



CALL FOR PAPER

OMNIBUS LAW OPPORTUNITIES AND CHALLENGES TOWARDS
ENTREPRENEURS AND LABOR : COMPARATIVE REVIEW

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Omnibus Law Opportunities And Challenges Towards
Entrepreneurs And Labor : Comparative Review

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Bismillahirrohmanirrohim

Assalamu'alaikum Wr. Wb.

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Pada seminar ini telah dipresentasikan hasil penelitian dosen dan mahasiswa yang diikuti oleh peneliti-peneliti dari berbagai universitas yang telah membahas berbagai keilmuan Hukum dan Humaniora.

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WEAKNESSES OF THE LEGISLATION FUNCTION OF THE REGIONAL REPRESENTATIVE COUNCIL IN THE BICAMERAL PARLIAMENT SYSTEM IN INDONESIA

Kelik Endro Suryono

Number : 10301700180

Abstract

In a bicameral system, the DPR should be the first chamber representing all the people of Indonesia (political representatives) and the DPD (Regional Representative Council) as the second chamber representing the regions / regional representatives that in the Republic of Indonesia. Based on the provisions of Article 2 paragraph (1) of the amended 1945 Constitution, the DPD does have a position equivalent to the DPR. However, both have unequal functions. Law Number 22 Year 2003 until now has been changed into the latest law, namely Law Number 2 Year 2018 into a series of representative institutions. In its journey, it turned out that the law could not accommodate the existence of the DPD as a regional representative institution. The constructivism paradigm is used to generate new ideas or theories about strengthening the legislative function of the Regional Representative Council in the bicameral parliamentary system. Meanwhile, the comparative approach is used in order to see the structure and function of the bicameral parliaments in several unitary states such as those in Britain, the Netherlands, France, Thailand and Japan. In the specifications of the research conducted is descriptive analytical. The method of data collection used in this research is literature study after the material or data is collected from various data sources and legal materials, the next step is data analysis. The work of data analysis begins with data reduction, namely summarization, data selection, and making categories based on problems and analyzing the normative content of legal products as a result of the 1945 Amendment and the ideas of the 1945 Amendment V that the DPD already has. The function of the DPD above if it is related to the function of a representative institution looks unusual because as a representative body, the DPD should be given a proper function, both in the field of legislation, supervision and budget. Furthermore, in the binding supervision, a representative institution is said to have a good oversight function if the representative institution is given the constitutional authority to exercise direct oversight of the government in carrying out government affairs. Later, if in carrying out such supervision the representative institution found indications that the government was violating the law, then the representative institution was also given the authority to follow up on its findings.

Keywords: *legalization function, regional representative council, bicameral.*

A. Background

The People's Consultative Assembly (MPR) consists of members of the People's Representative

Assembly (DPR) and members of the Regional Representative Council (DPD) elected through general elections and regulated by law, leading to the idea of overhauling the Indonesian representative system from a unicameral system to a bicameral system failed. In the bicameral system, the DPR should be the first chamber representing all the people of Indonesia (political representatives) and the DPD as the second chamber representing the regional representatives in the NKRI. This bicameral representative system, in addition to being practiced in federated countries, is also practiced in unitary states such as in the UK, the Netherlands, France, the Philippines, Thailand, Japan and others with the aim of maintaining integrity the territory of the country, protecting the ethnic and special interests of certain groups.¹ But to mention the representative system in the Republic of Indonesia with a two-chamber (bicameral) representative system is still questionable, considering that in the two-chamber (bicameral) representative system each room (chamber) has a balanced authority, which is carried out both jointly and individually. In addition, between the first room and the second room, there is an equal position between each other, both politically and legislatively.²

Based on the provisions of Article 2 paragraph (1) of the amended 1945 Constitution, the DPD does have a position equivalent to the DPR. However, both have unequal functions. The DPR according to the 1945 Constitution and Law Number 2 of 2018 has legislative, supervisory and budgetary functions and has various other authorities in determining the direction of national development policy. In contrast, the DPD has a very limited legislative function, a supervisory function and a budget function.

The logical consequence of the limited functionalities currently owned by the DPD, is that the DPD cannot play a large role in determining the direction of national development policies, including fighting for the aspirations and interests of the regions they represent at the national level so that regional interests in the past few years have begun to be ignored or can be ignored so only by the government. According to the author, the government can ignore the aspirations and interests of the region in the Republic of Indonesia in recent years, one of which is because the DPD as an official institution tasked with fighting for regional aspirations and interests at the national level has a very difficult and limited function.

In order for the DPD to always be able to fight for the aspirations and interests of the regions in the Republic of Indonesia, the DPD wants to strengthen its function in the Indonesian constitutional system. This was done by the DPD by proposing amendments to the provisions of Article 22D of the 1945 Constitution in 2007 to the MPR. However, the proposal received mixed responses from various groups in the community, Non-Governmental Organizations (NGOs) and members of the Republic of Indonesia DPR-MPR so that there were pros and cons. The pros and cons of the Fifth Amendment to the 1945 Constitution above finally caused the proposed amendment to the 1945 Constitution to be submitted by the DPD to fail. Article 22 C and D of the 1945 Constitution are the legal basis for the existence of the DPD as a regional representative. This article is manifested in a law governing representative institutions known as the MD3 Law (Law on the MPR, DPR, DPD and DPRD). It started with Law No. 22 of 2003 until now experiencing changes to the latest law, namely Law No. 2 of 2018 into a series of representative institutions.

In its journey, it turned out that the law could not accommodate the existence of the DPD as a regional representative institution. Some articles are considered to give more position to the DPR than the DPD, namely: the article on the DPR's examination which must obtain the approval of the DPR's Honorary Court, while the DPD does not, the article on sanctions for DPD members if six times in a row does not

1. Samuel C. Patterson & Anthony Mughan, 1999, *Senate: Bicameralism in the Contemporary World*, Ohio State University, p., 10.
2. Jimly Asshiddiqie, 1996, *Struggling the Role of the Government and Parliament in History: Study of Comparative Constitutions of Various Countries*, UI Press, Jakarta, p. 37.

attend the plenary session, while for the DPR the article was abolished, the article gave the DPR authority to prepare the budget, while the DPD was not given that authority. The role possessed by the DPD does not simply run without the right and authority to optimize its function. In addition, evaluation and accountability are also very necessary in the context of public accountability rather than mere reports. In the absence of more rights and authorities for DPD, the implementation of functions is not optimal. DPD tends to only absorb aspirations without being able to provide solutions, especially those related to legislation. Such conditions lead to discourse in society, it is better to dissolve the DPD than to maintain it as it is now.

Based on the background explanation described above, the problem that will be formulated with regard to strengthening the legislative function of the Regional Representative Council in the bicameral parliamentary system is as follows: How are the weaknesses of the legislative function of the Regional Representative Council in the bicameral parliamentary system in Indonesia?

C. Research Methodology

The paradigm³ used in this research is the constructivism paradigm,⁴ because this research is intended to produce a new thought or idea and theory about strengthening the legislative function of the Regional Representative Council in the bicameral parliamentary system. Meanwhile, the comparative approach is used in order to see the structure and function of the bicameral parliaments in several unitary states such as those in Britain, the Netherlands, France, Thailand and Japan. It is using the method of literature study and documents in the form of laws and regulations, especially the Constitution of the country concerned.

In the specification of the research conducted is descriptive analytical, which is describing a legal state as it is with the constructivist study paradigm, then by pouring it into a logical, systematic and comprehensive discussion. Data sources are all things that can provide information about data. Data sources in this study are:

- a. Primary Data is prioritized research data source, which is related to Strengthening the Legislative Function of the Regional Representative Council in the Bicameral Parliamentary System, while the data is sourced from statutory regulations namely the 1945 Constitution of the Republic of Indonesia before the Amendment, the 1945 Constitution The Republic of Indonesia after Amendment, Law No: 17 of 2014 concerning MPR, DPR, DPD, DPRD (MD3), Law Number 2 of 2018 concerning the Arrangement and Position of MPR, DPR, DPD, DPRD, Legislation relating to Issues examined, 85 MK Decision No. 79 / PUU-XII / 2014 concerning DPD's authority in the field of legislation.
- b. Secondary data is supporting data that can support the existence of this research, namely books, national journals, relevant international and statutory regulations that are relevant to this research.

The method in collecting data used in this research is literature study, which is collecting primary legal

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3. Thomas Kuhn, 2000. *The Structure of Scientific Revolution*, Indonesian Edition, PT. RemajaRosdaKarya Bandung and Liek Wilardjo, 1990. *Realitadan Desiderata*, Duta Waca University Press. Jogjakarta, and Ignas Kleden, 1987. *Scientific Attitudes and Cultural Criticism*. LP3ES, Jakarta, p. 20
 4. From the enlightenment era to the era of globalization there were four scientific paradigms developed by scientists, namely positivism, post-positivism, realism (critical theory) and constructivism (constructivism). The four paradigms are intended to discover the nature of reality or developing science. The difference of the four paradigms can be seen from the perspective of each of the realities used and the ways taken to develop scientific discoveries. Particularly in the three aspects involved, namely ontological, epistemological, 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, *Theory and Paradigm: Social Research A Resource Book for Qualitative Research*, Tiara Wacana. Yogyakarta, p. 68-72.

materials, in the form of laws, materials obtained from libraries in the form of books and legal documents and the results of previous studies. After the material or data is collected from various data sources and legal materials, the next step is data analysis. The work of data analysis begins with data reduction, namely summarization, data selection, and making categories based on problems and analyzing the normative content of legal products as a result of the 1945 Amendment and the ideas of the 1945 Amendment V that the DPD already has. The next step gives an overview of the formulation of the prospects of the DPD in the future representation system in Indonesia.

D. Discussion

1. Bicameral System

Basically, a two-chamber people's representative institution is a form of representative democracy consisting of two chambers or two councils. This form is a long process of organizing countries in various worlds. Since the inception of the idea of representative democracy, there has been a desire to create democracy that produces important decisions in the administration of the state. Bicameralism system is one of the classifications of parliamentary systems that exist in the world. In fact, an important function of the second chamber chosen on a limited basis is to serve a conservative attitude, that is, the aggressiveness of the first chamber, whose members are usually chosen more democratically. Another consideration is the desire to reduce the aggressiveness of the DPR (lower) in terms of current policy issues. A very important consideration is the importance of the second chamber to prevent corruption or power struggles by other institutions, by the executive or by special interests.

In the United States, the presence of the senate as a second chamber in the system of bicameralism is directed to conducive the situation to the existence of concerns in the practice of a single parliamentary system which tends to give rise to an oligarchy of power. This condition was realized by experts who seemed to cause intervention from upper house institutions in terms of the normal relationship of political responsibility with the lower, other democratic institutions and the executive. But this is a consequence of efforts to create a mechanism of checks and balances between institutions. According to Miriam Budiarjo, a unitary state that uses a two-chamber system (assemblies) is usually motivated by the consideration that one assembly can compensate and limit the power of other assemblies, it is feared that the one-room system presents opportunities for abuse of power, because it is easily influenced by political situations. The second chamber or chamber has less authority than the first chamber or chamber.⁵

C.F. Strong added that the existence of the second chamber could prevent the hasty and unplanned passage of laws by an assembly that felt its power was not limited especially in making laws, so that it would be possible to abuse power and tyranny.⁶ Then he also added that the second room would be meaningless and would not bring progress unless an attempt was made to find the following:

- a. The extent to which the upper house can maintain its real power.
- b. The extent to which the upper house elected can develop themselves and have power.
- c. In what way should a deadlock between the two houses be resolved if the power of the upper house is real enough to prevent the free action of the lower house.
- d. What is the position of the upper house if it is given power that is not given to the lower

5. Ad.Bryan A. Garner, Black Law Dictionary, (United States Of America, 2004), h, 319, Eighth edition

6. C.F. Strong, modern political constitutions : a translation of modern constitution (Bandung: Nusa media, 2008)p. 275, 2nd Edition

house⁷Furthermore, there may be two reasons why constitutional compilers choose bicameral systems. The first reason is to establish a-checks and balances mechanism and the second is to accommodate certain interests that may not be fully represented by the first assembly.⁸

2. Weaknesses of the Legislative Function of the Regional Representative Council in the Bicameral Parliamentary System in Indonesia

There are seven kinds of functions of representative institutions in the democratic constitutional system namely; the functions of legislation, the oversight function, the budget function, the function of political recruitment, the function of representation and communication, the function of electing public officials and the ratification of international agreements. But of the seven main functions there are three main namely the legislative function, the oversight function and the budget function.

- a. Legislative Function: One of the most important functions of representative institutions is to make laws which will be enforced in the midst of society so that representative institutions are also called legislative bodies or legislative bodies. In order to carry out the legislative function, representative institutions are given the authority to draft a bill, submit a bill called the initiative bill, the authority to discuss, amend and set the draft law into law, both independently and collectively togetherwith the government, depending on the principle of power in the country concerned. If the country adheres to the principle of absolute separation (separation of power), then the country has a presidential government system, then making laws in the country concerned becomes the full authority of representative institutions. Conversely, if the country adheres to the principle of power distribution (distribution of power) let alone the unification of power then the country has a parliamentary system of government, and the making of laws in that country is not only the responsibility of the representative institution, but also becomes a joint responsibility between the representative institution and government.⁹
- b. Oversight Function: Oversight functions are owned by representative institutions along with the development and transformation of democracy from direct democracy to representative democracy as a manifestation of people's sovereignty. In representative democracy, the people as holders of sovereignty are only represented by a handful or a small portion of people who sit in representative institutions whose job is to fight for the aspirations and interests of the people they represent.¹⁰This oversight function is shared by all representative institutions in democracies, both in countries that implement a parliamentary system of government and in countries that implement a presidential government system. Democratic countries that implement a parliamentary system of government such as Britain, Australia, Malaysia, and so on, their representative institutions (Parliament) have the authority to appoint or elect the head of government in the country concerned. Therefore, in a parliamentary democracy a representative institution has one of the tasks, namely to oversee the administration of the government.

7. Ibid.,hlm. 274

8. Ibid.,hlm. 16

9. See Syaifudun, 2006, the process of forming laws, the study of community participation in the process of forming laws in the Reformation Era, the Dissertation in the Law Doctoral Program at the Faculty of Law, University of Indonesia, Jakarta, pp. 153-154

10. In the Indonesian constitution, many legal products are made by the executive for its own interests, many of the stipulated laws are contrary to higher legislation. For more details, see Moh. Mahhd MD, 1999, Law and Pillars of Democracy, Yogyakarta, Gama Media, pp., 260. 35

- c. **Budget Function** The main source of state revenue comes from the source of taxes paid by the people to the state. Therefore, representative institutions whose records are filled out by people's representatives are given the authority to determine the state budget for income and expenditure based on the law at the beginning of each fiscal year or before that year's budget is implemented by the government. Determination of the state budget income and expenditure by representative institutions through the law is known as the budget function (budgeter).¹¹The function of the budget (budgeter) is carried out by the representative institutions by forming budget committees, budget bodies or budget commissions that function as government partners in drafting the state budget income and expenditure law in each development budget year. However, the reality shows that the drafting of the state budget in many countries, dominated by the government, is then submitted to a representative institution for approval before being implemented.

The function of the DPD above if it is related to the function of a representative institution looks unusual because as a representative body, the DPD should be given a proper function, both in the field of legislation, supervision and budget. In the field of legislation, a representative institution is said to have a legislative function that determines if the representative institution is given the authority to submit a bill, participate in discussing and establishing a bill into law, both independently and together with the government.¹²Then, in the field of budgeting, representative institutions can be said to have a strong budgeting function if the representative institutions are given the authority to discuss, amend and enact a state budget bill proposed by the government into law. Furthermore, in the bidding supervision, a representative institution is said to have a good oversight function if the representative institution is given the constitutional authority to exercise direct oversight of the government in carrying out government affairs. Later, if in carrying out such supervision the representative institution found indications that the government was violating the law, then the representative institution was also given the authority to follow up on its findings.

E. Closing

Since the inception of the idea of representative democracy, there has been a desire to create democracy that produces important decisions in the administration of the state. Bicameralism system is one of the classifications of parliamentary systems that exist in the world. C.F. Strong added that the existence of the second chamber could prevent the hasty and unplanned passage of laws by an assembly that felt that its power was unlimited, especially in making laws, so that it would be possible to abuse power and tyranny.

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12. Miriam Budiardjo, 2009, *Fundamentals of Political Science*, Gramedia, Revised Edition, Fourth Printing., Jakarta, p. 323-324

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