

# Strengthen the Authoritative Function of the Regional Representative Councils in Legislation

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## Abstract

The existence of the Regional Representative Council (DPD) in the constitutional structure in Indonesia can strengthen the parliamentary system which in turn can strengthen democracy. The substance of regional representation in the DPD is the accommodation of regional interests which is guaranteed constitutionally and elaborated with laws and regulations. This study is to analyze the reconstruction of DPD's regulatory functions in the fields of legislation, supervision and consideration. The regulation of DPD functions in the field of legislation, supervision, must be reconstructed in the 1945 Constitution of the Republic of Indonesia with the formulation of "legislative and oversight power exercised by the DPR and DPD" which is to replace the regulation of the DPD function in the legislative field which is limited to filing bills and participating in discussions at level I, but do not have authority for the decision making stage. Also the DPD does not have a supervisory function, because the DPD cannot follow up on the results of supervision and the follow-up to the results of supervision is a political and legal determination by the DPR (House of Representatives).

**Keywords:** *Legal Reconstruction, Function, Regional Representative Council, Legislation.*

## Introduction

The existence of the Regional Representative Council (DPD) in the constitutional structure in Indonesia can strengthen the parliamentary system which in turn can strengthen democracy. The constitutional basis of the DPD's power is regulated in Article 22 D of the 1945 Constitution of the Republic of Indonesia. The constitutional foundation as the basis for the formation of the DPD can be found in Article 22 C and Article 22 of the 1945 Constitution of the Republic of Indonesia. The authority of the DPD as regulated in the provisions of Article 22 D paragraph (1) and paragraph (1) 2) The 1945 Constitution of the Republic of Indonesia regulates that the DPD can submit to the House of Representatives a draft law relating to regional autonomy, central and regional relations, the formation and expansion and merging of regions, management of natural resources

and other economic resources, as well as those relating to central and regional financial balance. In addition, the DPD also discussed the draft law relating to regional autonomy; central and regional relations; formation, expansion, and merging of regions; management of natural resources and other economic resources, as well as central and regional financial balance; and giving consideration to the House of Representatives on the draft budget law for state income and expenditure and the draft law relating to tax, education and religion.

As a translation of Article 22 C and Article 22 D of the 1945 Constitution relating to the DPD, is regulated in Law Number 27 of 2009 as last amended through Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council and the Regional House of Representatives (hereinafter abbreviated as MD3 Law). The substance of regional representation in the DPD is the accommodation of regional interests which is guaranteed constitutionally and elaborated with laws and regulations. Legislation as a legal product is the basis for making state administrative decisions; be the basis for the formation of legislation; become the basis of legal relations between citizens and the

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resolution of social problems. In this context, legislation as a legal product becomes a very important tool in the administration of state life.<sup>1</sup>

Even though the DPD was born, it was not yet fully present.<sup>2</sup> Meaning, DPD can be considered between 'there' and 'none'. The DPD is 'there' because of its relatively strong legitimacy and its members are elected directly through the multi-district district election system. The DPD is also 'absent', because the strength of the legitimacy of the election results does not go hand in hand with its relatively minimal authority, especially when compared to the authority of the DPR. This study formulates a problem that will become a central point regarding the reconstruction of the DPD's regulatory functions in the fields of legislation.

### Research Method

This type of research is sociological normative legal research that examines and examines statutory provisions relating to the function and authority of the DPD. The study includes 3 layers of legal science namely legal philosophy (right philosophy), legal theory (right theory) and legal dogmatics (right dogmatics). This study uses several approaches, namely the historical approach (historical approach), conceptual approach (conceptual approach), statutory approach, comparative approach, and sociological approach.

**Position of the Regional Representative Council in the Constitution and State Administration:** The existence of the DPD is expected to strengthen the parliamentary system which in turn can strengthen democracy. The constitutional basis of the DPD's power is regulated in Article 22 D of the 1945 Constitution of the Republic of Indonesia. Furthermore, the function and authority of the DPD is regulated in the MD3 Law and P3 Law. According to MD3 Law, the DPD can submit a bill proposal to the DPR. If a bill is approved or approved with amendments, the bill will become a bill proposed by the DPR. Furthermore, the DPD proposal bill which has been adopted as the DPR proposal bill, the DPR leadership will ask the DPD leadership to appoint a tool that will discuss the bill in the DPR. Discussions on a bill in the DPR are conducted in two stages of discussion. First-level talks are held in commission meetings, joint commission meetings, Baleg meetings, Banggar meetings, or special committee meetings. Meanwhile, the second level talks were held in a plenary meeting which was a forum for decision making. Of the

two levels of discussion, the DPD RI can only take part in the level I discussion. It is also only done in the form of a mini-opinion submission delivered at the end of the level-1 discussion. The illegality of the first level of discussion so that the discussion of a bill can continue at the second level.

Based on the results of interviews with Syamsul Bachrie (Monday August 15 2016) related to the absence of DPD's participation in decision making in the sense of participating in a joint agreement between the DPR and the President after the Constitutional Court's Decision, it will cause the law to be legally flawed. That the judicial law is flawed when the DPD does not participate in the decision making process of a bill under discussion.

In the legislation process, this imbalance is increasingly seen in Law P3 and MD3 Law. Article 20 paragraph (1) of Law P3 regulates: "Preparation of National Legislation Program shall be carried out by the DPR and the Government". The norm of Article 20 paragraph (1) is not in line with the purpose of Article 22 D of the 1945 Constitution of the Republic of Indonesia that "the DPD can submit to the DPR a draft law relating to regional autonomy". Likewise the provisions of Article 20 Paragraph (3) of Law P3 "Preparation of Prolegnas within the DPR as referred to in paragraph (2) is carried out by considering proposals from factions, commissions, members of the DPR, DPD, and/or the public.

This arrangement seems to indicate that the function of the DPD to submit a bill is distorted as if it were the authority of the factions and commissions as the DPR's completeness instruments. The DPD is only authorized to propose a bill to be submitted to the DPR, then the proposal for the DPD bill will depend on the DPR's follow-up actions in the parliament. In other words, the DPD is a sub-ordinate of the DPR or only a supplementary organ of the DPR in the two-chamber parliamentary system.

The regulation of DPD functions in Law P3 as explained above, is not in accordance with the principle of rating norms. Law as a translation of norms in the Constitution, regulates norms that are not in accordance with what is ordered by the Constitution. Which is why the DPD does not carry out its constitutionality function optimally. Likewise, looking at the provisions of Article 65 paragraph (3) of Law P3, the participation of the DPD in the discussion of the Draft Bill is carried out only at

the level 1 discussion. Article 150 paragraph (3) of the MD3 Law also excludes the DPD from being involved in the DIM discussion as the DPR and the Government, whereas the submission and discussion DIM is precisely the core of the discussion of the bill and determine the legal politics of a bill.

Kelsen's teachings describe the process of forming a system that originates from a set of norms, including the inclusion of a norm into a particular system so that the construction of Kelsen's teachings also explains the validity of a norm. The existence of a norm is formed as a result of the formation of a norm is to regulate the procedure for someone's behavior towards other people or the environment. A norm applies because it has conductability or because it has validity (validity/geltrung).

Basic principles for understanding thinking if there are more than one person in the same space and time. Because the legal validity of Hans Kelsen who must especially understand the keywords against the validity of norms according to him; "The reason for the validity of a norm is always a norm, not a fact".<sup>3</sup> Here Kelsen has given a basic principle regarding the norm's sequence. A norm cannot be based on a factual event because a norm can only be pursued with fellow norms to its basic norms where there are no norms forming on it. As continued on the second basic principle; "a norm of validity of which cannot be derived from a superior norm we call a" basic "norm" (norms whose validity cannot be obtained from other higher norms, we refer to as "basic norms"). Kelsen absolutely states that norms must be tested with norms, norm hierarchies if pulled up until no more norms are found so the last norm is referred to as the basic norm.

Gaffar (2004) stated that the formation of the DPD is inseparable from two things. First, there is a demand for democratization to fill members of representative institutions so that they always include the voters.<sup>4</sup> There was a demand that the representation system be a two-room system. The DPD and the House of Representatives are described similarly to the representative system as in the United States which consists of the Senate as the state representative (DPD), and the House of Represents as the representative of the whole people (the DPR). In the United States, these two elements of representation are called the Congress. Article 1 paragraph (1) of the United States Constitution of 1787 states: All legislative powers here in granted shall be vested in a Congress of the United States, which shall consist of a Senate and

House of Representatives.<sup>5</sup>

One consequence of the idea of the two chambers is that names are needed for the representative body that reflects these two elements of representation. In the Netherlands the representative body is the Staten Generaal which consists of de Eerste Kamer (representative from the region) and de Tweede Kamer (representative of all the people). In Britain, the Parliamentary representative body consisting of the House of Lords (representative of the group) and the House of Commons (representative of the whole people).

The name of a two-room representative body in Indonesia in accordance with the above construction, was named MPR. As a consequence of the use of the MPR as the name of the two-room system, the MPR should not be an office environment that has its own authority environment. The authority of the MPR is inherent in the authority of the DPR and DPD. In the United States Constitution which is determined is the authority of the Congress and its implementation is carried out by its representative chambers.

The function of parliament is as representative and deliberative assemblies. Parliament in a modern state not only represents the will of the people, but is also a deliberate place, especially in the field of legislation to oversee regional interests in government administration and government policy. Legislative power is power that reflects the sovereignty of the people, to regulate life together. There are three important things that must be regulated by the people's representatives through parliament, namely arrangements that can reduce the rights and freedoms of citizens, which can burden the assets of citizens; and regarding expenses by state administrators.

**Authoritative Function of the Regional Representative Council in Legislation:** There are 4 forms of legislative function activities in the formation of laws, namely law making initiatives, discussion of bills, approval of the ratification of bills and granting approval of binding or ratification of international treaties or agreements and other binding legal documents.

In the formation of laws based on the 1945 Constitution of the Republic of Indonesia, the House of Representatives participates in all stages of the implementation of the legislative function, whereas the DPD is only entitled to propose, participate in discussion, and also give consideration to certain bills.

Because it is not complete in following the four forms of activity, it can be interpreted that the DPD does not have a legislative function.

Every legislator is obliged to understand the applicable laws and regulations. Proper mastery of statutory law will contribute highly relevant to the law-making profession.<sup>6</sup> Inaccuracy in mastering the applicable laws and regulations can be a cause of flawed legal rules that are formed both formally and materially. In addition, it is known that legislation has a very strategic function for the administration of the state. There are two functions of legislation, namely the protection function and the restriction function.<sup>7</sup> The function of protection is the function of legislation to provide guarantees for the protection of the relationship of rights and obligations in a shared life. In addition, legislation also plays a role to limit the use of rights and obligations themselves so as not to harm the rights of others.<sup>8</sup>

A very strategic part in the stages of drafting legislation is to fill in the formulation of legislation with the choice of norms or guidelines for appropriate and proportional behavior. The drafting of the legislation must be able to distinguish the notion of rules from norms. Bruggink gives a firmer term, the rules and rules of law.<sup>9</sup> It shows that the regulation of the functions of the DPD in the 1945 Constitution of the Republic of Indonesia with the MD3 Law and P3 Law shows the asynchronous norm. This has implications for the accommodation of regional interests through the field of legislation that cannot be fought for optimally.<sup>10</sup>

### Conclusion

The regulation of DPD functions in the field of legislation, supervision, must be reconstructed in the 1945 Constitution of the Republic of Indonesia with the formulation of “legislative and oversight power exercised by the DPR and DPD” which is to replace the regulation of the DPD function in the legislative field which is limited to filing bills and participating in discussions at level I, but do not have authority for the decision making stage. Also the DPD does not have a supervisory function, because the DPD cannot follow up on the results of supervision and the follow-up to the results of supervision is a political and legal

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