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## Relationship Of Regional Representative Council With State Institutions In The System Of Constitutional In Indonesia

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### **ABSTRACT**

*In the new era of institutional Indonesian governmental movement, the Regional Representative Council is a national level agency in Indonesia that was introduced through the amendment of the 1945 Constitution. The representation of members of the Regional Representative Council represents every province in Indonesia. The position of the Regional Representative Council in the Representative System in Indonesia, especially as a State institution has a weak function, only as a complement to the legislative body. The Regional Representative Council only as a "consultative and consideration" institution only, has no authority to decide. The relationship of the Regional Representatives Council with other State bodies such as the People's Representative Assembly, the People's Legislative Assembly, the Constitutional Court, the Regional Government and the Regional People's Legislative Assembly exist, but only on certain matters and only as a "consideration".*

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## **INTRODUCTION**

Since the reformation in 1998, a new milestone in the journey of Indonesian state administration began from the beginning. From 1999 to 2002, the 1945 Constitution has undergone a fundamental change of 4 (four) times. In the framework of the first amendment to the fourth amendment of the 1945 Constitution, Indonesia has adopted new principles in the constitutional system, from separation of powers and checks and balances to the settlement of political conflicts through legal channels.

Thus, through the amendment of the 1945 Constitution, the MPR has deconstructed itself into an institution of DPR and DPD which is almost similar to the bicameral parliament model. In addition, there has been a new institution named the Constitutional Court, the Judicial Commission and included in it is the DPD. In addition, there have also been independent state institutions whose authority is based on the order of the Constitution, Act, and even there is an institution whose authority comes from the President's decision.

The Regional Representative Council of the Republic of Indonesia (DPD-RI) has passed the first five years (2004-2009) as well as the next five years of service as one of the national-level representative bodies elected directly by the people through elections other than the House of Representatives. Not least the experience and problematic that.

The DPD faced during the first period of its existence, both institutionally and individually members as regional (provincial) representatives at the national level. The various experiences and problems are expected to be a reference to improve the performance of the DPD in improving the quality of its

contribution in presenting a more democratic, transparent and accountable government for Indonesia in the future.

Institutionally, the DPD is a relatively new national level institution in Indonesia introduced through the third amendment of the constitution in 2001. However, the quality of DPD members' representation comes from 34 provinces, relatively better than the members of the House of Representatives.

Starting in 2004 a new era in the history of Indonesian government, especially in the field of people's representation of the existence of members of Parliament (House of Representatives) which had never existed before. They have been elected in this 2004 General Election along with the election of members of the People's Legislative Assembly.

Based on the fourth amendment there is a fundamental change in the People's Consultative Assembly (MPR), where the MPR consists of members of the House of Representatives (DPR) plus group representatives, the MPR consists of the House of Representatives and the Regional Representatives Council (DPD) as set forth in article 2 (1) of the 1945 Constitution.

DPD's presence in Parliament as a new institution, which previously was filled by the Council of Regional Representatives (DUD) and delegates of the group. The filling mechanism is different, where for the delegates of the group and the delegates are easier because the Constitution is elected by the Provincial DPRD and the delegates are appointed. This change makes the system of representative bodies in Indonesia changed from the monocameral system to the bicameral system, that the bicameral system held in Indonesia is different from the bicameral system of other countries.

In this case we need to know that what is known as bicameral system in various countries in the world is strong two bicameralism system (strong bicameralism). So both rooms (Parliamentary Institutions) are equipped with equally strong authority and balance each other against each other, plus a veto. In the context of Indonesia today where regional autonomy is increasingly likely to be federalistic, suggestions have emerged that the parliamentary structure adopted is of strong "bicameralism".

Based on the amended 1945 Constitution it is mentioned that DPD performs functions: Legislation, consideration and supervision. DPD may submit a specific bill to the Parliament and participate in discussing specific Bill with Parliament. Areas that allow the DPD to propose a bill or participate in discussing the Bill are related to regional autonomy, central and local government relations, establishment and division and regional integration, management of natural resources and other economic resources, as well as those relating to central financial balances and area. In the function of consideration, the DPD gives consideration to the DPR or draft law APBN, the Bill related to taxes, education and religion, as well as consideration in terms of BPK election. Besides, the DPD has a supervisory function on the implementation of the Act in areas where DPD can propose a bill, participate in discussing and providing balance. Indirect supervision of the DPD may occur by receiving a CPC report. The results of the DPD's oversight are submitted to the DPR as a matter of consideration to be followed up. From the formulation of the 1945 Constitution, we can know that the DPD as a representative institution of the Region has three functions, namely the function of legislation, function considerations and supervisory functions.

Therefore, DPR and DPD reflect the imperfect bicameral system or it may also be called soft bicameralism. Even the existence of MPR, DPR, DPD can also be called as unicameral parliament building which is not purely, because in essence the function of legislation is in the hands of DPR, but beside there is DPD which also have duty as "partner in legislation". In addition, the MPR itself is still considered important because it has independent authorities, regardless of the meaning of the DPR and DPD institutions.

In carrying out its function, DPD has cooperation or relationship with other State institution, where not only with MPR, DPR but also with BPK as regulated in the provisions of Article 23 E Paragraph (2) and Article 23 F Paragraph (1) The third amendment to the 1945 Constitution. DPD with the Constitutional Court as regulated in Article 24 C Paragraph (1) and Article 22 E Paragraph (2) of the 1945 Constitution as well as in Law Number 2 Year 2003 concerning arrangement and position MPR, DPR, DPRD and DPD. In addition, the relationship between the DPD with the Supreme Court, Regional Government and Provincial and Regency / City DPRD even with non-Party Regional Communities.

Furthermore, based on Law Number 12 Year 2003 regarding General Election, the number of DPD members and each Province as many as 4 people, selected from individual candidates with severe requirements and voters following the multi-representative district system. This means that the

selection process and process of DPD membership will be more strict and heavier than the selection of members of DPR, every DPD member has clear and numerous constituents, so the political legitimacy is strong. But on the other hand the Constitution only regulates the weak authority, even not even regulate the rights of DPD members. How representative is selected through the district system, which relies on high member autonomy, without any description of the rights of members.

As in Law Number 22 Year 2003 on the Composition and Status of the MPR, DPR, DPRD and DPD, in Article 40: "To mention that the position of DPD is a regional representative institution domiciled as a State institution". So the position of DPD is a representative institution in charge of fighting for the aspirations and interests of the region in the Unitary State of the Republic of Indonesia.

Based on the description of the above background, there are some interesting issues studied in the writing of this study are as follows:

1. How is the position of the Regional Representative Council (DPD) in the Representative System in Indonesia?
2. What is the relationship between the Regional Representatives Council (DPD) and other State Institutions in the State System of Indonesia?

## **METHOD**

This research is a normative research that is legal research, by conducting study on legal materials in the form of legislation and study of books.

## **RESULTS AND DISCUSSIONS**

### **A. Position of Regional Representative Council (DPD) in Representative System in Indonesia**

The year 2004 is a new era in the history of Indonesian government, especially in the field of people's representation of the existence of members of DPD (Regional Representative Council) which had never existed before. A total of 128 DPD members from 32 Provinces have been elected in the 2004 elections along with the election of members of the DPR, who are currently waiting to be sworn in.

DPD is a new political institution born of this new spirit, especially that Indonesia and its ongoing must be maintained as or with a fair agreement between the people and between regions. As a new institution DPD is not a representative of DPRD-DPRD in the center, but an institution that stands alone and selected individually as well.

The existence of DPD in Parliament as a new institution, which previously was filled by the Council of Regional Delegates (DUD) and delegates of the group. The filling mechanism is different, where the delegates of the group and delegates are easier because the DUD is elected by the Provincial DPRD and the delegates are appointed to see the current MPR composition, which consists of the DPR and DPD, it tends to be called bicameral system, there is a DPR room, there is a DPD room. But theoretically we do not fully embrace this two-room system. Because the authority of the House of Representatives on the one hand and the authority of DPD on the other hand is not the same as the Senate and Congress in the legislative institutions in the United States.

Based on Article 22 D of the amended 1945 Constitution:

- (1) The Regional Representative Council may submit to the People's Legislative Assembly a draft law relating to regional autonomy, central and regional relations, the establishment and division and integration of regions, the management of natural resources and other economic resources, as well as those pertaining to financial considerations centers and regions.
- (2) The Regional Representatives Council shall also discuss the draft of regional legislation in relation to regional autonomy, central and regional relations, the establishment and expansion and integration of regions, the management of natural resources and other economic resources, as well as those pertaining to central and and to give consideration to the People's Legislative Assembly

on the draft State Income and Expenditure Bill and the draft laws relating to taxation, education and religion. \*\*\*)

- (3) The Regional Representative Council may exercise supervision over the implementation of laws concerning central and regional relations, the establishment and division and integration of regions, the management of natural resources and other economic resources, the implementation of the state budget of income and expenditure, taxes, education and religion as well submit the results of his supervision to the House of Representatives for consideration to be followed up. \*\*\*)

From the provisions of Article 22 D indicates that:

First, the position of the DPD is designed to be lower than the House of Representatives or merely complementary to the DPR, is not appropriate in its position as a territorial or regional representation. Secondly, it reflects the four functions of DPD, namely the function of legislation (although facultative), the budget function, the supervisory (facultative) function and the consideration function. Third, the existence of DPD is indeed to represent the aspirations of the region. So DPD performs the functions: Legislation, consideration, budget and supervision. However, if we look at the provisions of Article 41 of Law Number 22 Year 2003 regarding arrangement and position MPR, DPR, DPD and DPRD, DPD has functions:

- a. Proposal submission, participate in deliberations and provide consideration related to the particular field of legislation;
- b. Supervision over the implementation of certain laws.

From the formulation of DPD function is not complete only the function of legislation, consideration and supervision, should include the function of legislation, budget, supervision and consideration as regulated in Article 22D of the Amendment Constitution.

Furthermore, the institutional structure of the existence of DPR and DPD reflects the imperfect bicameral system or it may also be called the soft bicameralism. Although in theory the theory is not familiar with hard and soft systems. Even the existence of MPR, DPR, DPD can also be called unicameral parliament building which is not purely, because in essence the function of legislation is in the hands of DPR, but beside it there is DPD which also have duty as "partner in legislation". In addition, the MPR itself is still considered important because it has independent authorities, regardless of the meaning of the House of Representatives and the House (Jimly Asshiddiqie, 2003: 2).

Then in Law Number 2 Year 2003 on the Composition and Position of the People's Consultative Assembly, DPR, DPRD and DPD, in Article 40: "To mention that the position of DPD is a regional representative institution domiciled as a State institution". The article indicates the affirmation of DPD's position as a regional representative institution that fights for the aspirations and interests of the region is appropriate, but the DPD position should be parallel to the DPR instead of lower.

The amendment of the Law relating to the Composition and Status of the MPR, DPR, DPRD and DPD in 2009 has changed with the enactment of Law Number 27 Year 2009 on MPR, DPR, DPRD and DPD, in Article 222, that DPD is a regional representative agency domiciled as a state institution. In Article 223 (1) DPD has functions:

- a. submission of proposals to Parliament on draft laws relating to regional autonomy, central and regional relations, establishment and division and regional integration, management of natural resources and other economic resources, and in relation to central and regional financial balances;
- b. participate in the discussion of draft laws relating to regional autonomy, central and regional relations, the establishment, division and merger of regions, the management of natural resources and other economic resources, as well as the balance of central and regional finances;
- c. giving consideration to the DPR on the draft law on state budget revenue and expenditure and draft laws relating to taxes, education and religion; and
- d. oversight of the implementation of laws on regional autonomy, the formation, division and integration of regions, central and local relations, management of natural resources and other economic resources, the implementation of the state budget, taxes, education and religion.

Whereas in Article 224 (1) DPD has the task and authority:

- a. may submit to the DPR the draft legislation related to regional autonomy, central and regional relations, establishment and expansion and regional integration, management of natural resources and other economic resources, as well as those relating to central and regional financial balances;
- b. take part in discussing with the House of Representatives and the President of the draft law relating to matters as referred to in letter a;
- c. to discuss with the House of Representatives and the President of the draft proposed by the President or the House of Representatives, in relation to the matters referred to in letter a;
- d. giving consideration to the House of Representatives on the draft law on the State Budget and the bill relating to taxes, education, and religion;
- e. can supervise the implementation of the law on regional autonomy, establishment, expansion, and regional integration, central and regional relations, natural resource management, and other economic resources, the implementation of State Budget, taxes, education, and religion;
- f. submit the results of monitoring on the implementation of laws on regional autonomy, establishment, expansion, and regional integration, central and regional relations, natural resource management and other economic resources, the implementation of State Budget Laws, taxes, education, and religion to the DPR as consideration material for action;
- g. receive the results of the examination of the State's finances from the BPK as a matter of consideration to the House of Representatives regarding the draft law relating to the State Budget;
- h. giving consideration to the House of Representatives in the election of BPK members; and
- i. participate in the preparation of national legislation programs related to regional autonomy, central and regional links, establishment and expansion and regional integration, management of natural resources and other economic resources, as well as those relating to central and regional fiscal balance.

So the position of DPD is a representative office in charge of championing the aspirations and interests of the region within the territory of the Unitary State of the Republic of Indonesia. The existence of these institutions, among others, aims to increase or increase institutional access to the delivery and struggle of aspirations and regional interests in policy-making at the national level. In addition, it also encourages faster development and realization of regional development. Finally, the existence of the DPD to strengthen the bonds of the regions within the frame of the Unitary State of the Republic of Indonesia. We do not really want this DPD to merely speak of the interests of the region, but while at the MPR institution, it is discussed in addition to regional interests, he should also have the insight of the Unitary State of the Republic of Indonesia, this unifying attitude which must be taken first.

Although the theoretical Constitution of the DPD is "merely" as a "consideration institution" of the House of Representatives, but if the mandate of the constitution has been carried out has provided a description of how its function and its positive role in state life in our beloved Republic, which is still "toddler" in the course of reform, It should not be that this new State institution becomes a new constitutional problem.

On the other hand after the Third Amendment of the 1945 Constitution, a shift in the form of a State from a united State to a federal State. If we look at the provisions of Article 22 D of the 1945 Constitution on the DPD paragraph (1), "the DPD may submit to the House of Representatives draft of the Law relating to regional autonomy, central and regional relations, the establishment and expansion and consolidation of the regions, the management of natural resources and other economic resources, as well as those relating to central and regional financial balances ". This article governs the DPD's authority in anticipating conflicts between central and local governments. Whereas in united states, the central government fully regulates the problem of central and regional relations, as it is the power and authority of the central government. Sovereignty within the united State can not be denied. Even if there is regional autonomy, some of the sovereignty is only distributed to the region, but not given in full. Sovereignty remains in the central government as the organizer of State power.

The existence of DPD clearly reflects the form of 'quasi-federal' State. According to the teachings of CF Strong, one of the central features of the federal state is the distribution of power between the federal state and the states. Although the third Amendment of the 1945 Constitution does not explicitly regulate the division of powers between the central government and local governments, but the provisions set forth in Article 22 D clearly identify areas of power under the authority of the DPD. Where it is clear that all issues related to or related to regional interests, the central government needs

to obtain prior approval or consideration from the DPD. If the DPD does not agree, a draft law regulating the issue of central and local relations can not be a law. Even the draft state budget bill is not sufficiently discussed by the Parliament and the central government, but must "with due consideration of the Regional Representative Council (DPD)" as regulated in Article 23 paragraph (2) of the 1945 Constitution.

## **B. Relationship of the Regional Representative Council (DPD) with Other State Institutions in the State System of Indonesia**

### **1. The relationship between DPD and MPR**

The last amendment of the 1945 Constitution Article 2 (1) stipulates that the MPR consists of members of the DPR and DPD members. So it is not MPR consisting of DPR and DPD in the sense of institution. This does have different consequences in the mechanism. Each member from both the House of Representatives and the DPD are also members of the MPR. In such a position, essentially the MPR is a joint session between DPR and DPD when decisions must be taken by Indonesian parliamentarians as members of the MPR. Because the MPR is made up of DPD members and members of the People's Legislative Assembly, although it has never actually performed the functions of the MPR, such as amending and enacting the Constitution, and electing the President and / or Vice President in the event of a vacancy in the middle of the term of office. From the description it appears that on the one hand the DPD can be a "counterweight" for the DPR in the MPR forum forum, although the ballot is not entirely appropriate, since the number of DPD members is limited to at most one-third of the members of the People's Legislative Assembly and all MPR decisions are stipulated by majority vote. This means that the voting ability of the DPD is designed so that it can not be too disturbing to the DPR. While on the other side of the Susduk Law Number 22 Year 2003 Article 10 concerning the Status of the People's Consultative Assembly declared that "MPR is a people's consultative body domiciled as a state institution", it shows that MPR is a permanent institution not a joint session between DPD and DPR.

### **2. The relationship between DPD and DPR**

Under the provisions of Article 20 (1) of the first amendment constitution, strictly declares that "the People's Legislative Assembly shall have the power to form laws", so the DPR is an institution authorized to form Law. The House of Representatives will only be involved in deliberating the Draft Law in the House's internal session before the House of Representatives discuss it with the President. Article 20 (1) states, "Every Draft Law is discussed by the House of Representatives and the President for mutual consent". There is no article governing the draft of the Bill with the DPR, DPD and the President. Moreover, requiring DPR approval means DPD 'disagreement' may not preclude the legitimacy of legislation.

Similarly, in the provisions of Article 22 D paragraphs 1, 2 and 3 of the 3rd amendment, in which the DPD has very limited authority to give consideration, propose suggestions to Parliament and oversee the implementation of certain laws. So the full legislative authority in the House of Representatives with the President, as well as in terms of budget DPD can only give consideration and suggestions. Similarly, in the case of supervision of the implementation of certain laws, budgets and political policies, all should be forwarded to the Parliament for follow-up. This means that the DPD is only a "Consultative" authority, because it has no authority to decide, whereas the DPR is "very dominant" authority, where all the authority of the President is the involvement of the Parliament (from the side of the constitution already reflects the Parliamentary system).

In terms of constitutional law such authority is clear and unbiased, the problem is its political implications. What if the proposal or consideration or result of supervision was not represented in the DPR's decision? The House of Representatives, which consists of the Political Parties, will say that the DPD only gives suggestions instead of determining, the authorities are DPR. Indeed, all suggestions, suggestions and considerations given by the DPD to the DPR are not legally binding, but in order for the consideration to have a moral morality, so as to have a meaning that is politically significant, it is necessary to affirm a provision in the law. If the Parliament can not accept suggestions, suggestions, considerations of DPD there should be a written answer publicly announced with the reasons for rejection. Thus the nature of the DPD's considerations is unlike the advice and considerations of DPA that have no binding power at all, whether legally or morally.

### **3. DPD relationship with BPK**

In carrying out its function DPD also has a relationship with BPK, as regulated in Article 23 E paragraph 2 and Article 23 F paragraph 1 Third Amendment of the 1945 Constitution. These two provisions entitle the DPD to make the results of the BPK financial statements as a material in the execution of duties and the authority it holds and to determine the membership of BPK through the authority to give consideration in the process of nomination and election of BPK members.

### **4. DPD relationship with the Constitutional Court**

The Constitutional Court has a direct working relationship with the DPD. First, the DPD is one of the State institutions whose authority is determined in the Constitution. According to Article 24 C paragraph 1 of the 1945 Constitution, "the Constitutional Court has the authority to adjudicate on the first and final level whose final decision is to test the law against the Constitution, to break the dispute over the authority of the State institution whose authority is granted by the Constitution, to request the dissolution of political parties, about election results ". Therefore, as a State institution, the DPD may dispute with another State institution that has the same authority as the Constitution provides.

If the conflict or dispute relates to the relationship of authority between the institutions of that State, such conflicts shall be settled by the Constitutional Court in accordance with its authority in accordance with the provisions of the foregoing article. Secondly, the Constitutional Court is in charge of resolving, if a dispute arises over the election results of the DPD members through the general election. In Article 22 E paragraph 2 of the 1945 Constitution it is stated that "General Elections are held to elect members of the House of Representatives and members of the DPD, the President and the Vice-President and the DPRD", while in Article 24 C paragraph 1 states "..... to dispute the outcome of the election". Accordingly, if there is a dispute regarding the outcome of the election of DPD members, then the authorized decision is the Constitutional Court.

### **5. The relationship of DPD with the Regional Government and DPRD**

In relation to representative institutions in the regions, the relationship between DPD and DPRD is not regulated. But the DPD members are the provincial representatives who should be working with the DPRD. In the perspective of central-local relations, the DPD may be a bridge between DPRD (especially provinces) and DPR. So considering the DPD is a regional representative, then indeed there should be a relationship between the DPD through its members are determined four people from each province with their respective regions. In this case, the interests of the area may be interpreted as reflected in the composition of the DPRD membership and the Regional Head which is the result of the democratic process and / or local elections.

This relationship is actually reflected in the Structure and Status Law of Section 50 letter h, DPD members have the obligation to give moral and political accountability to the voters and the electoral districts. But this moral and political accountability is not clear in its concrete form. Therefore, it should be emphasized that the four members of the DPD are obliged to provide an openly written annual report. Subsequently to the report, a discussion was held by members of the DPRD and the Regional Head or who represented it, as appropriate to collect criticism and inputs in order to improve the performance of the DPD members concerned in fighting for their regional interests.

In addition, the relationship between the DPD and the DPRD may also be linked to the interim replacement procedure of DPD members as specified in Articles 88, 89 and 90 of the Structure and Status Law. The DPRD receives complaints from voters from the electoral districts, which are then forwarded to the DPD Honorary Board.

## **CONCLUSION AND SUGGESTION**

Based on the results of literature review as has been discussed previously it can be concluded:

1. The position of DPD as a regional representative body that fights for the aspirations and interests of the region is appropriate, but the DPD should position parallel to the DPR, not lower. In addition, as a State institution has a very weak function, only as a complement to the legislative body, where only as a "consultative and consideration" institution alone, has no authority to decide. In addition, the DPD is limited to issues related to regional autonomy.
2. The relationship of DPD with other state institutions such as the People's Consultative Assembly, the People's Legislative Assembly, the Constitutional Court, the Regional Government and the

Regional People's Legislative Assembly exist, but only on certain matters and only as a "consideration".

3. To establish a system of checks and balances in bicameral parliament, the DPD RI should have the same function and authority as the DPR RI as a legislative body. DPD RI and DPR RI are equally entitled to propose a Draft Law and mutually have veto rights that can cancel a Draft Act which has been approved by other institutions after fulfilling certain requirements. Discussion of a Draft Law starts from each representative institution, if the House of Representatives has approved a Draft Law (in the internal House of Representatives), then DPD RI will begin to discuss the Bill in internal DPD RI. If it is mutually agreed, it can be done triangle talks DPR RI - DPD RI and President to discuss and take a joint decision regarding the Bill into Act. In addition, it is also necessary to improve the function and authority of the DPD RI supervision to be equivalent to the fellow DPR RI as a State institution.

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