



# Strengthening the legislative function of the House of Regional Representatives In the Framework of bureaucratic reform in Indonesia

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## ABSTRACT

**Background:** The establishment of the House of Regional Representatives (DPD) aims to balance legislative power by implementing a two-room or bicameral system in representation. However, in reality, the authority of DPD in the field of legislation only acts as a co-legislator for the House of Representatives (DPR). The proposed law submitted by DPD is considered as DPR's initiative during the discussion, which indicates the need to strengthen the legislative function of DPD to be more equal to DPR. **Methods:** This research is conducted through juridical analysis of legislation and decisions of the Constitutional Court, particularly related to the legislative authority of DPD. This study also examines various legal documents and relevant literature to understand the dynamics and development of the legislative function of DPD in a bicameral representative system. **Findings:** The results showed that the decision of the Constitutional Court No. 92/PUU-X/2012 provides a bright spot for strengthening the legislative function of DPD, by giving the DPD the authority to propose draft laws as DPD initiatives and participate in the preparation of the National Legislation Programme. Nevertheless, DPD still requires further strengthening in the authority of the formation of laws that are general in nature as well as its involvement in the entire process of forming laws, from planning to discussion and approval. **Conclusion:** To strengthen the legislative function of DPD in the future, DPD needs to be given broader authority in the formation of laws and equal involvement in all stages of the legislative process with DPR. This is important to ensure balance in a bicameral system of representation and improve overall legislative effectiveness. **Novelty/Originality of This Study:** This study makes an original contribution by highlighting the need to strengthen the legislative role of DPD in Indonesia's bicameral system, as well as offering a new perspective on how the Constitutional Court decision can be a starting point for strengthening the legislative function of DPD. This analysis fills a gap in the literature on the role of DPD in legislation, especially in the context of strengthening the bicameral representative system in Indonesia.

**KEYWORDS:** bureaucratic reform; constitution; legislation; regional representative council; strengthening.

## 1. Introduction

Bureaucratic reform is a policy made to change or make improvements in the current Indonesian government bureaucracy. The changes or improvements to be made in bureaucratic reform include structures and processes in the delivery of public services, as well as changes in the mindset and culture of employees. Bureaucratic reform also aims to improve administrative procedures in the government bureaucracy, improve the use of

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state finances and performance accountability of government agencies. The legal basis for the implementation of this bureaucratic reform policy is contained in Presidential Regulation No.81 of 2010 concerning the Grand Design of Bureaucratic Reform 2010-2025. The elaboration is outlined in Permenpan & RB No.20 of 2010 and Permenpan & RB No.11 of 2015 on the road map of Bureaucratic Reform.

The Regional Representative Council is a new state institution in Indonesia's constitutional structure, which is the result of an amendment to the 1945 Constitution. The existence of the Regional Representative Council is considered as a manifestation of a representative system with a two-room or bicameral structure in the Presidency system of government. Therefore, the Regional Representative Council should also be given legislative powers in order to balance and supervise the House of Representatives based on the principle of checks and balance. In addition, the purpose of the establishment of the Regional Representative Council is to strengthen the role of the regions in the process of state administration, which is one of the important elements in maintaining the Unitary State of the Republic of Indonesia.

Based on the provisions in Article 22 of the 1945 Constitution, the House of Regional Representatives in the formation of laws has 3 (three) roles. (1) It can propose draft laws relating to regional autonomy, central and regional relations, the formation and expansion and merger of regions, the management of natural resources and other economic resources as well as those relating to the balance of power between the centre and regions. (2) To participate in discussing draft laws relating to regional autonomy, central and regional relations, the establishment and expansion and merger of regions, the management of natural resources and other economic resources as well as those relating to the balance of power between the centre and the regions. (3) To give consideration to the House of Representatives on draft laws on state revenue and expenditure budgets and those relating to taxes, education and religion.

With such a function, the House of Regional Representatives according to Jimly Asshiddiqie is referred to as a co-legislator or only as a companion to the House of Representatives in forming laws and regulations. However, in reality, the authority of the House of Regional Representatives in the field of legislation, which is limited to proposing and discussing draft laws in certain fields, is further restricted in Law Number 12/2011 on the Formation of Legislation. In the preparation of the national legislation programme, the Regional Representative Council is not involved at all and only involves the President and the House of Representatives. In addition, the draft law proposed by the Regional Representative Council during the discussion becomes the initiative proposal of the House of Representatives. If so, then the purpose of the establishment of the House of Regional Representatives as a counterweight to the House of Representatives in the principle of checks and balances is not achieved. The issuance of the Constitutional Court Decision No. 92/PUU-X/2012 restores the legislative function of the House of Regional Representatives in line with the President and the House of Representatives in accordance with the provisions of the 1945 Constitution. To realise the principle of checks and balances, more efforts need to be made to strengthen the legislative function of the House of Regional Representatives so that it has a greater role in the Indonesian constitutional system.

## 2. Methods

This research is qualitative, which is a research process that produces descriptive data in the form of written or spoken words from people and observed behaviour (R.A. Novanto, 2015). Qualitative research is a particular tradition in social science that fundamentally relies on observing humans in their own areas and relating to these people in their language and terminology. It is called descriptive qualitative research, because the data analysed does not accept or reject hypotheses if any, in accordance with this opinion, the form of this research is qualitative research and is descriptive. Descriptive qualitative research is

research that takes problems that exist in the present by describing the object that is the subject matter by collecting, compiling, analysing and interpreting into report form. In this study, the data collection technique that the author did was document analysis.

### 3. Results and Discussion

#### 3.1 Stages of the law formation process

The process of law formation can basically be divided into 3 (three) stages, namely the pre-legislation stage, the legislation stage and the post-legislation stage. In the pre-legislation stage, there will be a process of 1) planning the formation of laws; 2) preparation of draft laws consisting of studies, research and preparation of academic papers; 3) techniques and mechanisms for drafting draft laws; 4) drafting of draft laws. The legislation stage will go through the process of 1) discussion by the House of Representatives and the government; 2) ratification, stipulation and promulgation. While the post-legislation stage will go through the process of 1) documentation of the law; 2) dissemination of the law; 3) counselling; 4) implementation.

Article 1 point 1 of Law No. 12/2011 on the Formation of Legislation states that the formation of laws and regulations is the making of laws and regulations that include the stages of planning, preparation, discussion, ratification or stipulation and promulgation. From these provisions, it is concluded that the stages of the law formation process are 1) planning; 2) drafting; 3) discussion; 4) ratification or stipulation; 5) promulgation. The planning stage is carried out in the national legislative programme where the preparation of the national legislative programme is carried out by the House of Representatives and the Government.

The next stage is drafting, where at this stage is the stage of submitting draft laws either from the House of Representatives or from the President. The House of Regional Representatives can also submit drafts in certain fields to the House of Representatives. All proposed drafts must be accompanied by an academic paper. The next stage is the discussion of the draft law to be passed into law. In the discussion stage, the President and the House of Representatives as well as the Regional Representative Council participate in certain draft laws that are under the authority of the Regional Representative Council. However, the presence of the Regional Representative Council only reaches the first level of discussion, where at this stage of discussion there are 2 (two) levels of discussion, namely level I talks and Level II talks. Level I talks consist of (1) introduction to the deliberation, (2) discussion of the problem inventory list and (3) submission of mini opinions. Even in this level I discussion. The Regional Representative Council is only involved in the introduction of deliberations and the delivery of mini opinions. Level II talks consist of (1) submission of a report containing the process of mini-opinions of factions, mini-opinions of the Regional Representatives Council and the results of level I talks, (2) statements of approval or rejection from each faction and member verbally requested by the chairman of the plenary session and (3) delivery of the President's final opinion conducted by the assigned minister. The next stage is the ratification of the draft law into law.

Where the draft law that has been jointly agreed between the President and the House of Representatives is submitted by the leader of the House of Representatives to the President to be ratified into law. The last stage is the promulgation, and this promulgation is done by the minister who has duties in the field of law. There are several laws that involve DPD. (1) Act No. 3 Year 2020 on Mineral and Coal Mining (Majalah Konstitusi, 2013). In the formal testing of the formation of the Minerba Act, since the planning stage on 6 February 2015, a working meeting for the determination of national legislation (prolegnas) has been held which was attended by the legislation body (Baleg) and 6 members of the legislators from DPD RI. In it, DPD has agreed and approved the draft Mining Act has been included in the planning stage since 2015 and the changes are contained in the list of prolegnas that can

be accessed by the public through the DPR RI website. (2) Decision of the House of Regional Representative of the Republic of Indonesia Number 11/Dpd Ri/I/2016-2017 on the Draft Law on the Formation of Law.

### *3.2 Legislative function of the House of Regional Representatives in the 1945 Constitution*

In addition to changes in the process of law formation and ratification, another provision in the post-amendment 1945 Constitution is the role of the Regional Representative Council in law formation. The House of Regional Representatives has the role of proposing, discussing and giving consideration to certain draft laws within the scope of its authority.<sup>6</sup> According to Mahfud MD, the legislative authority contained in Article 22 paragraphs (1) and (2) of the 1945 Constitution, makes the House of Regional Representatives have no meaningful role, because the role of the House of Regional Representatives is very limited to several things. 1) The House of Regional Representatives can propose draft laws. This means that the House of Regional Representatives can only propose draft laws without any authority to participate in determining and deciding. 2) Participate in discussing the draft law. The authority to participate in discussing draft laws is limited to draft laws relating to regional autonomy. 3) To give consideration. The authority to give consideration is on draft laws on the state budget, taxes, education and religion.

This provision can be seen in Article 22D of the 1945 Constitution. 1) The Regional Representative Council may submit to the House of Representatives draft laws relating to regional autonomy, central and regional relations, the establishment and expansion and merger of regions, the management of natural resources and other economic resources as well as those relating to the financial balance between the centre and the regions. 2) The House of Regional Representatives shall participate in discussing draft laws relating to regional autonomy, central and regional relations, the establishment and expansion and merger of regions, the management of natural resources and other economic resources as well as those relating to the financial balance between the centre and the regions; as well as giving consideration to the House of Representatives on draft laws on the state revenue and expenditure budget and draft laws relating to taxes, education and religion.

### *3.3 Legislative Function of the House of Regional Representatives Based on Law Number 12/2011 on the Formation of Legislation*

In accordance with Article 1 point 1 of Law No. 12/2011 on the Formation of Laws and Regulations, the formation of laws and regulations is the making of laws and regulations that include the stages of planning, preparation, discussion, ratification or stipulation, and promulgation. Of all the stages of law formation, the House of Regional Representatives is only involved in the drafting and discussion stages.

At the drafting stage, the House of Regional Representatives may submit draft laws within the scope of its authority to the House of Representatives. The draft law from the House of Regional Representatives is submitted in writing to the Leader of the House of Representatives and must be accompanied by an academic paper.

At the discussion stage of the draft law, the House of Regional Representatives is included in the discussion of the draft law which is within the scope of authority of the House of Regional Representatives. In the discussion stage, the House of Regional Representatives only reaches level I talks, namely in the introduction of deliberations and the delivery of mini opinions.

### *3.4 Legislative Function of the House of Regional Representatives after the Constitutional Court Decision*

After the verdict of the Constitutional Court No. 92/PUU-X/2012 on Wednesday, 27 March 2013, Indonesian constitutional politics, especially the model of legislation has

increasingly reinforced its shape towards a two-chamber parliamentary system, this is an implication after the Constitutional Court (MK) decided on the petition filed by DPD (Cahyadi, 2018).

In the decision, the Court stated that: the provisions of Act No. 27 Year 2009 on the MPR, DPR, DPD, and DPRD (MD3 Act) and Act No. 12 Year 2011 on the Establishment of Legislation (P3 Act) that have reduced or diminished the authority of DPD as intended when DPD was established in the constitution should be declared unconstitutional. Similarly, the General Explanation and article-by-article explanation of both laws related to the constitutional authority of DPD, should also be considered to adjust to the understanding or interpretation given by the Constitutional Court. Furthermore, all provisions that reduce or diminish the authority of DPD in the two laws, either petitioned or not petitioned by the Applicant, but related to the authority of DPD should be declared contrary to the 1945 Constitution or declared conditionally contrary to the 1945 Constitution if it is not in accordance with the understanding or interpretation given by the Court (Majalah Konstitusi, 2013).

In principle, the Court has strengthened the constitutional authority of DPD in three aspects, namely first, the authority of DPD in proposing the Draft Law (Bill) relating to the region; second, the authority of DPD to participate in discussing the bill relating to the region; and third, the involvement of DPD in the preparation of the National Legislation Programme (Prolegnas). While one authority that was also questioned by DPD, namely the authority of DPD to give approval to the bill was rejected by the Court.

The Constitutional Court Decision No. 92/PUU-X/2012 confirmed five things. 1) The role of the House of Regional Representatives is involved in making the national legislation programme (Prolegnas). 2) The role of the House of Regional Representatives has the right to propose a bill referred to in Article 22 D paragraph (1) of the Constitution of the Republic of Indonesia Year 1945 as the case together with the House of Representatives and the President, including in the formation of the bill Repeal of Government Regulation in Lieu of Law. 3) The role of the Regional Representative Council has the right to discuss draft laws fully in the context of Article 22 D paragraph (2) of the 1945 Constitution of the Republic of Indonesia. 4) The discussion of laws in the context of Article 22 D paragraph (2) is tripartite, namely between the House of Representatives, the role of the Regional Representatives Council, and the President. 5) The Constitutional Court states that the provisions in Law Number 27 of 2009 concerning the People's Consultative Assembly, the House of Representatives, the House of Regional Representatives and the Regional People's Representative Council and Law Number 12 of 2011 concerning the Formation of Legislation that are not in accordance with the Constitutional Court's interpretation of the authority of the Role of the Regional Representative Council are automatically contrary to the 1945 Constitution of the Republic of Indonesia, whether requested or not (Cahyadi, 2018).

### *3.5 Strengthening the Legislative Function of the House of Regional Representatives*

When viewed constitutionally, there are 2 (two) aspects of the weakness of the authority of the Regional Representative Council. Firstly, the scope of the authority of the Regional Representative Council is still very limited. The Regional Representative Council only has authority related to regional issues. Secondly, the House of Regional Representatives does not have the authority to participate in the process of passing a bill into law, but only proposes and has limited authority in the discussion process. So, in essence, the House of Regional Representatives does not have legislative power (Sipangkar, 2016).

With the issuance of the decision of the Constitutional Court Number 92/PUU-X/2012, the legislative function of the Regional Representative Council is back in accordance with what is regulated in the 1945 Constitution. In which, the House of Representatives participates in all stages of the law-making process, both in level I talks and level II talks, and does not participate in the process of approving a draft law into law.

However, to further enhance the legislative function of the House of Regional Representatives, the approval process of draft laws should also involve the House of Regional Representatives together with the House of Representatives and the President. Or to achieve the objective of the establishment of the House of Regional Representatives as a counterweight institution to the House of Representatives, the House of Regional Representatives should be included in all law-making processes in general, not just laws relating to regional autonomy, central and regional relations, the establishment and expansion and merger of regions, the management of natural resources and other economic resources as well as those relating to the financial balance between the centre and regions.

## 5. Conclusions

That in accordance with the purpose of the establishment of the House of Regional Representatives is as a balancing institution for the House of Representatives, especially in the implementation of the legislative function. However, in the end, the Regional Representative Council is only included in the process of forming laws relating to regional autonomy, central and regional relations, the formation and expansion and merging of regions, the management of natural resources and other economic resources as well as those relating to the balance of central and regional finances. This provision has also been eroded in the provisions of Law No. 12/2011 on the Formation of Legislation.

In order to achieve the purpose of establishing the House of Regional Representatives as a counterweight to the House of Representatives in the implementation of the legislative function, the House of Regional Representatives should be included in all law-making processes in general. However, if the authority to participate in all law-making processes in general cannot be given, then the Regional Representative Council should be included in all law-making processes that include its authority in accordance with Article 22D of the 1945 Constitution.

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Not applicable.

### Conflicts of Interest

The authors declare no conflict of interest.

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