

Construction of the regional representative council as regional representation through historical approach in Indonesia

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Abstract

Juridically, the Regional Representative Council (DPD) of the Republic of Indonesia is regulated in Article 22C and Article 22D of the 1945 Constitution. The existence of the DPD as a regional representative institution in absorbing and realizing people's aspirations, the authority given by the constitution is still weak. The DPD's legislative authority cannot be said to be complete, because the DPD is only limited to proposing bills, without being given authority to approve laws. Strengthening the DPD's legislative function can only be done by continuing changes to the 1945 Constitution. This article explains the reconstruction of the DPD's position in Indonesia as well as the ideal concept of the DPD's function in Indonesia. This research uses a normative juridical research type with a statutory approach and a conceptual approach. In the perspective of a democratic rule of law based on the constitution, representative institutions that carry out legislative, supervisory and budgeting functions are given constitutional rights to carry out these functions. Theoretically, some countries usually adhere to a bicameral system consisting of a Lower House and an Upper House. The constitution differentiates and limits the functions performed by these two chambers. It is necessary to optimize the DPD to correct the imbalance in the DPD's position as a regional representative institution through changes to the 1945 Constitution.

Keywords

Construction, DPD, Historical Approach

Introduction

Constitutional reform is one of the agendas that emerged in line with demands for a more democratic state process. The movements that developed at that time were a form of crystallization of the people's desire to re-evaluate the condition of the state which was in a crisis position (Subardjo: 2002). Meanwhile, Indonesia's constitutional reform began when the 1945 Constitution was changed after the New Order (Bagir Manan: 2004). The demand for reform through changes to the 1945 Constitution has resulted in many changes in the constitutional system of the Republic of Indonesia.

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Amendments to the 1945 Constitution from the perspective of constitutional law are a *sine qua non* condition for restructuring Indonesian constitutional life in order to design democracy or popular sovereignty which is oriented towards upholding the rule of law, controlling power, civil society and checks and balances (Dahlan Thaib: 2009).

One of these changes occurred in terms of state institutions with the addition of several state institutions, one of which was the Regional Representative Council (DPD). The Third Amendment to the 1945 Constitution, which was implemented in 2001 at the Annual Session of the People's Consultative Assembly of the Republic of Indonesia, is juridically the basis for the presence of a new institution in the constitutional system in Indonesia, namely the Regional Representative Council of the Republic of Indonesia which is regulated in Article 22C and Article 22D of the 1945 Constitution.

The DPD as a state institution resulting from the reform regime was originally a Regional Delegation institution within the composition of the membership of the People's Consultative Assembly (MPR), which consisted of members of the People's Representative Council plus regional delegates and group delegates. Then there was a demand that the "Regional Representatives" in the MPR be realized in the form of a Regional Representative Council. The existence of Regional Representatives is still very necessary because of the tendency to strengthen regional autonomy. Regulation of the composition of the DPR was necessary at that time because the DPR was party representatives, while the Regional Representatives were local representatives (Valina Singka Subekti: 2007).

The two-chamber system was then adopted in the 1945 Constitution (post amendment). The 1945 Constitution adheres to a bicameral representation system consisting of the DPR chamber and the DPD chamber. The DPR represents the people in general with a national interest orientation and represents the people in a regional context with a regional interest orientation (Jimly Asshiddiqie: 2005). In carrying out their functions and authority, these two bodies can operate independently, but can also convene together to discuss issues deemed important. The joint session between the DPR and DPD is a joint forum called the People's Consultative Assembly. However, the two-chamber system does not have the same authority. This is because the two chambers of the representative institution are not equipped with the same strong authority. The authority of the DPR in the 1945 Constitution is even stronger than that of the DPD.

The history of the founding of the Indonesian state has known for a long time the existence of a people's council. The Dutch East Indies government at that time formed the Volksraad or People's Council (1918-1942), which was a kind of parliament to accommodate the aspirations of the people, but it was also unable to stem the surging enthusiasm for realizing independence. The Volksraad was formed on 16 December 1916, but was only inaugurated on 18 May 1918 and the first session was held on 21 May 1918. The People's Council had 30 Bumiputera members, 25 Europeans and 5 Eastern Foreigners. Of the 30 Bumiputera people, 20 people were appointed through election and 10 people through appointment; while of the 25 Europeans, 15 were appointed by

election and 10 by appointment. Foreign East membership is determined through the election of 3 people and through the appointment of 2 people. Furthermore, in accordance with the provisions of Article 72 paragraph (1) of the 1917 Indische Staatblad, from among the 60 members of the People's Council, 15 people were selected who were designated as the Working Body/Council (College van Gedelegeerden). This body worked throughout the year, while other members of the People's Council spread throughout the Dutch East Indies only met at certain times, especially when drafting an ordinance. In reality then, the Volksraad was only an advisor (Adi Sudirman: 2014).

The spirit for independence was also realized through the formation of political parties. Leaders of the independence movement who took a non-cooperative attitude towards the Dutch East Indies government, including Sukarno and Hatta, were arrested and exiled outside Java. Nationalist parties gathered in GAPI (Indonesian Political Association) which was known to have the motto "Indonesia Berparlemen" (1939). At every meeting they display a red and white flag bearing the motto "Indonesia Berparlemen". GAPI was formed on the initiative of M. Husni Thamrin from Parindra (Greater Indonesia Party), Gerindo (Indonesian People's Movement), and PSII (Indonesian Islamic Sarikat Party).

GAPI, through a Plenary Meeting held in Jakarta on January 31 1941 issued a GAPI Memorandum Concerning Indonesian State Administration. In this Memorandum, among other things, the goal was stated to form a Parliament consisting of two Majlis, namely the First Madjelis (*Eerste Kamer*) and the Second Madjelis (*Tweede Kamer*).

Indonesian Independence Fighters, including Mr. Soepomo, Mr. Subardjo, and Mr. Maramis immediately prepared several draft laws and regulations in preparation for Indonesian independence. On April 4, 1942, Mr. Soepomo, Mr. Subardjo, and Mr. Maramis completed the draft draft of the Independent Indonesia Law, the Regulations Concerning the Provisional Government of Indonesia, and the Preliminary Plan for the Indonesian Constitution. The text of the Independent Indonesia Law contains the main ideas regarding the Provisional Indonesian Government and the Constitution for an independent Indonesian State, as well as the relationship with the Nippon (Japan) Government. The Regulations Concerning the Provisional Government of Indonesia is a text which contains provisions regarding the power system and temporary government system as well as matters regarding the transfer of power from the Dutch East Indies Government.

Method

Legal research is actually related to how to understand the law (Ida Hanifah & Andryan: 2021). The research method used in this research is normative juridical. The approach used in this research is a legislative approach, a conceptual approach and a historical approach, where the historical approach is in providing strengthening to the DPD as a parliamentary institution with regional representation at the central level (Andryan:

2023). The data collection used is legal research, meaning that the research is applied or applied specifically to legal science (Ida Hanifah: 2023).

Results and Discussion

DPD and womb reform

The existence of the DPD as an independent institution makes it possible to fight for the interests of the people seriously compared to the position of the DPR which is the people's representative who comes from a political party and is of course more tied to party policies (H.Harpani Matnuh, 2010). The authority given to the DPD as a regional representative institution in absorbing and realizing the aspirations of the community, seen from the aspect of the rights and authority granted by the constitution, is still very weak. This very limited authority can be said to cause the DPD to become just a constitutional formality due to the compromise behind the implementation of the amendment (Mahfud MD: 2010).

Although many observers of constitutional law say that the model of people's representative institutions in Indonesia tends to adhere to a tricameral system, only the DPR and DPD are in contact with legislative functions. The connection between legislative functions can be read in Article 22D paragraph (1) of the 1945 Constitution. However, the DPD cannot be said to have a legislative function. However, the function of legislation must be seen as a whole, starting from the submission process to approving a draft law. The inequality in legislative functions becomes increasingly apparent with the existence of Article 20 paragraph (1) of the 1945 Constitution which states that the power to form laws is in the hands of the DPR.

The DPD was produced in the amendment to the 1945 Constitution. It can be said that the DPD is the womb of reform. However, the spirit of reform did not give the DPD a strong position. The DPD is not given the authority to amend or reject draft laws that have been jointly approved by the President and the DPR. From the provisions contained in Article 22D of the 1945 Constitution, the phrase "participate in discussions" still allows the DPD to play a more optimal role in legislative functions. However, this possibility is closed because a number of laws which further regulate the implementation of the DPD's authority do not provide space for the DPD as mandated by the constitution.

Restrictions on the role of the DPD in legislative functions are actually not only closed because of the MD3 Law, but also in Law Number 12 of 2011 in conjunction with Law No. 19 of 2019 concerning the Formation of Legislative Regulations (UU P3). The MD3 Law and the P3 Law increasingly strengthen the role of the DPD in the law formation process. The idea of testing the legislative function of the Regional Representative Council (DPD) includes 5 things. First, for the DPD to be equally involved in the preparation of the national legislation program. Second, the resulting draft law is treated the same as bills from the president and DPR. Third, be involved in discussing a particular bill from start

to finish. Fourth, discussion of certain bills is three-party (tripartite), namely the DPR, DPD and the president. Fifth, as an inseparable part of the process of discussing a particular bill, the DPD is also involved in the approval process of a bill which is discussed tripartitely.

The laying of the constitutional basis for the formation of the DPD as part of the MPR through amendments to the 1945 Constitution, is part of a shift in the constitutional strategy of state and government life, as well as one of the dimensions of constitutionalism that emerged in the context of constitutional reform in Indonesia (Article 2 paragraph (1) of the 1945 Constitution) (M.Solly Lubis: 2011). The DPD was born and presented as one of the people's representative institutions that will bridge policies and regulations on a national scale by the Government (Central) on the one hand and the Regions on the other. There has been a change in strategy from the pattern of representing regional interests through the placement of Regional Representatives in the MPR to the pattern of representation through the Council which is specifically tasked by the Constitution to fight for regional interests, whose duties are detailed in the Articles of the 1945 Constitution, much different from the Regional Representatives known so far (Chapter VII A Article 22 C juncto Article 22 D).

In addition to the two juridical-constitutional paradigms and political paradigms, the DPD also does not forget to refer to Article 18 A and Article 18 B, which introduce the functioning of philosophical-cultural paradigms, namely benchmarks for the application of relations between the Government (Central) and Regions are organized by taking into account regional specificities and diversity and so that they respect traditional legal community units and traditional rights that still exist in the region (Solly Lubis: 2011).

DPD as a regional people's representative institution at the center in channeling people's aspirations must have a clear function. According to Jimly Asshiddiqie, the function of parliament can be divided into three types, namely regulatory function (legislation), supervisory function (control), representative function and representation (Jimly Asshiddiqie: 2007). The regulations regarding the function of the DPD are outlined in Article 22D of the 1945 Constitution of the Republic of Indonesia which states that:

1. The Regional Representative Council can submit to the People's Representative Council draft laws relating to regional autonomy, central and regional relations, the formation and expansion and merger of regions, management of natural resources and other economic resources, as well as those relating to the balance of central and regional finances.
2. The Regional Representative Council participates in discussing draft laws relating to regional autonomy; central and regional relations; formation, expansion and merger of regions; management of natural resources and other economic resources, as well as balancing central and regional finances; as well as providing consideration to the House of Representatives on draft state revenue and expenditure budget laws and draft laws relating to taxes, education and religion.

3. The Regional Representative Council can supervise the implementation of laws regarding; regional autonomy, formation, expansion and merger of regions, central and regional relations, management of natural resources and other economic resources, implementation of state revenue and expenditure, tax, education and religion budgets and submitting the results of their supervision to the House of Representatives for consideration to be followed.

Viewed from the perspective of legislative strategy, what is being done as a discussion discourse regarding the DPD at this time, is only a basic benchmark that can be presented in the 1945 Constitution. Completion of the amendments to the 1945 Constitution in the future must provide something change, so it cannot be denied that legislative regulations the invitation regarding DPD must be reviewed. The DPD must be able to meet legal needs and aspirations for democratic governance in this country, especially in relations between the Center and the Regions. Moreover, after witnessing that there were various political nuanced actions and movements taking place in various regions, which in essence demanded the condition of what was mentioned as one of the policy paradigms (political paradigm), that it was necessary to create "a balance between the ongoing power and authority of the Central Government in Regions and at the same time the democratization of Government and the accommodation of the aspirations of the Regional people in a fair and democratic manner".

Strengthening DPD through historical approach

The history of the development of state institutional arrangements, especially in the establishment of parliamentary institutions, provides legitimacy to the DPD's position as a regional council. As contained in the Initial Plan Of The "Indonesian State Constitutional Law" Includes 11 Chapters And 74 Articles And Contains A System Of Sovereignty, A System of state government power, which includes executive, legislative and judicial powers, as well as regarding the Rights And Obligations Of The Population, Financial Matters And General Rules. In Chapter III concerning the People's Representative Council, it is stated as follows:

1. Article 30: The People's Representative Council is divided into two councils, namely: the First Council and the Second Council.
2. Article 31: According to the law concerning the First Council, the council is all or partly composed of members who are appointed or elected.
3. Article 32: The Second Council consists of members elected by the people, according to the provisions of the Law on Election of Members of the Second Council.
4. Article 33: A person cannot at one time be a member of both Councils.
5. Article 34: Every law must obtain approval from the House of Representatives.
6. Article 35: The Council both decides on draft laws, which are submitted to it by the Government, and if necessary can propose its own draft laws.

7. Article 36: A law that has been rejected in one of the two Houses may no longer be brought forward during that session.
8. Article 37: Both Councils may submit proposals to the Government, whether for legislation or regarding other matters. However, if the proposals are not accepted, they cannot be brought forward again during the trial.

From the provisions mentioned above, although there are two Councils, they are not intended to embody a bicameral system with two chambers. The two Houses are a unit in one House of Representatives institution which is differentiated only by the recruitment process. The First Council accommodates representatives who are appointed, among other things, based on a balance of representatives from the regions. This shows that from the start the idea of kinship has been adhered to which always includes all regional elements and groups within the framework of togetherness as a big national family.

In the perspective of a democratic rule of law based on the constitution, representative institutions that carry out legislative, supervisory and budgeting functions are given constitutional rights to carry out these functions. Theoretically, some countries usually adhere to a bicameral system consisting of a Lower House and an Upper House. The constitution differentiates and limits the functions performed by these two chambers.

In many countries, the two chambers in the bicameral system consist of the Lower House and the Upper House. According to Jimly Assiddiqie, within federated countries, the term upper house or High Council is called by various names. In the United States, Canada, Australia and Latin America, it is usually known as the Senate; in India and Switzerland it is called the Council of States; in Germany and Austria it was called the Federation Council (Bundesrat) and in Myanmar, Czechoslovakia (now Chechs and Slovakia), and the Soviet Union (now Russia) it was called the Chamber or Soviet Nationality.

In some countries, in practice, the Lower House is usually given the authority to take the initiative to submit a state budget and revenue plan (RAPBN), while the authority of the Upper House is focused on making and formulating policies. The bicameral has an equal position. The Lower House and Upper House do not supervise each other, either politically or legislatively. Laws cannot be enacted without mutual agreement, which is usually carried out by a joint committee or through a joint session between the two houses.

Initially, the aim of establishing a bicameral parliament was linked to the form of a federated state which required two chambers of assembly. Both assemblies need to be held for the purpose of protecting the federation formula itself. However, its development coincided with a shift in the trend towards the form of unitary states. Two main reasons that can be put forward for the use of this bicameral system are:

1. There is a need for a more stable balance between the executive and legislative parties, the unbridled power of a single chamber being restrained by the creation of a Second Chamber recruited on a different basis;
2. The desire to make the parliamentary system run, if not more efficiently, at least more smoothly, through an assembly (chamber) called a revising chamber to maintain a careful check on the sometimes-hasty decisions of a first chamber.

In England, for example, there are two houses, namely the Upper House (House of Lords) and the Lower House (House of Commons). The High Council was originally the king's council leading the landowners. Over time, its function changed to become a law-making body together with representatives of the majority of the people. From 1688 until the end of the 19th century, the Upper House acted as an effective countervailing force in carrying out its function of controlling power. However, since the 20th century, its influence has waned under the lower house whose membership is democratically elected.

Conclusion

The existence of the DPD as an independent institution makes it possible to fight for the interests of the people. The authority given to the DPD as a regional representative institution to absorb and realize the aspirations of the community, seen from the aspect of the rights and authority granted by the constitution, is still very weak. In the perspective of a democratic rule of law based on the constitution, representative institutions that carry out legislative, supervisory and budgeting functions are given constitutional rights to carry out these functions. Theoretically, some countries usually adhere to a bicameral system consisting of a Lower House and an Upper House. The Lower House and Upper House do not supervise each other, either politically or legislatively. Laws cannot be enacted without mutual agreement, which is usually carried out by a joint committee or through a joint session between the two houses. Therefore, based on historical considerations of the establishment of parliamentary institutions, where the ideals of the founders of the country were to strengthen parliamentary institutions by implementing a bicameral parliamentary system, namely the existence of a Lower House and an Upper House, which balance each other out, it is appropriate to strengthen the DPD by re-adopting the history of its formation. parliamentary institutions that implement a bicameral system model.

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