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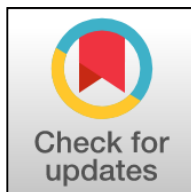
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# Indonesia Regional Representative Council Authority After Constitutional Court Decision No. 92 / PUU-X / 2012

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## Abstract

The purpose of this study was to determine the position, role and function of the DPD-RI in the Indonesian constitutional system before and after the Constitutional Court Decision No. 92 / PUU-X / 2012. The research method used is juridical normative and type of research is statutory approach, comparative approach, and conceptual approach. The results showed that a number of laws and regulations governing the DPD-RI were still less than the initial purpose of the formation of the DPD-RI. Certain articles relating to the position, function and role of the DPD-RI actually limit the authority of the DPD-RI so that it cannot function as a state institution that should have the same position as the DPR-RI. The decision of the Constitutional Court No. 92 / PUU-X / 2012 brings a new chapter in the implementation of democracy in Indonesia. The ruling of the Constitutional Court firmly provides a strategic role for the Regional Representative Council in Indonesian constitution.

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## Introduction

Indonesia as a sovereign country, when viewed from the perspective of national / national culture patterns of Indonesia is included in the State of Constitutional Philosophy, which is a country that places the nation's philosophy and constitution as the basis of its government. As a State of Constitutional Philosophy, the Republic of Indonesia is based on the nation's philosophy, namely Pancasila (as the Ideal Foundation) and the 1945 Constitution (as a Constitutional Structural Foundation).

The rule of law is termed *Rechtstaats* or the rule of law. In Indonesia, the founding of the state has been aspired by the founding father as a rule of law from the beginning. In the context of the third amendment to the 1945 Constitution Article 1 paragraph (3), it is emphasized that "the State of Indonesia is a State of Law". Even though it has been explicitly stated in the constitution as a state based on law, the blueprint and macro design elaborating the idea of the rule of law have not been explicitly formulated comprehensively.

The 1945 Constitution regulates state institutions that regulate the course of government in Indonesia. Among the existing state institutions, there are 3 (three) state institutions which are said to be "axes" of universal state power, meaning that they must exist in every country. The three state institutions are as follows:

- a. Legislative institutions, as state legislators, are also referred to as representative institutions of the people or parliament.
- b. The executive body, as the implementing agency of the law, is known as the government.
- c. Judicial institutions, as law enforcement and justice institutions or judicial implementing agencies.

The system of regional government in the Republic of Indonesia according to the 1945 Constitution, it is stated that Indonesian regions will be divided into provincial areas and provincial areas will also be divided into smaller regions. In regions that are autonomous (*streek and locale rechtsgemeenschappen*) or are merely administrative regions, all according to the rules to be determined by law. In autonomous regions, regional representative bodies will be held. Therefore, even in the area of government will be based on consultation.

In its journey, the Indonesian constitutional system has undergone a very fundamental change, especially since the amendment (change) of the 1945 Constitution conducted by the post-New Order of People's Consultative Assembly. This change was motivated by the desire to build a democratic government with equal and balanced checks and balances between branches of power, realize the rule of law and justice, and guarantee and protect human rights. In state institutions, one of the main objectives of the 1945 amendment is to arrange a balance between state institutions. The importance of structuring relations between institutions so that there is no centralization of power and authority in just one state institution. Because with the concentration of authority and power in one institution, the life of a democratic state administration is difficult to realize.

Since the fall of the New Order in 1998, there have been four amendments to the 1945 Constitution, this paper will specifically discuss the Third Amendment to the 1945 Constitution, one of which focuses on the formation of new state institutions; one of them is the Regional Representative Council (DPD). The writer's discussion about the DPD is very interesting because as a new institution, the socialization of the DPD to the community is very insufficient so that not a few people could not distinguish the basic tasks and functions between the DPR, DPRD and DPD. In addition, discussions about the DPD have become even more interesting since the Constitutional Court in its decision No. 92 / PUU-X / 2012 has given a rage to the DPD by aligning the DPD's authority with the DPR. The main problem that will be discussed in this paper is how the role of the DPD in its position as representatives of non-party regional people carry out their duties as a conveyor of the "pure" aspirations of the Indonesian people.

## Research Method

The research method is a system of research procedures and techniques. Thus, its purpose is to reveal systematic, methodological and consistent truths. Writing in this research uses the normative juridical research method, which is an approach that refers to the applicable laws and regulations. While the normative approach is an approach carried out by examining library materials or secondary data on the principles of law and case studies or frequently referred to as library law research. This is a library research from which the sources of data are obtained through research on various relevant literatures to the object of research. The type of this research is descriptive analytical qualitative, which means that the research is carried out by describing, analyzing qualitatively on data relating to the object of research both in positive law to draw conclusions in accordance with the subject matter.

## Discussion

Amendment System of the State Constitution

In the modern constitutional system, there are two systems that have evolved in constitutional changes, namely renewal as adopted by the Anglo Saxon countries. The whole system of constitutional change so that it came into force later was a completely new constitution. Countries that adopt this system are Germany, France and the Netherlands.

The amendment constitutional change system is a change in the constitution while still enforcing the original constitution. The results of these changes are part or attachment that accompanies the original constitution. Countries that embrace this system include the superpower United States of America.

The reason a constitution must be changed, of course there are some things that must underlie it. The changes to the constitution are intended to:

1. Amending articles in the constitution that are unclear and unequivocal in providing regulations. As a result, many things can easily be interpreted by anyone, depending on the interests of the people who interpret them.
2. Changing and / or adding regulations in institutions that are too short and incomplete, and delegating too many subsequent arrangements to other laws and regulations.
3. Correcting various fundamental weaknesses both in the content and the manufacturing process, such as the inconsistency of relations between chapters, between parties, and between chapters and articles.
4. Renew some provisions that are no longer in accordance with the political conditions and state administration of a country. .

## Amendments to the Indonesian Constitution

Since the proclamation of the independence of the Unitary Republic of Indonesia on August 17, 1945 until now, Indonesia has experienced several changes of the constitution. Formally, Indonesia has experienced four periods of the enactment of the constitution, namely:

*Pasal-pasal yang diubah: pasal 5 (1), 7, 9 (1), 13 (2) (3), 14 (1) (2), 15, 17 (2) (3), 20 (1) (2) (3) (4), 21.*

*Sidang Umum MPR tanggal 14-21 Oktober 1999.*

*-Penyempurnaan tentang kekuasaan Presiden.*

*-Masa jabatan Presiden dibatasi 2 periode.*

*Pasal-pasal yang diubah: pasal 18 (1) (2) (3) (4) (5) (6) (7), 18 A (1) (2), 18 B (1) (2), 19 (1) (2) (3), 20 (5), 20 A (1) (2) (3) (4), 22 A, 22 B.*

*BAB IX A. WILAYAH NEGARA, 25 E, 26 (2) (3), 27 (3).*

*BAB X A. HAK ASASI MANUSIA, 28 A, 28 B (1) (2), 28 C (1) (2), 28 D (1) (2) (3) (4), 28 E (1) (2) (3), 28 F, 28 G (1) (2), 28 H (1) (2) (3) (4), 28 I (1) (2) (3), 28 J (1) (2), 30 (1) (2) (3) (4) (5),*

*BAB XV, BENDERA, BAHASA, DAN LAMBANG NEGARA SERTA LAGU KEBANGSAAN, 36A, 36 B, 36 C.*

*Sidang Tahunan MPR 7-8 Agustus 2000.*

*-Terbukanya era otonomi daerah.*

*-Hak Jaminan Sosial Warga Negara.*

*-HAM diatur dalam BAB tersendiri.*

*Pasal-pasal yang diubah: Pasal 1 (2) (3), 3 (1) (2) (3), 6 (1) (2), 6A (1) (2) (3) (5), 7A, 7B (1) (2) (3) (4) (5) (6) (7), 7C, 8 (1) (2), 11 (2) (3), 17 (4).*

*BAB VII A, BADAN PEMERIKSA KEUANGAN, 23 E (1) (2) (3), 23 F (1) (2), 23 G (1) (2), 24 (1) (2), 24 A (1) (2) (3) (4) (5), 24 B (1) (2) (3) (4), 24 C (1) (2) (3) (4) (5) (6).*

*Sidang Tahunan MPR 1-9 November 2001.*

*-Kekuasaan Kehakiman tidak hanya dijalankan Mahkamah Agung tetapi juga Mahkamah Konstitusi.*

*-Presiden dan Wakil Presiden dipilih langsung oleh rakyat.*

*-Kepolisian Republik Indonesia berada langsung di bawah Presiden.*



1. *Amandemen II, tanggal 8 Agustus 2000.*
2. *Amandemen III, tanggal 10 November 2001.*
3. *Amandemen IV, tanggal 10 Agustus 2002.*

*Pasal-pasal yang diubah: Pasal 2 (1), 6A (4), 8 (3), 11 (1)..*

*BAB IV DEWAN PERTIMBANGAN AGUNG (DIHAPUS), 16, 23 B, 23 D, 24 (3), 31 (1) (2) (3) (4) (6), 32 (1) (2), 33 (4) (5), 34 (1) (2) (3) (4), 37 (1) (2) (3) (4) (5). ATURAN PERALIHAN: Pasal I, Pasal II, Pasal III.*

*ATURAN TAMBAHAN: Pasal I, Pasal II.*

*Sidang Tahunan MPR 1-11 Agustus 2002.*

*-Selain DPR, DPD masuk sebagai bagian dari MPR.*

*-Dihapuskannya DPA (Dewan Pertimbangan Agung).*

As for material matter, there are four kinds of constitutions or basic laws that have been applied in Indonesia, namely:

1. *Undang-Undang Dasar 1945 Periode Pertama (18 Agustus 1945-27 Desember 1949).*
2. *Konstitusi Republik Indonesia Serikat (27 Desember 1949-17 Agustus 1950).*
3. *Undang-Undang Dasar Sementara 1950 (17 Agustus 1945-5 Juli 1959).*
  1. The legislative body (legislator) is held by the People's Consultative Assembly (MPR), the House of Representatives (DPR), and the Regional Representative Council (DPD).
  2. The executive institution (implementing the law) is held by the President and Vice President.
  3. The judiciary (overseeing the implementation of the law / adjudicating violations of the law) is held by the Supreme Court (MA), the Constitutional Court (MK), and the Judicial Commission (KY).
  4. Amend and enact the Constitution (Article 3 paragraph 1 of the 1945 Constitution).
  5. Inaugurate the President and Vice President, and dismiss the President and Vice President during their terms of service according to the constitution.
  6. The MPR no longer elects the President and Vice President (they are elected directly by the people in an overflowing and fair election).
  7. The MPR no longer compiles the State Policy Guidelines (GBHN).
  8. The function of legislation means that the DPR functions as a legislator.
  9. Budget function, meaning that the DPR functions as an institution that has the right to determine the State Budget (APBN).
  10. The function of supervision (control), means that the DPR functions as an institution that conducts oversight of the government in carrying out its government.
  11. Inadequacy in making products of legislation due to it makes the first room (DPR) as the main focus.
  12. Legislation products do not absorb the aspirations of the community as a whole because of the sharp difference between the DPR authority and the DPD in the legislation duties and functions.
  13. Many legislative products have been replaced in a short period of time due to the immature legislation process. Though this can be prevented by further empowering the role of the DPD in the legislation process.

In the context of the amendment to the Constitution there are five important elements agreed by the *ad hoc* committee to amend the 1945 Constitution, namely:

1. *Tidak melakukan perubahan atas Pembukaan Undang-Undang dasar 1945 yang meliputi sistematika, aspek kesejarahan, dan orisinalitasnya.*
2. *Tetap mempertahankan eksistensi Negara Kesatuan Republik Indonesia (NKRI).*
3. *Mempertegas Sistem Pemerintahan Presidensial.*
4. *Meniadakan penjelasan UUD 1945 dan hal-hal normatif dalam penjelasan dimasukkan dalam pasal-pasal.*
5. *Perubahan dilakukan dengan cara penambahan (adendum) .*

Before the amendment to the 1945 Constitution, state equipment in the 1945 Constitution were the Presidential Institution, MPR, DPA, DPR, BPK, and Judicial Power. After the overall amendment to the 1945 Constitution, the state apparatus called the high state institutions became eight institutions, namely the MPR, DPR, DPD, President, MA, MK, KY, and BPK. The position of each institution is equal, namely as a high state institution that has a correlation with each other in carrying out the functions of checks and balances between these high institutions.

The State Institutions After Amendments to the 1945 Constitution

The constitutional reform in Indonesia related to state institutions as a result of the amendment process of the 1945 Constitution can be seen in the main tasks and functions of these institutions which are grouped in legislative, executive and judicial institutions.

The power structure in the Republic of Indonesia before the amendment is as follows:

Figure 01:

Arrangement of State Institutions before the amendment of the 1945 Constitution

Figure 02:

Arrangement of State Institutions after the amendment of the 1945 Constitution

Legislative Body Executive Agency Judiciary

From the diagram above, it can be concluded that there are three government powers that are exercised by state institutions, namely:

For more details and in accordance with the problem, the author will discuss the main tasks and functions of the legislature, namely:

People's Consultative Assembly (MPR)

The People's Consultative Assembly (MPR) includes the legislative body, in this case the MPR has the authority to:

MPR is no longer domiciled as the full implementer of the people's sovereignty. There are two changes to this authority, including:

With the direct election of the President and Vice President by the people, each candidate for President and Vice President must arrange their own GBHN which will be implemented if later elected as President and Vice President.

The House of Representatives (DPR)

The House of Representatives (DPR) is known as a legislative institution because this institution holds the power to form laws as stated in the 1945 Constitution Articles 20 and 21. Members of the DPR have the right to submit proposals for the Draft Law (RUU), and each bill is discussed by the DPR and President to get mutual agreement.

DPR members are elected through general elections held by the General Election Commission (KPU) once every five years. Based on Election Law No. 12 of 2003 stipulates that the number of members of the House of Representatives is 550 people. The number of provincial DPRD members is at least 35 people and as many as 100 people. As for the number of district / city DPRD members, there are at least 20 people and at most 45 people.

Regional Representative Council (DPD)

DPD members are elected through general elections. Its function is to articulate regional interests at the national level. The DPD is representative of all provinces in Indonesia, where the number of DPD members is no more than one third of the total number of DPR members. Every DPD member becomes a member of the MPR. The DPD meets at least once a year. The DPD can submit a Draft Law relating to regional autonomy to the DPR, and then the DPD can also supervise the implementation of the law. In addition, the DPD also took a close look at the issue of central relations with regional governments, the formation and incorporation of new regions, and the management of regional economic resources.

The existence of the DPD as a high state institution, is regulated in Article 22 letter D of the 1945 Constitution. The basic constitution of Indonesia, namely the 1945 Constitution as a lex generalist for the formation of the DPD, requires the state to make a special regulation governing the DPD, thus Law No. 27 of 2009 concerning the Composition and Position of the MPR, DPR, DPD and DPRD; as a specialist lex of DPD formation. Law No.27 / 2009 in addition to regulating the MPR, DPR and DPRD, also comprehensively regulates the Composition and Position of the DPD in Indonesian constitution into 40 articles; starting from articles 246-285. Article 246 of Law No. 27/2009 explicitly states that the DPD is the provincial representative elected by general election. In the United States constitutional system, the DPD is the Senate. Senate members are referred to as Senators. The Senator is a representative / envoy from the State (in Indonesia, the State can at least be equated with the Province). An important and respected position in the state administration system of any country that adopts presidential principles. DPD (Indonesia) or Senate (United States) is intended as a counterweight to the DPR (if in the United States known as the House of Representatives) which has a close attachment to the interests of the party. The DPD is a "pure" regional representative / representative of the province so that it is free and independent, regardless of the interests of any party. In such an ideal position in Indonesian state administration, the DPD has high credibility and capability in maximizing the interests of its regions. If the DPD succeeds in fighting for its regional interests to the full, then the region will be more prosperous. If the region is more prosperous, the Unitary State of the Republic of Indonesia will be easier to organize, maintain and maximize its national potential.

Candidates for the DPD are individual or independent, not from political parties. This provision is contradictory to Law No. 8 of 2012 concerning the Election of DPR, DPD and DPRD which states that party members or management are not prohibited from becoming candidates for DPD members. The author sees this as a very strange thing. An ambiguity that suppresses the freedom and independence of the DPD in fighting for the interests of its region, because at the same time the DPD from political parties is also required to prioritize the vision, mission and interests of the party; which is very likely to conflict with the regional interests that the DPD is fighting for.

Constitution No. 27/2009 regulates that each province is represented by 4 DPD members. Prospective DPD members are elected together with the DPR Elections, Provincial DPRD and Regency / City DPRD. The four DPD elected candidates are the candidates with the most votes, namely ranking 1, 2, 3, and 4.

As from the issuance of Law No. 27/2009, there have been two elections with the participation of the DPD election. However, it turns out there are still many people who do not understand what DPD really is. As voters, it is also difficult for the community to differentiate between the DPD and the DPR or DPRD. According to the author, the main reason why DPD is not well understood by the public is due to the lack of socialization of the existence of the DPD to the community. Another reason for contributing to the popularity of the DPD is that the existence of the DPD is felt to be less "biting" or weak, because it did not reach the formation of a law. Article 22 letter D of the 1945 Constitution provides limited powers for the authority and duties of the DPD in the field of legislation. In Article 40 it is regulated that the DPD is a regional representative institution that is domiciled as a state institution. Based on the 1945 Constitution, the authority of the DPD is regulated in article 22 letter D, namely:

The Regional Representative Council can submit to the People's Representative Council on the Draft Law relating to regional autonomy, central relations with the regions; regional formation and expansion and merging; management of natural resources and other economic resources as well as those related to central and regional financial balance.

The Regional Representative Council also discussed the Draft Law relating to: Regional Autonomy, central and regional relations, the formation, division and merging of regions; management of natural resources and other economic resources, as well as central and regional financial balance and can give consideration to the House of Representatives on the Draft Budget for the State Revenue and Expenditure and Draft Law relating to tax, education and religion.

The Regional Representative Council can supervise the implementation of the Law on regional autonomy, the formation, division and merging of regions, relations between the center and regions, management of natural resources and other economic resources, implementation of the State Revenue and Expenditure Budget, taxes, education and religion as well as submitting the results of their supervision to the People's Legislative Assembly as consideration for further action.

In the articles contained in the legislation, the role given to the DPD seems still very weak in the parliamentary system in Indonesia. It is also inseparable from comparisons with other countries in the world that follow the same system as in Indonesia. Meanwhile, the parliamentary system that is currently being built is oriented towards a bicameral system which basically provides balanced proportionality between each room. So, as a result of DPD empowerment deficiency caused the non-optimal functioning of the legislation in the process of making legislation.

The following are some criticisms resulted from the weaknesses of the DPD role as a second chamber in the freedom system in Indonesia:

The existence of restrictions relating to the granted authority, will definitely affect the optimization of legislative function implementation held by the Regional Representative Council. Therefore, there are restrictions on the form of authority in the field of legislation, namely restricted only to submit a Draft Law, participate in discussing, and give consideration, is clearly a deviation from the desired status and conditions of the formation of the DPD which is a representative institution.

However, this weakness has been canceled by the Constitutional Court in its decision No. 92 / PUU-X / 2012. The Court actually strengthens the authority and duties of the DPD, namely submitting and discussing draft laws 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 related to central financial balance and regions to the DPR. Now, the DPD is given the authority to be involved in the legislative process and the preparation of regional budgets. The authority of the DPD makes the DPD "fight" and no longer merely acts as a "DPR assistant". In fact, the level of difficulty in the DPD election mechanism is the same as the DPR, namely; through general election. This is expressly regulated in article 22 letter C of the 1945 Constitution, reinforced by article 246 of Law No. 27/2009, that; DPD members are elected from each province through a General Election. Supposedly, if the level of difficulty in the DPD election mechanism is the same as the DPR; then the authority must be the same.

Of the two decisions from the Constitutional Court, the consideration contained in the legislators did not fully accommodate and follow what was decided by the Constitutional Court, so that the DPD had submitted a material

test related to what had reduced its authority in the field of legislation twice. The DPD participates in discussing, considering and giving approval to the Draft Law proposed by the Parliament and the President. The DPD is involved in the National Legislation Program and List of Problems and the creation of a tripartite model (DPR, DPD and President).

Until the present day, Indonesia still needs to improve its system. The occurrence of inequality in work relations, especially in terms of carrying out legislation has always been a major problem so that the debate continues to no end. The follow-up to the decision of the Constitutional Court was not well accommodated in Act Number 17 of 2014.

## Conclusion

The new round of implementation of democracy in Indonesia has been born along with the birth of the Regional Representative Council (DPD), in which the birth of the DPD is a mandate from Indonesia's basic constitution that requires the formation of a non-party state institution as a representation of the aspirations and interests of the people in each province within the Republic of Indonesia. The presence of the DPD is in line with the implementation of decentralization regulated in Law no. 22/1999; a statutory regulation which is a milestone in the beginning of the reformed era of regional autonomy. The formation of the DPD is in accordance with the need for increasing the capacity of regional participation in overall national development.

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