the reforming process of the structure of Indonesia's representative institutions. The Regional Representative Council

(DPD) as a state institution does not have independent authority relating to legal decision making in carrying out its legislative functions.

In fact the position of the DPD as stated above, in essence is not in accordance with the idea of forming the DPD in the process of reforming the structure of Indonesia's representative institutions. DPD as a state institution does not have independent authority relating to legal decision making in carrying out its legislative functions [13]. Political communication that was built in the era of using mass media when looking at the theory of Antonio Gramsci's hegemony over the alliance of organizational networks, hegemony has a significant impact on the broad understanding of society regarding its constitutional rights [14].

3. CONCLUSION

The limited authority of the Regional Representative Council's (DPD) legislative function has become a necessity to reconstruct the institution's legislative function. Legally, such strengthening can be done by continuing changes to the 1945 Constitution of the Republic of Indonesia. However, it is difficult to strengthen the Regional Representative Council's (DPD) legislative function without rearranging the 1945 Constitution of the Republic of Indonesia. Strengthening the function of legislation should be carried out by comprehensively rearranging the legislative functions in the state administration system. It is possible that the Regional Representative Council (DPD) will not be fully involved in discussing the draft law (Bill) as the House of Representatives (DPR) will, but to build checks and balances, the Regional Representative Council (DPD) should be given space to correct and/or reject the draft law (Bill) which has been approved by the House of Representatives (DPR).

As a people's representative institution that is democratically elected and has strong legitimacy from the people, then the Regional Representative Council's (DPD) legislative function should be strengthened by giving right to regional representative council in the process of discussing, not only suggesting. This is to avoid the implementation of regional representative council function which does not reflect democracy's enthusiasm and as one of society's sovereignty holders they need to be more firm toward the function of regional representative council to strengthen society sovereignty principle.

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