

Representative Council as the Regional Representative Body in the System of the State Administration of the Republic of Indonesia

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Abstrak-Dewan Perwakilan Daerah yang merupakan salah satu lembaga baru hasil Amandemen Undang-Undang Dasar Tahun 1945. Dewan Perwakilan Daerah merupakan salah satu dari lembaga perwakilan disamping Dewan Perwakilan Rakyat. Dewan Perwakilan Daerah berperan sebagai lembaga penyeimbang dari Dewan Perwakilan Rakyat, agar fungsi *check and balances* di parlemen. DPD sebagai lembaga perwakilan (*Representative*) mempunyai tiga fungsi; fungsi legislasi, fungsi pertimbangan dan fungsi pengawasan. Namun peran dan fungsi Dewan Perwakilan Daerah sebagai salah satu lembaga perwakilan baik segi dan peraturannya pelaksanaannya belum sesuai dengan harapan dan tujuan dibentuknya Dewan Perwakilan Daerah sebagai lembaga perwakilan daerah. Peran dan Fungsi Dewan Perwakilan Daerah belum seimbang dibandingkan dengan Dewan Perwakilan Rakyat dan belum adanya mekanisme *checks and balances*.

Kata kunci: Peran dan Fungsi DPD, Lembaga perwakilan, bikameral

Abstract-The Regional Representative Council (*Dewan Perwakilan Daerah/DPD*) is one of new institutions resulting from the amendment of the 1945 Constitution. The Regional Representative Council is one of the representative bodies besides the People's Representative Council. The Regional Representative Council plays role as a balancing organ of the People's Representative Council, in order that the function of check and balances in the parliament. DPD as the representative body (*Representative*) has three functions: legislation function, advisory function, and supervisory function. Nevertheless, the role and the function of the Regional Representative Council as one of representative bodies, either from the aspect or the rule of the implementation, has not met the expectation and the goal of the establishment of the Regional Representative Council as the regional representative body. The role and the function of the Regional Representative Council has not been balanced compared to the People's Representative Council and has no mechanism of checks and balances.

Keywords: Role and function of DPD, Representative body, bicameral

1. Introduction

The amendment of the 1945 Constitution brought consequence on the system of the state administration in Indonesia. As consequence of the amendment of the 1945 Constitution, several changes in the system of the state administration occurred. The several changes appeared in the reposition effort of the representative system, which introduced and accommodated new institutions which run state power branches, the process of determination the president's post through a direct election by people, and the vertical power distribution between the central government and the regional government through giving the Regional Autonomy (Yuhana, 2007).

The change in the state administration system influenced the state high institutions in which there was state institution removed and there are new state institutions. The removed state institution was the Supreme Advisory Council (*Dewan Pertimbangan Agung*), whereas, the new state institutions previously

absent are the Regional Representative Council and the Constitution Court. The presence of the Regional Representative Council is as a result of amendment on the 1945 Constitution. The amendment on the Constitution is held by the Working Body of The People's Consultative Assembly (Badan Pekerja Majelis Permusyawaratan Rakyat) which was begun in 1999 up to 2002.

The formation of the new state of the Regional Representative Council was begun in the time of the third amendment of the 1945 Constitution although the rearrangement of the composition of the People's Consultative Assembly especially that come from the regional representative and from the class representative was begun to be proposed since the first meeting of the *Ad Hoc* committee of the Working Body of The People's Consultative Assembly on 7 October 1999 (Isra, 2009). Debate on the membership of the People's Consultative Assembly till the formation of the Regional Representative Council can be seen in the meeting treatise of the *Ad hoc* committee of the Working Body of the People's Consultative Assembly.

The formation of the Regional Representative Council which is one of new state institutions can be seen formally constitutional and factually. Formally constitutional, the Regional Representative Council had been formed since the legalization of the third amendment of the 1945 Constitution in the seventh Plenary Session of the People's Consultative Assembly on 9 November 2001. Factually, the Regional Representative Council had just been formed on 1 October 2004 signified by the inauguration and the oath taking of the members of the Regional Representative Council as the result of the general election on 5 April 2004. The Regional Representative Council is one of the representative bodies. A representative body (Representative) has three functions. The three functions are: legislation function, supervisory function and as means of political education (Busroh, 2009). The consequence of the Regional Representative Council as a representative body which one of its functions is as the legislation function, the Regional Representative Council should have a role as law making institution. The Regional Representative Council as one of representative bodies (representative) is elected to help channeling the regional aspiration to the national government, nevertheless, the Regional Representative Council must balance the national problems and personal concern to the constituents in the region of election.

The role of the Regional Representative Council is elaborated through functions, tasks, and authorities contained on the rule (Pudjosewoyo, 2001). The Regional Representative Council is regulated on the 1945 Constitution Article 22C and Article 22D, besides, it is regulated on Act Number 22 of 2003 regarding the arrangement and the position of the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council and the People's Representative Council which was then was replaced by Act Number 27 Of 2009 which was then also replaced with the newest on that is Act Number 17 of 2014 which was legalized in Agustus 2014.

The function of the Regional Representative Council as ruled on Article 22D of the 1945 Constitution on paragraph (1), paragraph (2) and paragraph (3) covering the legislation function, the advisory function, and the supervisory function. The function of the Regional Representative Council based on the stipulation of the 1945 Constitution is getting clearer that its functions and tasks only support the constitutional tasks of the People's Representative Council. The functions of the members of the Regional Representative Council are not balanced to the requirements of its membership. The supporting requirements to be the members of the Regional Representative Council are more difficult than those of the People's Representative Council. Therefore, legitimating of the members of the Regional Representative Council is balanced with the quality of their authority as the representative of regional people. The process of electing the members of the Regional Representative Council is conducted using a system of district with many representatives. This system is based on the regional election that is province and uses *multimember* district (Maridjan, 2010). This is a system of general election where a region has two or more representatives. This system determines the winner in the multi member district based on the candidates who obtain the most votes.

The functions, tasks, and authority of the Regional Representative Council, if carefully observed, it is known that there is no equal position between the Regional Representative Council and the People's Representative Council. It is not similar to other countries in which the People's Representative Council

and The Regional Representative Council have an equal role. In principle, the two chambers in the system of bicameral have an equal position. They do not subordinate each other, either politically or legislatively (Huda, 2008). The Regional Representative Council as a state institution should give solution on the centralistic political system along the last five decades. Nevertheless, the role of the members of the Regional Representative Council cannot be maximal. There is a gap between expectation in the time of the formation of the Regional Representative Council by the People's Consultative Assembly or the expectation of people and the members of the Regional Representative Council about the function and the role of the Regional Representative Council ruled in the law. The amendment of the 1945 Constitution has a basic change in the system of the state administration of the Republic of Indonesia regarding the representative body in Indonesia in line with the objective of the amendment of the 1945 Constitution. Nevertheless, the role and the function of the Regional Representative Council as one of the representative bodies either in the aspect or in the regulation, the implementation has not been suitable with the expectation and the early objectives of the formation of the Regional Representative Council as a regional representative body.

2. Discussion

2.1 The Regional Representative Council as a Regional Representative Body

To implement the democratic values, the democratic values needs to be implemented by several state institutions, one of them is the representative body. This representative body is an embodiment of democracy through people's representative. The people's representative is contained in the third main idea on the preamble of the 1945 Constitution that is a people Sovereignty State based on people matters in a representative deliberation. The representative body has a role to reach democracy either in a formal meaning (the shape) or in a material meaning (the content).

Because the democracy is embodied by the establishment of government by people and people-interest oriented, all public decision must involve all elements of society which get impacts from the decision. The creation of law must be finished through participation and communication which assure the equal opportunity for the society. According to Habermas, deliberative democracy is a model of democracy which a legal legitimacy is obtained from discourse (public consultation) which occurs in the dynamics of civil society among many parties with interests and in a balanced position (Habermas, 2007).

Initially, the function of the representative body or parliament was not as a law making institution, but it was no more than a communication medium between the king and the kingdom officers, the noblemen, and the church authorities. Therefore, the objective of the body was to discuss the state problems (Cipto, 1999).

The people sovereignty is as a control over the government through a political public space. The people sovereignty can be embodied if a state which consists of executive, legislative, and judicial institutions run well according to the constitution. Habermas gave an offer not in the form of a direct democracy but a representative democracy *perwakilan* strengthened by the political public. Habermas' opinion about the people participation in all kinds of participation was also conveyed by Beetham about the purpose of democracy. The norm of democracy aims at giving people's control room on public matters based on an equality in politics and solidarity among citizen which requires a set of general principles about rights and abilities of all people to participate, authorization, representation, and transparent responsibility.

Legally, democracy is concretized in the institutionalization of three state power branches, they are: legislative, executive and judicial. The power of the three institutions is limited. Teaching about the institutionalization of the government power limitation systematicall in a constitution is called as Constitutionalism. Constitutionalism is related to the mechanism of checks and balances. In line with the objective of the amendment of the 1945 Constitution that is to complete the basic rule of the state administration regarding the people sovereignty, the power limitation is necessary which its implementation is based on the principle of checks and balances. The power limitation is implemented

based on the principle of people sovereignty from the institutional aspect through two ways, they are: the system of power separation or power distribution (Asshiddiqie, 2005).

Basically, the formation of the people's representative body is begun from the people's needs on law as a means of regulating the collective life's besides needs on a body which makes and implements it (Sanit, 1985). In accordance to the idea, in overall, the rulers of a country make law in the name of their people and implement it to run the collective life and certain tasking, but in making law, all parties are involved themselves. This involvement of all rulers is said as a law maker in a broad meaning. In this modern era, the people representative body is specially tasked as a law making institution, therefore, it was said that the function of parliament recently is to perform the main function in a narrow meaning.

The representative body accommodates people's aspiration and then is implemented in many policies and laws. In the government democracy system, the people's representative body is the most important element besides other elements such as the election body, equality before the law, freedom of speech, freedom of expression, and freedom of association. The representative body can work if the representatives or the members come from one of representatives kinds. The classification of representatives is divided into three central concerns. This representative classification is made as a center of study which obliges the presence of "representative" that is the presence of party, the presence of group, and the presence of the represented region. Due to such classification, it results in three kinds of representatives:

- a. political representative
- b. functional representative
- c. regional representative

The political representative is if people through a political party sit down to be a member. If due to his/her skill or he/she is a functional figure the he becomes a member of the representative body, he/she is called as a functional. The regional representative is meant to represent regions, regional interests is prioritized and free from individual interests. The regional interest they struggle is related to all people's interests in the related regions. The representative system also supports the creation of government which is really responsible for the ruled people. There are four limitations about the representation:

First, the formal representation is a power which acts in the name of others obtained through an institutional process or regulation such as free and open election. *Second*, descriptive or demographic representation is a representative who reflects society; therefore, the legislative institution should be the exact description of people. *Third*, symbolic representative is how much the legislative body is accepted as trusted body and as one of their own possession by their original region. *Fourth*, substantive representation is the sensitivity of the legislative members on the constituent (Napitulu, 2005).

The understanding on the representative sytem gives a description that the individual representative must understand aspiration, value, trust and attitude of thousands of people. Therefore, the representative system should really describe the characteristics of the represented constituent, their role, their relation to the constituent and their perception on conscience or the constituents' political opinion. The representative body must be able to accomodate such matters related to the constituents because of the function attached to the representative body. The representative body has three functions, they are: legislation function, supervisory function, and as a means of political education (Busroh, 2009). The legislation function means the formation of legislation. The supervisory function covers functions performed by the representative body to monitor the executive in order to be suitable with the legislation. As the means of political education, the discussions held by the representative body are related to the public interest, people can obtain information through the mass media, therefore, indirectly, and the mass is educated to be citizen who is aware of their rights and obligations.

2.2 The representative system of bicameral system

In general, there two systems of representative system adhered by the representative body, they are: unicameral and bicameral system. Unicameral is a system adhered to one the representative body. In bicameral system, the representative body has two chambers: one chamber represent people in overall,

meanwhile another chamber only represent the state. If the two bodies meet, it is called as Congress. The bicameral system is much adhered by the countries that use a form of Federation such as the United States of America.

Practically, the stated administration system of bicameral has advantages as follows: (Megawati and Murtopo, 2006)

- a. Officially, it can represent all or various constituents.
- b. It facilitates a deliberative approach in arranging the legislation.
- c. It prevents the legalization of defect law or careless law as a result from the decision which sometimes is made in a hurry in the first chamber/assembly.
- d. A better supervisory mechanism because there is a double check.

There are several reasons of the formation of two chambers in the legislative body. According to Ginanjar Kartasasmita in his paper, he said that the bicameral system is necessary to prevent a tyranny of majority and the tyranny of minority (Kartasasmita, 2007). The Regional Representative Council was formed in order to accommodate the regional interests effectively and fairly in order to make a national political decision and to empower the regional potential. The Regional Representative Council must be able to absorb the regional aspiration brought to the national level to be the national aspiration and to be the national interest.

The principle of people representation and regional representation must be differed firmly. The difference is also related to the system of its membership recruitment; therefore, the two representations can be maintained continuously according to the nature of their existence. If both of them are not differed, people cannot know exactly the nature of the existence of both representative chambers (Assidiqie, 2005). Besides, the representative body can formed through the general election and the appointment. The election is one of ways to determine the high or the low level of democracy. If the representation is based on the results of general election, the degree of democracy is higher, meanwhile, the more dominant of the appointment, the lower the degree of democracy adhered by a Country.

2.3 The Authority of the Regional Representative Council in the Constitution

The authorities of the Regional Representative Council on article 22D of the 1945 Constitution are on paragraph (1), paragraph (2), and paragraph (3) related to legislation, advisory, and supervisory:

- a. The Regional Representative Council can propose to the People's Representative Council the bills related to the regional autonomy, the relation between central and region, the formation, the development, and the fusion of region, the management of natural resources and other economic resources, and other related to the financial balance between central and region.
- b. The Regional Representative Council participate in discussing the bills related to the regional autonomy, the relation between central and region, the formation, the development, and the fusion of region, the management of natural resources and other economic resources, and other related to the financial balance between central and region; as well as giving advice to the People's Representative Council on the bill of state budget and the bill related to taxes, education, and religion.
- c. The Regional Representative Council can perform supervision on the implementation of law regarding: the regional autonomy, the relation between central and region, the formation, the development, and the fusion of region, the management of natural resources and other economic resources, and other related to the financial balance between central and region, the implementation of state budget, education, and religion as well as to deliver the results of the supervision to the People's Representative Council as a material of consideration for follow-up.

The Regional Representative Council can give advice to the People's Representative Council regarding the bills related to taxes, education, and religion as well as to give advice outside the bill in the selection of the candidates of the Financial Supervisory Board (*Badan Pemeriksa Keuangan*) members (Republik Indonesia, 2009).

The Regional Representative Council can also conduct supervision on the implementation of law regarding the regional autonomy, the relation between central and region, the formation, the development,

and the fusion of region, the management of natural resources and other economic resources, and other related to the financial balance between central and region, the implementation of state budget, education, and religion, either obtained by the Financial Supervisory Board or obtained by the government.

If referring to the essence of strong and effective bicameral, and referring to our state administration system, at least, there are four roles of the Regional Representative Council: *First*, the Regional Representative Council must affirm more their position as ‘the people’s messenger in the region. It must be underlined that the Regional Representative Council as the regional representative is getting important to be affirmed that the existence of the Regional Representative Council does not only share tasks between domestic or foreign countries, as practiced in the United States of America, but it also struggle the regional aspiration, especially aspiration related to the regional interest in the national level. *Second*, the Regional Representative Council has a role as the stabilization body of the People’s Representative Council, in order that the function of check and balances in the parliament can work. As explained above, the position of the People’s Representative Council is too strong and dominant in building a relation between the People’s Representative Council and the executive. Besides, the presence of check and balances, a product produced by the parliament will be more comprehensive. *Third*, the role of the Regional Representative Council is helping to reduce the load and the task carried out by the People’s Representative Council. By many products that must be produced, a partnership institution is necessary to discuss every Bill or problems related to the tasks and the responsibilities of the parliament. As commonly known, the abundance of Bills that have not been finished according to the target are indicators that the effort to minimize the parliament’s performance can be done. *Fourth*, the Regional Representative Council must take an initiative in many things related to the national problems, either locally or nationally. It must be attached to the institution of the Regional Representative Council, as attached to the People’s Representative Council. This role becomes a part of evidence that the Regional Representative Council is one of chambers which has an active role in the national political matters.

The regulations of the institution of the Regional Representative Council according to the 1945 Constitution as a result from the third amendment that is ruled on Article 22 C are:

- a. The members of the Regional Representative Council are elected from every province through a general election.
- b. The members of the Regional Representative Council from every province has a similar number and the number of all members of the Regional Representative Council is no more than one third of the number of the People’s Representative Council members.
- c. The Regional Representative Council holds a session at least once a year.
- d. The arrangement and the position of the Regional Representative Council are ruled by the law.

Other legal sources related to the tasks and the authorities of the Regional Representative Council are ruled on Act Number 22 of 2003 which was then replaced by Act Number 27 of 2009 and the newest one is Act Number 17 of 2014 regarding the arrangement and the position of the People’s Consultative Assembly, the People’s Representative Council, the Regional Representative Council and the Regional People’s Representative Council (Republik Indonesia, 2014).

2.4 The Role of the Regional Representative Council in Empowering the Regional Society

2.4.1. The Ideal Authority of the Regional Representative Council

The ideal authority of the Regional Representative Council is not apart from the democracy adhered by Indonesia that is democracy based on the deliberation, consensus, and representation concepts which were then conveyed on the fourth principle of Pancasila, and determined on the Preamble of the 1945 Constitution. It is evidence that Indonesia is a people sovereignty nation, based on people matters, deliberation, and representation. A democracy which focuses on all people and their interests become the process of the state administration, not majority-minority but all people. For Indonesia, this people’s desire is performed through the inner wisdom (the fourth principle). The inner wisdom is meant *wisdom*. Something led which is based on wisdom requires everything is performed *peacefully* which becomes the universal characteristics of democracy teaching.

The ideal authority of the Regional Representative Council is related to the mechanism of checks and balances, if it is suitable with the base of the formation of the Regional Representative Council, it not only among the power branches but it is in the legislative institution itself. Therefore, the authority of the Regional Representative Council must be increased although it is not a must to be similar to the People's Representative Council. It means that the presence of the Regional Representative Council is as a partner of the People's Representative Council regarding the regional matters. A bill discussed by the People's Representative Council, the Regional Representative Council and President related to the region is obtained a collective agreement, nevertheless, the People's Representative Council keep maintaining the power to make a law.

The existence of the Regional Representative Council as the partner of the People's Representative Council regarding the regional matters is based on the scope of the authority domain of the Regional Representative Council which covers the regional autonomy, the relation between central and region, the formation, the development, and the fusion of region, the management of natural resources and other economic resources, and other related to the financial balance between central and region, as well as giving advice to the People's Representative Council on the bill of state budget and the bill related to taxes, education, and religion. It is suitable with the theoretical consideration base and the political consideration base of the presence of the Regional Representative Council RI. The theoretical consideration base of the presence of the Regional Representative Council of the Republic of Indonesia is to build a mechanism of control and balance. The political consideration base of the presence of the Regional Representative Council is to strengthen the regional ties under the umbrella of the Unitary State of the Republic of Indonesia, to strengthen the national unity and motivation of all regions in a forum which meets all backgrounds of regional problems, to increase aggregation and to accommodate aspiration and regional interests in formulating the national policy and to support the regional democracy acceleration, development, and advance fairly, equally, and continuously.

2.4.2. Empowering the role of the Regional Representative Council for the Regional Interest

The role of the Regional Representative Council is limited its authority on legislation related to the region, the budget and the supervision is also limited to the regional matters. The gap of the function and the authority must be made as challenges to the Regional Representative Council. Although it is not forbidden, the Regional Representative Council should not demand an equal authority as the that of People's Representative Council through proposing the amendment of Article 22D of the 1945 Constitution (Republik Indonesia, 1945).

Recently, the important thing is how the Regional Representative Council can make sure the society by being pro-active in doing many excellent programs and touch the local society's interest, either in the local social aspect, local cultural aspect, local political aspect, local legal aspect, or people economic aspect. Recently, there are so many national legislation programs which have relation to the function of the Regional Representative Council, for example: the amendment of the completion of Main Agriculture Act Number 5 of 1960, Land Reform Act, Bill of Legal Traditional Society and Bill of Natural Disaster.

The Regional Representative Council can have a role in the struggle of the formation of legalisation on the natural disaster which is also strategic. The natural disaster incident happened in many regions which the susceptibility and security levels were not easy to be managed quickly because the location of the disaster was far from the public facilities. The Regional Representative Council as the regional people's representative, based on the fact, should be able to mobilize the conscience. They must be motivated to struggle the local disaster victims' interest. It is the golden opportunity of the Regional Representative Council to be more pro active in the struggle of the society's rights especially in the Bill of the Natural Disaster Countermeasure (Rancangan Undang-Undang Penanggulangan Bencana Alam (RUUPBA)). It will be a significant contribution for the people of the regions that are susceptible of natural disaster.

The Regional Representative Council is hoped to do more visits to the regions and to absorb the regional aspiration and to complete the ongoing programs, the future and not executed programs so that the regional people know them. The Regional Representative Council has a role in build a communication with the region in order that the problems in the regions related to its tasks and functions can be solved quickly and properly.

3. Conclusion

The authority of the Regional Representative Council in the state administration system of the Republic of Indonesia is very limited, either contained on article 22D of the 1945 Constitution, Act Number 27 of 2009, or Act Number 17 of 2014 regarding the Arrangement of the Position of the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council and The People's Representative Council Daerah. DPD as a regional representative body must have a legislation function, advisory function, and supervisory function but the functions are limited on the things related to the regional autonomy, the relation between central and region, the formation, the development, and the fusion of region, the management of natural resources and other economic resources, and other related to the financial balance between central and region.

The role and the function of the Regional Representative Council have not been balanced compared to those of the People's Representative Council and there is no mechanism of checks and balances. The Regional Representative Council with its limitation in authority must keep making sure the society by being pro active in doing many excellent programs and touch the local society's interest, either in the local social aspect, either in the local social aspect, local cultural aspect, local political aspect, local legal aspect, or people economic aspect.

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