STRENGTHENING THE LEGISLATION FUNCTION OF THE REGIONAL REPRESENTATIVE COUNCILS IN THE BICAMERAL PARLEMENT SYSTEM

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ABSTRACT

This study aims to examine the authority of the legislative function between the Regional Representative Council (DPD) and the People's Representative Council (DPR) in the application of the bicameral system in Indonesia, analyze the weaknesses of the legislative function of the Regional Representative Council in the bicameral parliamentary system in Indonesia, and formulate the ideal construction of strengthening the Regional Representative Council in the bicameral parliament system in Indonesia. This study uses a constructivist paradigm with an empirical juridical approach. The data used are primary data and secondary data. The data analysis method is using qualitative descriptive analysis. The results of the study found that there were striking differences in legislative authority between the DPD and the DPR in the bicameral system; the DPD has the right to propose the initiative to submit a draft law, but the DPD cannot participate in determining the bill into law as regulated in Article 22D of the 1945 Constitution. Meanwhile, the DPR has a legislative function and veto rights, so there is no balance between legislative functions and powers between DPD and DPR. The weakness that the DPD has in the bicameral system is that the inter-chamber relationship in the representative institution does not run in two effective chambers. Article 20A Paragraph (1) of the 1945 Constitution states that DPR holds the power to form laws, thereby giving rise to superiority and providing a very clear demarcation line regarding the legislative function of DPR against DPD. There are three efforts that can be made in order to strengthen the legislative function of DPD in the bicameral parliament system: 1) Strengthening the Legislative Function of DPD through Optimizing Duties and Authorities as a Representative Body, 2) Strengthening the Legislative Function of DPD through Judicial Interpretation, 3) Strengthening the Legislative Function of DPD As a Representative Institution with an Effective Bicameral System. The ideal construction to strengthen DPD's function by realizing a Representative Body with an Effective Strong Bicameralism is by improving the functions and powers of DPD so that there is balance and equality with DPR. To realize this, it is necessary to encourage the fifth amendment of the 1945 Constitution, in particular Article 22D of the 1945 Constitution. In addition, constitutional conventions can be developed in practice of normative application in the field which is unusual or through customary practice.

Keywords: Strengthening; Legislation; DPD; Bicameral;

A. INTRODUCTION

In a democratic government, the highest power is in the hands of the people as mandated in the 1945 Constitution of the Republic of Indonesia, especially in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. It reads "Sovereignty is in the hands of the people and is exercised according to the Basic Law". As a democratic country, Indonesia has a representative institution or legislative body known as parliament in its constitutional structure which functions as a channel for people's aspirations and as a supervisory function for other institutions, especially the executive.

In order to prevent the disintegration of the nation and increase regional participation in determining the direction of national political policy in the future, the Regional Representative Council (DPD) was formed through the third amendment of the 1945 Constitution. This is a forum to fight for regional aspirations and interests at the national level such as regional interests that are in line with national interests. Thus it can be seen that the initial idea of forming the DPD in the Indonesian constitutional system was to maintain national integration. This is the same as the idea of forming a bicameral system in federation countries which originally aimed to protect the federation formula. [1]Besides that, it also reformed the Indonesian representative system from a one-chamber representative system (unicameral) to a two-chamber representation system (bicameral). This is like in the United States, which consists of the Senate as regional representatives and the House of Representatives (DPR) as representatives of all the people).[2]

Articles 22 C and D of the 1945 Constitution are the legal basis for the existence of DPD as regional representatives. This article is embodied in the law that regulates representative institutions known as the MD3 Law (Law on MPR, DPR, DPD and DPRD). Starting with Law Number 22 of 2003 until now it has been changed to the latest law, namely Law Number 2 of 2018 into a series of regulatory agency arrangements. In fact, the law has not been able to accommodate the existence of DPD as a regional representative institution. Several articles are considered to provide more position for DPR than for DPD. For example, the article on DPR examinations which must be approved by DPR Honorary Court while DPD does not. Then the article on sanctions for DPD members is given if six times consecutively they do not attend the plenary session and temporarily for DPR this article is abolished. Another example is the article that gives DPR the authority to prepare a budget, but DPD is not given this authority. DPD members of course have to be a representation for the people not only for their constituents in accommodating every aspiration and finding solutions to these problems.

[1] K. C. Wheare, 1967, Legislature, London, Oxford University Press, p. 205.

[2] Bagir Manan, 2003, DPR, DPD dan MPR dalam UUD 1945 Baru, FH UII Press, Yogyakarta, p., 53. Also see Jimly Asshiddiqie, 2004, Format Kelembagaan Negara dan Pergeseran Kekuasaan dalam UUD 1945, FH. UII Press, Yogyakarta, p., 17.

The role of DPD does not just go on without the rights and authority to optimize its functions. In addition, evaluation and accountability are also very necessary in the context of public accountability and not just reports. So far, the rights possessed by DPD are only limited to consideration without having the authority to decide. Whereas regional interests are very important besides national interests because the state will not progress without support from the regions. The absence of more rights and authority for the DPD has resulted in suboptimal implementation of functions. DPD tends to only accommodate aspirations without being able to provide solutions, especially those related to legislation. This condition creates a discourse in society: it is better to dissolve DPD than to maintain it as it is now. Maintaining DPD as it is now is considered a waste of State money. In addition, the rights of the Chairperson of DPD, the Deputy Chair of DPD and the members of DPD, such as salaries, allowances and other facilities provided by the state, are the same as those of the Chairman of DPR, the Deputy Speaker of DPR and members of the DPR. In fact, both have different functions. However, if DPD is dissolved, it means that we are denying the mandate of reform because one of the reform mandates initiated by students and the people in 1998 was the need to expand regional participation in national development, one of which was realized by DPD. Based on the description above, it turns out that the idea of applying bicameral in Indonesia is different from the bicameral that is commonly used in various countries and is not in accordance with the ideas discussed earlier. Its membership is limited in number, its functions and powers are not the same as that of DPR, there is discrimination in its role, and the initial concept proposed is the same as DPR. So that after being stipulated in the constitution the question arises whether the granting of powers as contained in the current Indonesian constitution has fulfilled the purpose of establishing this institution. This question shows the Indonesian people that there are still many weaknesses in the birth of a Regional Representative Council besides DPR.

Based on the explanation described above, the issues to be formulated relating to strengthening the legislative function of the Regional Representative Council in the bicameral parliament system are as follows: Why is the legislative function of the Regional Representative Council in the parliamentary system not given the same authority as the House of Representatives? What are the weaknesses of the legislative function of the Regional Representative Council in the bicameral parliamentary system in Indonesia? and What is the ideal construction of strengthening the functions of the Regional Representative Council in the bicameral parliamentary system?

B. RESEARCH METHODOLOGY

The paradigm[3] used in this research is the constructivism paradigm [4], because this research is intended to produce a new thought or idea and theory regarding the strengthening of the legislative function of the Regional Representative Council in the bicameral parliamentary system. The approach method used is juridical empirical. The data used are secondary and primary data[5]. Data collection techniques through FGD, interviews and questionnaires. The collected data were analyzed using qualitative descriptive analysis.[6]

C. RESULT AND DISCUSSION

A. Ideal Construction Strengthening the Function of Regional Representatives Council in Creating Strong, Effective Bicameralism Representatives

To encourage DPD to have a balanced function in the legislative function, it is necessary to implement a strong bicameralism system with the condition that there is a change in the 1945 Constitution. Regarding the concept of strong bicameralism, Indonesia can adopt such system as implemented in the United States parliament. In the United States parliament, members of parliament are elected directly through elections (democratic legitimacy). In its composition, it is incongruent (Article 1 Section 3, United States Constitution). The House of Representative is the political representative, while the Senate is the state representative and serves as the legistative power holder.[7] In addition, the actual use of the bicameral system is not merely a dichotomy of the structure of the representative body, but reflects a completely different element of representation. In other words, the membership of the two chambers of parliament really represents the different aspirations of one another, so that both truly reflect the combined interests of all the people.[8] Theoretically the chambers in this system are in one chamber which contains

[3]The paradigm in this study is a set of beliefs that guide researchers in understanding the problems of this research, both at the ontology, epistemology, and methodology levels. This simple understanding departs from Margareth Masterman's understanding of the paradigm, that the paradigm is a whole general assumption, laws, techniques and metaphysical principles that guide scientists in the process of knowledge. See Thomas Kuhn, 2000. The Structure of Scientic Revolution, Indonesia Edition, PT. Remaja Rosda Karya Bandung and Liek Wilardjo, 1990. Realita dan Desiderata, Duta Waca University Press. Jogjakarta, also Ignas Kleden, 1987. Sikap Ilmiah dan Kritik Kebudayaan. LP3ES, Jakarta, p. 20.

[4]From the Enlightenment to the era of globalization, there were four scientific paradigms developed by scientists, namely positivism, post-positivism, realism (critical theory) and constructivism (constructism). The four paradigms are intended to discover the essence of the developing reality or science. The difference between the four paradigms can be seen from the perspective of each of the reality used and the ways in which to develop scientific discoveries, especially in the three aspects contained therein, namely ontological, epistomological, and methodological aspects. However, it should be noted that some paradigms sometimes have the same perspective on one of the three aspects. Agus Salim, 2006, Teori dan Paradigma: Penelitian Sosial Buku Sumber Untuk Penelitian Kualitatif, Tiara Wacana. Yogyakarta, p. 68-72.

[5]Johny Khoesoema Hioe, Anis Mashdurohatun, Gunarto, Irwan Jasa Tarigan, Reconstruction of Pretrial Institution Function in Supervising Investigator Authorization Based on Justice Valuewith Moderating Role of Supply Chain Management, Int. J Sup. Chain. Mgt Vol. 9, No. 3, June 2020.p.617.

[6]Anis Mashdurohatun, Eyrsa Setya Kurnia, The Settlement Model Against Credit Agreements Between Creditors And Debtors,International Journal of Law RecontructionVolume 4, Number 2, September 2020. p.126. DOI : http://dx.doi.org/10.26532/ijlr.v4i2.11319, see Haris Budiman, Eman Suparman, Anis Mashdurohatun, Spatial Policy Dilemma: Environmental Sustainability and Economic Growth, UNTAG Law Review (ULREV)Volume 2, Issue 1, May 2018, p.2

[7] See article 1 section 1, Constitution Of The United States,....Op.Cit.

[8] Jimly. Asshiddiqie, 2006, Foreword in, "Bikameral bukan federal", DPD group in MPR, Desember, p. xv.

members that broadly represent the population directly. While the other chamber is an element of a different representation. This can be described as from the elements of social class interests, economic interests, or generally territorial differences.

There are two possible reasons for choosing a bicameral system. First, is to build a checks and balances mechanism, especially to double check the process and substance of legislation. Second, is to form representatives to accommodate certain interests which are usually not sufficiently represented by the first assembly. In particular, bicameralism has been used to ensure adequate representation for regions within the legislature.[9] To realize a strong bicameralism model, amendments to the 1945 Constitution are a necessity as one of the reform agendas to get out of political crises, legal crises, economic crises, and moral crises. The four changes have indeed provided very basic changes in the life of the Indonesian state administration. However, the results of the changes also have various weaknesses because the developed paradigm cannot be used as a basic reference in making good governance effective. The amendment results have not been able to explain and promise significantly the construction of values and state buildings to be built.

In this fifth change, there are at least three central issues of concern:

1. Strengthening the Presidential System

   In essence, strengthening the presidential system does not strengthen the position of the president, but rather the government system that needs to be strengthened. Aspects that need to be appreciated and strengthened in the presidential system (as studied from the theoretical and reality aspects of various countries), are:

   a. The President / Vice President (including parliament or DPR) is directly elected by the people (Article 6A Paragraph 1 of the 1945 Constitution). Thus, in a presidential system of government, there are two general elections (elections), namely the presidential election and the parliamentary (legislative) election, whereas in a parliamentary system of government, only one election is the election for members of the parliament, then the parliament forms the government. For example in the UK, a person can only be appointed executive (prime minister, minister, or deputy minister) if he is elected as a member of parliament (DPR or Senate / DPD), and still functions at the same time as a member of parliament.
   b. The President may not be overthrown (dismissed) during his term of office due to political aspects (on the president's policies that are considered wrong), but must be with juridical aspects such as committing legal violations (betrayal of the state, corruption, bribery, other serious crimes, or despicable acts, and proven that they no longer qualify as a president / vice president). This has been regulated in Article 7A of the 1945 Constitution.
   c. There is a distribution (separation) of power, whereas in a parliamentary system of government there is no clear distribution of power. The full legislative power lies with the parliament, although the president can still submit a bill to the parliament (DPR and DPD / Senate). The president does not participate in discussing the bill, but the president has the right to reject (veto) the bill approved by the parliament (DPR and DPD / Senate as two chambers). However, the 1945 Constitution adheres to the "sharing of power" as affirmed in Article 20 Paragraph (2) of the 1945 Constitution that: "Every bill is discussed by DPR and the President for mutual approval". This provision confuses the strengthening of the presidential system, because although the power to form laws rests with the DPR 286 (Article 20 Paragraph 1 of the 1945 Constitution), the president is still given the power to discuss the bill with DPR. This aspect needs to be appreciated in the fifth amendment to the 1945 Constitution if Indonesia consistently adheres to the presidential system of government by placing DPD parallel to DPR as the legislators in two chambers (bicameral system).
   d. The focus of executive power (government) is on the president, but the president in running the government is still overseen by the parliament, and there are clear checks and balances in the administration of government.
   e. The term of office of the president is fixed (fixed terms) as stipulated in Article 7 of the 1945 Constitution, and the president is at the same time the head of government (chief executive) and head of state (head of state). Meanwhile, in a parliamentary system, the head of government and head of state are held by different people, for example the head of government is held by the Prime Minister and the head of state is held by the king / queen or other designations.
   f. The President (either as head of state or head of government) cannot freeze or dissolve the DPR (Article 7C of the 1945 Constitution). The ministers (cabinet members) are appointed / dismissed by the president and of course are fully responsible to the president (Article 17 Paragraph 2 of the 1945 Constitution). Meanwhile in the parliamentary system, the Prime Minister (executive) as the head of government and cabinet members are appointed and dismissed by the parliament and have the right to declare a motion of no confidence to the head of government.

2. Strengthening the Representative Body (DPD)

   The formation of the DPD was constitutionally ratified since the Third Amendment to the 1945 Constitution in the 2001 MPR annual session on November 9, 2001.

   Then through the holding of general elections, the birth of DPD in fact only took place on October 1, 2004 which was marked by the inauguration and pledging of DPD members as a result of the election on April 5, 2004. Based on the amendments to the 1945 Constitution, the idea of forming DPD is expected to contribute to stimulating positively the progress of democracy in Indonesia, especially representation in the regions in policies that favor citizens who are more in the regions. Thus, encouraging the progress and welfare of the community and maintaining the integrity of the Republic of Indonesia.[10] Historically, the formation of the DPD was inseparable from the reforms since 1998. The reform process was primarily through democratization in parliamentary elections. The opinion that the people in the parliament and its members must be elected by the people was expressed by the members of Commission A of the MPR RI at the Commission A meeting on 5 November 2001 as follows: [11] then in Chapter II Article 2, the alternative that must be chosen in our opinion is alternative two. So the People's Consultative Assembly consists of the People's Representative Council and the Regional Representative Council

[9] Andrew. S. Ellis, 2001, Lembaga Legislatif Bikameral? Sebuah Agenda Dan Beberapa Pertanyaan, NDI for International Affairs and Indonesian Chancellors Forum of YSPDM, Jakarta, p. 61.

[10] DPD of Republic of Indonesia, 2014, Pengkajian Positioning Fungsi Pengawasan DPD RI dalam Musrenbang, Secretariat General of DPD of the Republic of Indonesia, Jakarta, p. 43.

[11] Muchammad Ali Safa˝at, 2010, Parlemen Bikameral, UB Press, Malang, p. 93.

whose members are elected through general elections. So there is no person who has the right to act on behalf of the people's representatives who are not really elected by the people. One principle that we must uphold if we want to build a democratic state based on law.

Thus, in determining DPD members, they must go through general elections so that they no longer bring authoritarian powers like in the New Order era by confirming support from MPR, one of which is by filling most of MPR members by appointment. By improving the way they elect members, DPD truly represents the people in the regions, not the partisan interests. In addition, the historical reasons for the current existence of DPD can be said to be a meeting of two ideas, namely democratization and regional autonomy. Therefore, in the demand for democratization, filling DPD must always involve the people in voting. Meanwhile, in the case of regional autonomy, elected DPD members must prioritize regional interests and aspirations above any interests. Thus, DPD members as representatives of the population in an area will represent regional interests in making important political decisions at the national level.

As for the constitution, through the Third Amendment to the 1945 Constitution regulates membership in DPR and DPD institutions. The provisions regarding the election of members are regulated in Article 22E paragraph (3) "Election participants to elect DPR members and DPRD members are political parties" and paragraph (4) "Election participants to elect DPD members are individuals." Based on the basis of Article 22E paragraph (3) of the 1945 Constitution, that there are differences in recruitment patterns in the two parliaments between DPR and DPD. The difference between the two lies in the nature of the interests that each one represents. DPR as a political representation is meant to represent the people in the national interest, while DPD is a territorial representation meant to represent the regions. This difference in the nature of representation is important in order to avoid the notion of double representation, which defines the parliamentary function that is carried out by the two councils. For example, people who live in areas that have participated in the elections to elect DPR members are considered to have represented their interests by the elected representatives of the people to occupy seats in DPR, both at the district / city level, at the provincial level, and at the central level DPR. Therefore, even though DPD members are also elected through elections, the recruitment process should still be differentiated from the system applied to recruit DPR members. Thus the definition of double representation can be avoided.[12]

The meaning of an individual in Article 22E paragraph (4) of the 1945 Constitution states that the content of the stated norms is that to run as a candidate for DPD member, must nominate himself as an election participant, not nominated by a political party. This is different from the nomination of DPR members which is expressly stated in Article 22E paragraph (3) of the 1945 Constitution, where those who wish to become members of DPR must be nominated by a political party. Then regarding membership in political parties is not an implicit constitutional norm and is attached to the term "individual" in Article 22E paragraph (4) of the 1945 Constitution. This is explained in Article 181 of Law Number 7 Year 2017 concerning General Elections, which states that: "Election contestants to elect DPD members are individuals." Furthermore, the requirements to become candidates for DPD members are regulated in Article 182 of Law Number 7 of 2017 concerning General Elections, as follows:

a. Indonesian citizens who have reached the age of 21 (twenty one) years or more;
b. fear God Almighty;
c. residing in the territory of the Republic of Indonesia;
d. can speak, read, and / or write in Indonesian;
e. with the lowest education has graduated from high school, *madrasah aliyah*, vocational high school, vocational *madrasah aliyah*, or other schools of the same equivalent;
f. loyal to Pancasila[13], the 1945 Constitution of the Republic of Indonesia, the Republic of Indonesia, and Bhinneka Tunggal Ika;
g. has never been sentenced to imprisonment based on a court decision that has obtained permanent legal force for committing a crime punishable by imprisonment of 5 (five) years or more, unless openly and honestly declaring to the public that the person concerned is a former convict;
h. physically and mentally healthy, and free from narcotics abuse;
i. registered as voters;
j. willing to work full time;
k. resign as regional heads, deputy regional heads, village heads and village officials, Village Consultative Body, state civil apparatus, members of the Indonesian National Army, members of the Indonesian National Police, directors, commissioners, supervisory boards and employees at state-owned enterprises and / or regional government-owned companies and / or village-owned enterprises, or other bodies whose budgets originate from state finances, which is stated in an irrevocable resignation letter;
l. willing not to practice as an advocate public accountant, notary public, land deed maker official, and / or not doing work providing goods and services related to state finances and other jobs that may create conflicts of interest with the duties of authority and rights as DPD members in accordance with the provisions of the legislation;

[12] Efriza and Syafuan Rozi, 2010, Parlemen Indonesia Geliat Volksraad Hingga DPD, Alfabeta, Bandung, p. 266.

[13] Pancasila in its position as the source of all sources of state law because it contains ideals of law (Rechtsidee), basic values, as well as the basic philosophy for the organization of the state of Indonesia. Pancasila is the "guiding star" as well as criticism norms (rule of assessor / size / acid test) an ethical-philosophical, andbecomes a margin of appreciation doctrine of all the laws that exist.The forming laws and regulations when performing activities of law-making (legislation) should always be oriented, constrained, measured, assessed, and guided by the basic values of Pancasila, which these basic values are summarized in the principles of Pancasila, see Anis Mashdurohatun, Constructing And Developing The Social Function Principlesin Utilising Copyright Products Related To The Fundamental Rights, South East Asia Journal of Contemporary Business, Economics and Law, Vol. 7, Issue 4(Aug.) 2015.p.90. Pancasila is the main basic values which is as crystallization of various values that live in society. It is the soul of the nation (volksgeist) in society and nation of Indonesia which is the guiding star (leidstar) in the life of society, nation and state of Indonesia. Anis Mashdurohatun, Hayyan Ul Haq & Sony Zulhuda, Social Function Reconstruction Of Intellectual Property Rights (Ipr) Based On Justice Values, International Journal of Law Reconstruction Volume I, Issue 1, September 2017.p.141.

m. willing not to hold concurrent positions as other state officials, directors, commissioners, supervisory boards and employees at state-owned enterprises and / or region-owned enterprises and other bodies whose budgets come from state finances;
n. nominate only for 1 (one) representative institution;
o. nominate only for 1 (one) constituency; and
p. get minimal support from voters in the electoral district concerned.

The essence of individual DPD member candidates means non-political parties (not members or administrators of political parties). Incidents of DPD members joining a political party and the absence of non-political party provisions during DPD candidacy are not only contrary to the mandate of the constitution, but also increasingly obscure the essence of DPD as individual regional representatives. When compared with democratic countries in the world such as in the United States, which allow members of the senate to come from political parties but can carry out their mandate as regional representation properly, this is not completely justified.

In the political conditions and culture in the United States, the Senate in terms of the basis of representation, regardless of the issue of affiliation with political parties, can be said that a Senator must be based on territorial society. The elected Senate does not have a strong degree of loyalty to the party. This is partly because members of the senate get their positions by election in a state or district, not because of the leadership of the national party, nor because they are at Congress. On the other hand, for example, a country like Thailand, has its own political conditions and culture, which is different from the political context and culture of the United States, which makes this country have to strictly regulate that members of the Senate cannot come from political parties to ensure the functioning of senate members (as a regional representation) well in the political environment and culture of the country. This difference is due to the different *raison d 'etre* (reason for existence) and the background of each country to create an institution like the senate. Consequently, the political environment and political culture that allow a senate to function properly and adequately or impede the implementation of the functions of a senate also vary from country to country. Thus, each country must have its own way of encouraging the creation of a system that allows a Senate to function properly and adequately and eliminates systems that hinder the implementation of the functions of a Senate in that political and cultural environment.

In the context of Indonesia's current political environment and culture, the opposite is true. The people's representatives are trapped in a pattern of fighting for their personal and party interests. Thus, if in the United States or certain other countries members of the Senate originate or may come from a political party, this does not necessarily provide justification for the same case. In this case, DPD must have its own way of encouraging the creation of a system that allows DPD to function properly and adequately and to eliminate systems that hinder the implementation of DPD's functions in the political environment and political culture in Indonesia. One of them is to emphasize DPD prohibition on membership of political parties.

Thus, DPD members can act independently in carrying out their duties to represent the people in the context of regional interests without having a burden on any party in an effort to strengthen the Representative Body. So MPR must be designed to consist of DPR and DPD as state institutions, not consisting of members of DPR and members of DPD. This is very substantial, especially in joint decision-making, which must be seen in the existence of the institution, not the number of members, so that a balance is created in the two legislative chambers. The authority of the DPD in Article 22D of the 1945 Constitution relating to legislation, is only to submit a bill to DPR relating to regional autonomy (autonomy), central relations with regions, the formation / expansion / merger of regions, management of natural resources and other economic resources, as well as central and regional financial balance. This of course needs to be strengthened by the principle of equality in two chambers. Although DPD participated in discussing the bill (including being given the authority to oversee the implementation of laws related to regional autonomy and so on), the granting of this authority was only half-hearted. This is because DPD does not participate in determining the formation (determination) of the Bill as the spirit of legislative power. Strengthening DPD is not only in its "function" as a counterweight because it is directly elected by the people, the same as DPR members, but also in strengthening "structural", especially those related to personal protection (members) of DPD in the form of immunity rights of DPD members which are currently only regulated at the level of Law that is appointed to the constitutional level (UUD 1945). The existence of the chamber system (both unicameral and bicameral) in the people's representative institutions, its effectiveness is determined by the "balance of powers" between chambers in the implementation of parliamentary functions, such as the legislative function, budget function and supervisory function (including the representation function and recruitment of political positions). Of all these functions, it is the balance of legislative functions that is the central factor in strengthening the mechanism of the people's representative institutions, even as the implementation of the inter-chamber checks and balances mechanism. The mechanism for strengthening the role of DPD in the subsequent amendments to the 1945 Constitution is designed in two chambers for the proposal, discussion, and stipulation of a bill into law, which can be seen as follows:

a. DPR and DPD (including the president can submit a bill to DPR or DPD) submit a bill. The bill from DPR is submitted to DPD, and vice versa, to be discussed and approved, to propose changes, or even to reject the proposed bill.
b. If the bill is approved by DPR or DPD (jointly), then the bill is submitted to the president to be passed into law.
c. If DPR or DPD proposes a change in the proposed bill, DPR and DPD form a "Joint Committee" to discuss it. Conversely, if the bill is rejected by DPR or DPD, the bill concerned cannot be submitted again during the trial period at that time.
d. The President can refuse to pass (*veto*) a bill that has been approved by DPR and DPD.

However, a bill that was rejected by the president would become lawful if it was approved by at least 2/3 members of DPR and 2/3 members of DPD by determining the time limit for being passed. Based on Article 20 Paragraph (5) of the 1945 Constitution, the time limit for a bill that is not passed by the president to become law is thirty days. Another effort that can be taken to strengthen DPD is changing the recruitment system for DPD members. The existence of DPD on the one hand is to strengthen DPD with a direct election system to avoid misuse of the MPR as a political tool of authoritarian rulers.

On the other hand, the existence of DPD is to provide space for regions to be directly involved in the formation of central decisions. So that regional interests can be aggregated and articulated by the appointment and struggle of regional

problems at the center. The recruitment system that gives freedom to each individual to become a member of DPD, whether they come from a political party or not, has an impact such as people who represent regions in DPD are people who come from politicians or who are related to politicians so that they have more access to become a DPD member. In fact, not a few of the 295 members of DPD who were elected were people who did not acknowedge regional problems. Under these conditions, a change in the recruitment system is needed in which the elected DPD members are regional figures who have the capability and know the problems and what the regions need and want as constituents.

This can be reflected in the current condition where the freedom for each individual to run for the position of DPD member does not have a domicile requirement. Therefore, a selection system is needed for each individual to nominate himself as a DPD member. Some of the initial requirements that can be used in the selection process include:

a. Domicile requirements. Candidates for DPD members who become representatives of the region must be native or at least have become citizens of the area with proof of domicile in the area within a certain period of time.
b. Requirements for leadership of regional organizations / communities. With this requirement for prospective DPD members, before running as DPD members, the prospective candidates must have had a structural position in the regional community or organization in the area where the prospective candidate will run for DPD member who will represent the region.

By imposing special conditions in the selection process for candidates for DPD members, it is hoped that the candidates for DPD members will have the capability and knowledge of regional qualifications as provisions as members. The peak is being able to produce DPD members who are able to aggregate and fight for regional interests with great capabilities as the second chamber representing the region.

3. Strengthening Regional Autonomy

The concept of regional autonomy and patterns of governance in the regions have consistently followed theoretical developments, particularly in the relationship between the central government and regional governments.

In the context of state forms, there are something called the Unitary State and the Federal State. In the design of the Unitary State, it is formed and divided into several regions, so that the pattern of state power essentially rests with the central government, then the power is divided into regions. Article 18 Paragraph (1) of the 1945 Constitution affirms: "The Republic of Indonesia is divided into provincial areas and the provincial area is divided into districts and cities, each of which has a regional government, which is regulated by law". Whereas in a Federal State, such as the United States, the pattern of power is initiated by regions or states to form a state. Thus, the essence of state power comes from the regions, which are then handed over to the Federal (central) State. After the New Order government, the people challenged the existence of "centralization of power" and wanted a "decentralization of power or regional autonomy" pattern. The basis for regional autonomy is affirmed in Article 18 Paragraph (2) of the 1945 Constitution that: "Provincial, regency, and municipal governments regulate and manage government affairs themselves according to the principle of autonomy and assistance tasks". In various countries, similar demands have also occurred and constitute a pattern of government that is expected to bring government closer to the people. It can be seen in the four major countries in Latin America (Brazil, Argentina, Colombia, and Chile) which also carried out reforms by giving part of the power of the central government to local governments or the decentralization model with variation. Theoretically (Rondinelli and Cheema, 1983) designed several models of decentralization, as follows:

a. Deconcentration, which is a distribution pattern of administrative authority in government structures.
b. Delegation, which is the application of delegation of management authority and decision-making over certain functions given to organizations that are not directly under government control.
c. Devolution, which is devolving the functions and authorities from the central government to local governments.
d. Privatization, which is devolving some authority in planning and certain administrative responsibilities to private organizations.

The four models of decentralization above basically cover the meaning of the implementation of decentralization in the form of autonomy and assistance tasks. However, one aspect that needs to be appreciated and maintained is the phrase "autonomy" which will stimulate regional strengthening. Meanwhile, the word "decentralization" is a protector and its various variants may be an attempt to reduce the centralized model.

The proposal for amendments as a follow-up to DPD proposal (2004-2009 period) was carried out in August 2007 which had a dead end. The reason was because the crucial requirements in Article 37 Paragraph (1) of the 1945 Constitution are not fulfilled: at least 1/3 of the number of members of the MPR. The number of supports did not reach the minimum limit: 226 members of the total 678 MPR members for the 2004-2009 period. Although initially the number of supports was quite significant, this number continued to shrink along the way. The reason was because members of the large factions in the MPR who came from political parties were busy withdrawing their support, so that they did not meet the minimum limit for the agenda for the amendment trial.

At present, the number of MPR members for the 2009-2014 period is 692 people. So that to meet the minimum 1/3 requirement, 231 MPR members must be supported. The proposal for comprehensive changes is not only designed to strengthen DPD in an effective two-chamber (bicameral system). However, what is also very important is the strengthening of the presidential system, human rights, regional autonomy and central-regional government relations, management of natural and economic resources, as well as the systematics of the 1945 Constitution in accordance with the theory of constitutional formation. This shows that the state constitution as the basic law still needs improvement in line with the needs and development of the life of the nation and state. Theoretically, a country's constitution is not immortal (immortal constitution) which cannot be changed, moreover Article 37 of the 1945 Constitution allows changes to be made.[14]

Amendments to the 1945 Constitution are not easy, because Article 37 of the 1945 Constitution stipulates four stages that must be passed. First, proposals are submitted by at least 1/3 of the number of members of MPR. Second, the proposed amendment is submitted in writing and clearly indicated the part to be changed along with the reasons. Third, the session must be attended by at least 2/3 of MPR members (the current number of MPR members is 692, consisting of 560

[14]Marwan Maas, Menggagas Perubahan Kelima Undang-Undang Dasar 1945, Legal Journal PRIORIS, Vol . 3 No. I, 2012,p. 56.

DPR members and 132 DPD members). Fourth, amendment decisions must be approved by at least fifty percent plus one of all members of MPR.

The important agenda in the fifth amendment of the 1945 Constitution is how DPD plays a role in an effective bicameral as a consequence of the formation of two chambers in the legislative body.

So far, the existence of the DPD has been nothing more than an accessory to democracy in the representative system. If DPR often demands that DPD work and act first then demand additional powers, this is of course not accepted. What should be done if only proposing a bill or giving consideration, but not determining it? What DPD demands is not the interests of the current DPD members, but the interests of the people who inhabit the autonomous regions. [15]

Equalizing the authority of DPD with DPR is a necessity amidst the people's disappointment with th DPR, which often ignores the aspirations it represents when making regulations. Political parties with the majority of members of MPR do not shackle the hopes of the people, because DPD as a regional representative can cooperate with DPR in the legislative, budgeting and supervisory process. The inadequate authority of DPD has blurred the mechanisms for balancing and supervising the legislative process (checks and balances) which could lead to the delegitimization of political parties which continue to lose their credibility in the eyes of the people. It cannot be denied that there is public unrest over the less than optimal role of DPD. The positive correlation of effective bicameral by strengthening the role of DPD to be more rational and adaptive will bridge regional and central interests.

DPD will provide alternative solutions to the pattern of structuring the political system to strengthen the Republic of Indonesia while ensuring the implementation of regional autonomy. In the proposed amendments, DPD does not only function as discussant of the proposed bill, but also acts as a second chamber that will articulate regional political interests in any decision-making process. The president is given "veto power" against the bill that has been approved by DPR and DPD, and the president can even submit the bill to DPR or DPD. Designing a comprehensive amendment to the 1945 Constitution with an effective bicameral system is actually a necessity amid the people's hopes that DPD will act as a counterweight in the presidential government system. DPD must be positioned as an integral part of the bonding of the Republic of Indonesia and the process of healthy checks and balances in the life of the Indonesian state administration.

B. Ideal Construction for Strengthening the Function of the (Regional Representative Council) DPD through the Constitutional Convention

The Constitutional Convention are norms that arise in the life practice of the state administration. The Constitutional Convention can also be interpreted as a constitutional act that is carried out repeatedly so that it can be accepted and obeyed in constitutional practice, even though it is not a law.[16] According to C.F. Strong and K.C. Wheare, one way of changing the constitution can be reached through conventions. A convention or convention (of the convention), is often defined as a customary law rule regarding public law; unwritten customary law in the constitutional field. [17] Meanwhile, according to Bagir Manan, explaining the Convention or (law) constitutional habit is (law) that grows in the practice of state administration, completes, completes, and enlivens (dynamizes) statutory law principles or constitutional customary law.[18] The constitution is open for evaluation and refinement from time to time through political mechanisms. Of course, to amend and improve the constitution, besides being able to be developed through amendments or amendments as regulated in Article 37 of the 1945 Constitution, it can also be done through constitutional conventions, as well as by conducting a judicial interpretation (interpretation of the constitution). Thus, the role of the Constitutional Court in interpreting the constitution through constitutional cases can help to improve the deficiencies of the 1945 Constitution.[19] In the explanation of the 1945 Constitution, there is a description which states as follows: "The Constitution of a country is only a part of the basic laws of that country. The Constitution also apply unwritten basis that are arising and maintained basic rules in the practice of state administration even though not written"[20] Referring to the explanation of the 1945 Constitution above, it is appropriate if it is related to the meaning and nature contained in the convention of the constitution. Because the constitutional convention is not an unwritten basic law but rather basic constitutional habits. If given the predicate "basic law" (which is not written), then every activity of a state classified as such should have an instrument of coercion, and be followed by legal sanctions that can be imposed if it is violated.

However, the problem solely concerns the use of the term, because the substance of what is stated in the explanation of the Constitution means a constitutional convention. The constitutional convention that applies in constitutional practice in Indonesia. Some of them have been practiced since the beginning of independence, while there are also new things that have begun to transform into constitutional conventions. Apart from those that have been and are being transformed into constitutional conventions, there are also many proposals from experts in constitutional law who want the establishment of a constitutional convention because they are considered to address the needs of statehood. Not all of the ideas that propose the formation of constitutional conventions are considered new phenomena, but there are also old phenomena that are intended to become constitutional conventions.

[15]Ibid, p. 57. 300

[16] Ismail Suni, 1983, *Pergeseran Kekuasaan Eksekutif*, Aksara Baru, Jakarta, pp. 36.

[17] Fockema Andreae, 1983, *Kamus Istilah Hukum: Belanda-Indonesia*, Binacipta, Bandung, pp. 48.

[18]Bagir Manan, 1987, *Konvensi Ketatanegaraan*, Armico, Bandung, pp. 1.

[19] Jimly Asshiddiqie, Dalam acara Temu Wicara Mahkamah Konstitusi dalam Sistem Ketatanegaraan RI untuk Pimpinan dan Anggota Asosiasi DPRD Kota Seluruh Indonesia (ADEKSI), 2000, Jakarta.

[20]The whole explanation in The 1945 Constitutions were deleted. In Additional Rules in Apendix of the new Article II (Fourth Amendment, 2002) it is stated: " With the enactment of this amendment to the Constitution, the 1945 Constitution of the Republic of Indonesia consists of the Preamble and articles".

In addition to those that have been formed or which can be developed into constitutional conventions as stated earlier, there are other things that need to be considered to be developed into constitutional conventions. For example it concerns:[21]

1. Responsibility of the Vice President to the MPR

The problem starts with what if the vice president violates the "state policy" or the constitution. Is it natural that the vice president's deviant actions must be held accountable by the president even though the vice president is the same as the president appointed by the MPR. If the president must be dismissed because he is responsible for the vice president's actions, is it justified that the vice president who will replace the president? Because it is very natural for the vice president himself to be accountable for violations of state policy and / or the constitution to the MPR.

2. The participation of the DPR in the appointment of Ministers

Without reducing the president's freedom to appoint and dismiss ministers, it is necessary to think about ways that will strengthen the relations between ministers and the people. The minister is a political answer, therefore apart from expertise, common political views, a minister's political base also needs to be taken into account.

3. The results of the examination by the State Audit Board of Article 23 of the 1945 Constitution state that the results of the BPK examination are notified to the DPR. A similar provision is also contained in Article 5 paragraph (2) of Law No. 15 of 2006 concerning the BPK. According to Article 7 paragraph (3) Law no. 15 of 2006, if an examination reveals things that cause suspicion of criminal acts or actions that are detrimental to the state, BPK will report the matter to the competent authority What needs to be developed is an announcement to the people regarding the results of the BPK audit, because what is being checked is public money, whether it comes from natural resources or in the form of taxes and other levies. Therefore the people have the right to know the use of this money. Although the 1945 Constitution or other statutory regulations do not oblige the BPK to announce the results of the examination, practices can be found so that the people will know the results of the examination. This kind of practice will invite many positive aspects.

4. Implementation of amendments to the Constitution which have been approved by the people in a referendum. In contrast to what prevailed in several countries such as France (1958), the referendum in Indonesia has a unique character because it is not a condition for the effect of (effective) changes to the 1945 Constitution.

The Indonesian referendum merely agreed or did not agree with "the will of the MPR to propose amendments to the 1945 Constitution". Even if the MPR wants to hold a referendum and its intention to amend the 1945 Constitution is canceled, it is possible for the MPR to reject the result of the referendum. Thus, if we examine further the implementation of the state so far, there are various possibilities that can be developed into constitutional conventions. And making these various aspects into constitutional conventions in the future means strengthening the role and function in the development of Indonesian Constitutional Law. The main weakness that appears in the operation of constitutional conventions in the practice of the state is a matter of compliance with them. Customary constitutional rules that are maintained through constitutional conventions can be classified as political norms requiring state administrators to comply with them if a constitutional convention is still needed. Based on the description, it can be concluded that the constitutional life of the Republic of Indonesia according to the 1945 Constitution, apart from being implemented based on written legal principles, must also pay attention to and obey unwritten rules (law). With the exception of criminal law (Materiil) based on the principle of *nullum delictum noela puena sene lege ponale*, all areas of law accept the presence of unwritten (law) rules.

In constitutional law, the presence of unwritten rules (law) is very common, even constituting a unified system of constitutional law. In other words, constitutional law as a legal subsystem, is always equipped with unwritten rules (laws), it grows and develops side by side with written legal rules. The presence of unwritten rules (laws) is recognized as an important source of constitutional law. The development of conventions in other countries, such as the United States (US), as one of the countries that adheres to the common law system shows an interesting difference. The US is a democratic country where in its constitutional tradition it is filled with conventions (habits). Simply put, almost all constitutional processes in the United States do not have concrete norms governing them.

Starting from the primary election process, then the debate for presidential candidates, victory speeches, concession speeches, until the President speaks in front of all legislative and judicial powers known as the state of the union. All these traditions have no written rules, but until now the practice is still running and no problems arise. This also happens in other countries where the common law system is their legal system, such as England or Australia. Likewise in countries with a civil law legal system such as the Netherlands, there are still many constitutional traditions which are still maintained until now and are not regulated in written norms, such as the position of Prime Minister which will automatically be held by the highest leadership of the Party that gets the largest votes in general elections.[22]

The convention as one of the foundations or sources of constitutional law of the Republic of Indonesia raises the need to know its nature and details. As a country full of turmoil, having experienced several changes to the Constitution of the Republic of Indonesia has never had sufficient opportunity to organize a state government that is truly based on a constitutional system, so that certain traditions are formed which become the joints of a strong constitutional government. Therefore, it is deemed necessary to examine the convention as a source of constitutional law that can be utilized in the formulation of the state administration system of the Republic of Indonesia as a constitutional law state with people's sovereignty.

[21] Nike K. Rumokoy, Peranan Konvensi Ketatanegaraan Dalam Pengembangan Hukum Tata Negara Indonesia, Jurnal Hukum, Vol. XVIII/No. 4/Mei – Agustus/2010.pp. 18-19.

[22] Ahmad Gelora Mahardika, Konvensi Ketatanegaraan Dalam Sistem Hukum Nasional Di Indonesia Pasca Era Reformasi, Jurnal Rehts Vinding, Media Pembinaan Hukum Nasional, Volume 8, Nomor 1, April 2019, pp. 64-65.

Understanding the convention is also important to be able to distinguish it from unwritten constitutional law provisions such as customary constitutional law, especially differences in binding powers and procedures for their enforcement.[23] Constitutional amendments based on conventions do not mean to add, reduce, or replace the contents of the constitution, but only to change the implementation of constitutional principles in the practice of constitutional administration. Wheare also added that traditions and habits can last a long time or in a short time in the form of an agreement between the two parties (express agreement).

Wheare's conception of tradition and habit in some literatures is referred to as a constitutional convention. There are several examples of constitutional convention practices in the Republic of Indonesia, including: Pluralism in appointing ministers and Presidential Speech which is held every August 16 as an explanation of government policies that have been and will be pursued later.[24]

On one occasion, the Professor of State Administration at Parahyangan University in Bandung, Asef Warian Yusuf, stated that the constitutional convention is one of the alternative solutions to provide strong authority to the DPD in addition to formal amendments. The constitutional convention involving the DPD has occurred in the form of a state speech in front of a joint session of the DPR and DPD every August 16 (starting in 2010) by making the submission of financial notes and the socialization of the national development policy plan as the substance of the speech. The DPD through the DPD group in the MPR strives in each membership period so that recognition of the existence of the DPD as a representative institution that is equal to the DPR can occur so that it can make a positive contribution later to strengthening DPD authority.[25] In the system of accountability of DPD members to their constituents or the public, there is no governing regulation, so that the public or constituents are rarely informed about the performance of their representatives in the legislative body.

So far, the performance of DPD members has not become public consumption, but only in the form of performance reports. This of course cannot describe the performance of DPD members. The public also does not know what policies have been taken as a solution or a follow-up to community aspirations. a measure of the performance of DPD members which is only in the form of a report is of course not effective. This makes the recess period just a routine return to the regions where the results are poured into performance.[26]

Of all the strengthening efforts made, at least the DPD has implemented two levels of awareness, namely discursive and practical awareness. as described by Giddens discursive consciousness (discursive consciousness). Discursive awareness is an awareness that has a discursive form. Discursive awareness can be manifested through verbal expression by actors, about social conditions, especially about the conditions of their own actions. This can be seen from the striking difference between the powers of the DPD and the DPR, this is independence as a high institution.[27]

However, it must be admitted that strengthening the authority of the DPD through constitutional conventions based on this state speech has not provided maximum strengthening of authority. The functional aspect that is strengthened by the DPD based on the path of strengthening authority through traditions and habits is only related to the budgeting function considering the President as the organizer of power. There is another way, according to Wheare, which can be done is evolutive and gives a long time, is like through a short agreement (express agreement). Strengthening the DPD's authority through this route will be more effective if it is carried out by compiling a Joint Order Regulation between the DPR and DPD.[28]

C. Conclusion

There is a striking difference in legislative authority between the DPD and the DPR in a bicameral system, where the DPD has the right to propose the initiative to submit a bill, but the DPD cannot participate in determining the bill into law as regulated in Article 22D of the 1945 Constitution, while the DPR has a legislative function and veto rights, so that there is no balance between the functions and powers of legislation between the DPD and the DPR. The weakness that the DPD has in the bicameral system is that the inter-room relationship in the representative institution does not run in two effective rooms. Article 20A Paragraph (1) of the 1945 Constitution states that the DPR holds the power to form laws, thereby giving rise to superiority and providing a very strict demarcation line for the legislative function of DPR to DPD. There are three efforts that can be made in order to strengthen the legislative function of the DPD in the bicameral parliamentary system, namely; 1) Strengthening the Legislative Function of the DPD through Optimizing Duties and Authorities as a Representative Institution, 2) Strengthening the Legislation Function of the DPD through Judicial Interpretation, 3) Strengthening the Legislation Function of the DPD as a Representative Body with an Effective Bicameral System. The ideal construction is to strengthen the DPD function by realizing a Strong Representative Body Effective Bicameralism, namely by improving the functions and powers of the DPD so that there is balance and equality with the DPR. In order to achieve this, it is necessary to encourage the fifth amendment of the 1945 Constitution, particularly Article 22D of the 1945 Constitution. In addition, constitutional conventions can be developed in the practice of normative application in the field that is not common or through customary practice.

[23] JimlyAsshiddiqie, Dalam Acara Temu Wicara, Op., Cit.
[24] Bagir Manan, *Konvensi Ketatanegaraan*, Op.Cit, pp. 12.
[25] Donald Rumokoy, 2011, *Praktik Konvensi Ketatanegaraan Indonesia*, Media Prima Aksara, Jakarta, pp. 108.
[26]Tamsil Linrung, 2019, *Penguatan DPD Wujudkan DPD Berdaya*, Bibliosmia Karya Indonesia, Jakarta, pp. 139.
[27] Ibid
[28] Bagir Manan, *Konvensi Ketatanegaraan*, Op.Cit

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