

Tripartite Institutional Mechanism in the Discussion of the Draft Law

Ari Wuisang¹⁾ & Roby Satya Nugraha²⁾

¹⁾ Faculty of Law, Universitas Pakuan, Indonesia, E-mail: ari.wuisang@unpak.ac.id

²⁾ Faculty of Law, Universitas Pakuan, Indonesia, E-mail: robysatyanugraha@unpak.ac.id

Abstract. *This article explores the emergence and implementation of a tripartite institutional mechanism in the legislative process in Indonesia, particularly following the Constitutional Court Decisions No. 92/PUU-X/2012 and No. 79/PUU-XII/2014. These rulings affirm the legislative role of the Regional Representative Council (DPD) alongside the House of Representatives (DPR) and the President, establishing a more balanced representation in drafting laws within specific areas. Using a normative juridical approach, this study analyzes the constitutional foundations, institutional practices, and comparative perspectives on bicameralism. The research identifies significant structural and functional disparities between the DPR and DPD, despite the formal recognition of the DPD's legislative rights. Although the DPD may participate in the first and second-level discussions of draft bills, it is excluded from the final approval stage. Moreover, DPD-initiated bills and proposed revisions are often ignored in practice, weakening its legislative impact. Drawing from comparative constitutional studies, the article highlights the typologies of bicameralism—ranging from perfect to weak—and situates Indonesia's model within the broader global context. The findings underline that a truly effective tripartite mechanism requires not only formal recognition but also practical and procedural adjustments to ensure power-sharing and institutional dignity. The authors recommend enhancing the DPD's authority through constitutional practices, internal institutional development, and greater political negotiation capacity to strengthen its legislative influence and create a more balanced parliamentary structure.*

Keywords: *Bicameral; Constitutional; Court; Tripartite.*

1. INTRODUCTION

The use of the term tripartite institution in the discussion of the Bill (RUU) began to be known after the issuance of the Constitutional Court Decision No. 92/PUU-X/2012 concerning the Testing of Law No. 27 of 2009 concerning the MPR, DPR, DPD and DPRD against the 1945 Constitution. In this decision, the Constitutional Court affirmed the legislative function of the DPD, which means that not only the DPR holds this function. Through its decision, the Constitutional Court re-established the authority to form laws owned by the DPD in accordance with the "original intent" of Article 22D paragraph (2) of the 1945 Constitution. Consequently, the DPD has a legislative function equivalent to the DPR as long as it is related to the field of law that is the authority of the DPD. Although this Constitutional Court Decision was then "overturned" by Law No. 17 of 2014

concerning the MPR, DPR, DPD and DPRD (MD3 Law) which replaced the previous Law (No. 27 of 2009), the DPD again submitted an application for the testing of Law No. 17 of 2014 to the Constitutional Court, and through Decision No. 79/PUU-XII/2014, once again, the Constitutional Court affirmed the legislative function of the DPD as in the previous Decision (No. 92/PUU-X/2012) (Alkadri, Riska, 2017).

The equality of legislative functions between the DPD and the House of Representatives constructed by the Constitutional Court includes planning the formation of laws (through the *prolegnas*), the submission of bills, and the discussion of bills (certain areas that are the authority of the DPD). All of these stages are held equally between the House of Representatives and the DPD. In the discussion stage of the bill, even the Constitutional Court allows the DPD to be involved not only in the discussion of level I, but also in the discussion of level II until before making a decision on mutual agreement between the House of Representatives and the President (government). Meanwhile, in the stage of mutual approval, of course, the DPD cannot be involved because the 1945 Constitution has expressly limited the authority of the DPD not to give approval to the bill.

In the discussion stage of this bill, what is called a three-institution or "tripartite" mechanism arises, namely the DPR-DPD and the President (government). The term tripartite itself was introduced by experts including Saldi Isra (Saldi Isra, 2025). There are also those who call it three-chamber legislation. However, in this article, the term tripartite is used. The emergence of tripartite institutions shows the side of equality between the DPD and the DPR and the President in the discussion of the bill. In the event that the bill comes from the House of Representatives, the House of Representatives provides an explanation, while the DPD and the President (government) provide views. Then, if the bill comes from the government, then the government provides an explanation and the DPR and DPD provide views. And so on (Saldi Isra, 2010).

The strengthening of the DPD in a tripartite institution through the Constitutional Court Decision brings a breath of fresh air in the implementation of the system of checks and balances through the practice of the legislative function among the three state institutions of the DPR, DPD and the President. Previously, the DPD was completely helpless because the MD3 Law normized the limited legislative function of the DPD, and made the DPD under the shadow of the DPR. In fact, Jimly Asshiddiqie, for example, said that the DPD is no more than a co-legislator of the DPR (Pan Mohamad Faiz, 2023).

The inauguration of the legislative function of the DPD by the Constitutional Court in accordance with the original intent of the 1945 Constitution, normatively has had a considerable constitutional impact, especially in the relationship of legislative power within the scope of the people's representative institution. However, it does not mean that the Constitutional Court's decision is a magic wand that can instantly make the positions of the DPR and DPD truly equal. In its implementation, there is still an imbalance between expectations in the text of the decision and the practice of legislation that takes place in the parliament building. This study tries to analyze these inequality and provide recommendations to map the ideal legislative function relationship between the DPR and DPD in accordance with the 1945 Constitution (Sori, Alirman, 2019).

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2. RESEARCH METHODS

This research uses a normative juridical method with a literature, legislation and case study approach. This data is obtained from a variety of legal sources, including statutes, government regulations, as well as academic literature and industry reports. This analysis was carried out using a descriptive method by examining the suitability of existing regulations and practices in the field with the potential for future development.

3. RESULT AND DISCUSSION

3.1. Structure of the Indonesian Parliament after the formation of the House of Representatives

The formation of the DPD through the third amendment of the 1945 Constitution raises legal issues regarding the structure of what people's representative institutions are embraced by Indonesia. According to Muchammad Ali Safaat, one thing that is certain is that with the existence of the DPD, the Indonesian parliament is no longer a parliament with a one-chamber structure (Muchammad Ali Safa'at, 2010). Related to that, some of the opinions that have emerged revolve around:

1. The structure of the Indonesian Parliament is one and a half chambers, as the legislative function of the DPD is very limited compared to the legislative function of the full DPR (Mahmuzar, 2019).
2. The structure of the Indonesian Parliament has entered a two-chamber (bicameral) structure which means that it has two separate parliamentary assemblies from each other. With the birth of the DPD as a separate parliament through the Third Amendment to the 1945 Constitution, the structure of the Indonesian parliament changed to two chambers consisting of the first chamber (the lower house), namely the DPR and the second chamber (the upper house), namely the DPD.
3. The structure of the Indonesian Parliament has three Tricameral chambers, with the MPR as the third chamber. The MPR is considered a separate chamber because it has its own duties, its own leadership and its own Secretariat General. For supporters of the bicameral structure, it is an exaggeration if the MPR is categorized as the third chamber because the functions of the MPR are not routine. Even if it is routine, there is only one function, namely inaugurating the President and Vice President, which is also done every 5 (five) years (Reni Dwi Purnomowati, 2005).

There is also an opinion that combines existing structural models, which says that the type of structure of the Indonesian parliament depends on which side it is on. When viewed formally, Indonesia's representatives are bicameral because they consist of the DPR and DPD and structurally have a tricameral structure because they consist of the MPR, DPR and DPD. However, it is practically a one-chamber structure because the full legislative power is in the House of Representatives.

Another opinion that is also a combination is put forward by Fatmawati by looking at the division of legislative functions in a narrow sense and in a broad sense. When viewed from the function of legislation in a narrow sense, namely the formation of laws, the structure of the Indonesian parliament is two chambers because only the House of

Representatives and the DPD are in direct contact with the formation of laws. Meanwhile, when viewed from the function of legislation in a broad sense, which also includes the formation of the Constitution (Constitution), the structure of the Indonesian parliament is three chambers, because only the MPR has the authority to form the Constitution. The author is more inclined to Fatmawati's opinion which is more appropriate to use the division of legislative functions in a narrow and broad sense in determining the structure of the chamber (Fatmawati, 2010).

In addition, DPD is placed as a separate chamber (assembly) because it has met three criteria in determining the room, namely:

1. Have authority according to the functions of parliament (*representative assemblies* and *deliberative assemblies*);
2. Have its own members, who are representatives of citizens of a certain category and certain selection methods;
3. It has its own institutional structure and its own rules about procedures in the institution.

Determining the parliamentary structure of a country whether it is bicameral (two chambers) or not using the criteria of the size of the authority of the first chamber and the second chamber is not an appropriate analysis. A common pattern that occurs in countries in the world is that the power of the second chamber is weaker than the first. Therefore, such a condition cannot be used as a measure that a country does not adhere to bicameralism. For this reason, experts such as Giovanni Sartori and Arend Lijphart have proposed various bicameral structures. Sartori, for example, stated that there are three bicameral classifications, namely:

1. Perfect bicameral (the power of the second and first chambers is equally strong or completely balanced).
2. Strong bicameral (the power of the second chamber is relatively (almost) balanced with the first chamber.
3. Bicameral is weak (the power of the second chamber is smaller than the power of the first chamber) (Giovanni Sartori, 1996).

Meanwhile, Arend Lijphart divides the bicameral criteria as follows:

1. Strong bicameral.
2. Moderate bicameral.
3. Bicameral between medium and weak
4. Bicameral is weak (Arend Lijphart, 2012).

From the above opinion, it appears that in a bicameral structure it is possible to have equally strong authority between the second chamber and the first chamber or not equally strong (the second chamber is weaker than the first).

3.2. The Relationship of the Legislative Functions of the DPR and DPD

The people's representative institution has several main functions, the most important of which is the legislative function. This function basically contains the authority of the people's representative institution to plan, propose, discuss and approve bills into law. In fact, according to Jimly Asshiddiqie and Miriam Budiardjo, the function of this legislation also includes the authority of the people's representative institutions to approve the ratification of international treaties (Jimly Asshiddiqie, 2006). In the Indonesian context, the functions of the people's representative institutions include the function of legislation, the function of the budget, the function of supervision and the function of nomination. Both the DPR and DPD have these three functions, although the functions owned by the DPD are not yet at the same level as the DPR (Omara, Andy, 2021).

Constitutional Court Decisions No. 92 and No. 79 as stated above have indeed strengthened the legislative function of the DPD, at least in the corridor of Article 22D paragraph (1) and Article 22D paragraph (2) of the 1945 Constitution. Outside of these two articles, the legislative function of the House of Representatives is above the DPD. This can be seen in the process of forming laws, among others. The DPR has the authority to reach the stage of mutual approval with the President, while the DPD only reaches the discussion stage. In addition, the DPR can propose and discuss all areas of law while the DPD can only propose and discuss laws in certain areas as referred to in Article 22D paragraph (2) of the 1945 Constitution. However, as mentioned above, the power of the first chamber which is greater than the second (asymmetrical) is common in the bicameral parliamentary system applied to the countries of the world. It is as stated by Arend Lijphart and Giovanni Sartori that it has become a common pattern in this world that the power of the second chamber is subordinate to the power of the first chamber (Kuncoro, 2024).

According to data from the *International Parliament Union*, today out of 188 countries in the world, there are 81 (eighty-one) countries that implement a bicameral parliamentary system. Not many of the countries with a bicameral parliamentary system use the classification of *strong bicameralism* or *perfect bicameralism* which has the characteristics that the first chamber and the second chamber have equally strong or relatively balanced power. In Arend Lijphart's research comparing 54 (fifty-four) democracies with bicameral parliamentary systems, for example, only 5 (five) countries have a classification as *strong bicameralism*, namely Argentina, Australia, Germany, Switzerland and the United States. The rest are bicameral who are medium or weak (<https://data.ipu.org>, 2025).

Meanwhile, Fatmawati's research which compared 22 (twenty-two) countries that implement the bicameral system, found two countries that have a classification as *perfect bicameralism* according to Sartori's classification, namely Brazil and Nigeria. Then if using the opinion of Arend Lijphart, it was found that 8 (eight) countries with an area of more than 500,000 km² and a population of more than 25 million people were classified as *strong bicameralism*, namely Argentina, Brazil, Colombia, Congo, Mexico, Nigeria, Pakistan and the United States. The rest are countries that adhere to moderate, weak, or even very weak bicameralism, which basically has a weaker power than the first chamber.

Therefore, looking at the above facts, if the authority of the DPD as the second chamber is not balanced with the first chamber (DPR), this is actually not strange, because not a few other countries are also experiencing it. However, with the imbalance of authority between the second chamber and the first chamber, the second chamber should be given compensation for authority in the form of the right to veto the bill to amend (revise) or consider the bill. If these rights do not exist, the second chamber is given the right to delay *the* bill that has been agreed upon in the first chamber. The right to delay is often the ultimate power of the second chamber if the right of veto and the right of amending do not exist (Zainal Arifin Mochtar, 2018).

The DPD currently does not have the above rights. However, ideally the DPD is equipped with one or more of these rights, because this mechanism is commonly encountered in the practice of bicameralism in other countries. However, in fact, the DPD implicitly has the right to amend (*revise*) the bill that is the area of authority of the DPD at the time of the first level of discussion, although this right feels weak because the DPR is the final decider whether or not to accept the proposed changes from the DPD through discussion meetings, either meetings with the equipment of the commission/legislation body or with the working committee (*panja*) (Suryono, Kelik Endro, Unissula).

For example, in the discussion of the Jakarta Special Region Bill (March 2024) which later became Law No. 2 of 2024 concerning the Special Region of Jakarta, the Legislation Body received a revision proposal from the DPD related to the officials who will occupy the position of Chairman of the Agglomeration Area Council. In the initial draft of the bill, the Chairman of the Agglomeration Area Council is automatically held by the Vice President. But then the DPD through its view proposed that the filling of the position of Chairman be left to the President to appoint who the person is (not always the Vice President). The revision of the DPD was well received by the Legislation Body which was then formulated into the provisions of Article 55 paragraph (3) of Law No. 2 of 2024, namely, "The Chairman and members of the Agglomeration Area Council are appointed by the President". However, there are also proposals for the revision of the DPD that are ignored, for example in the discussion of the Bill on Provinces and Regencies/Cities, the views and the Problem Inventory List (DIM) of the DPD are often ignored by Commission II of the DPR (Dewi, Geney Srikusuma, 2021).

By looking at the examples of the above practices, the legislative function of the DPD can be said to have contributed to the law-forming process, although not as strong as the DPR. This can be attributed to the opinion of George Tsebelis and Money that "the second chamber (such as the DPD in Indonesia) still plays its influence even though it is considered that its power is not as strong as the first, and the power relations between the two still show a certain degree of power-sharing..."

According to Arend Lijphart, talking about a bicameral parliamentary system (two chambers) does not always have to be fixated on the aspect of the power relationship between the two chambers that is balanced or unbalanced, but can also be seen from the selection method. The first chamber is usually always chosen through a general election, while the second chamber varies but is mostly not elected directly. The second room that was not chosen directly certainly had a thin legitimacy. In contrast to the second chamber that is directly elected, it will have a more real political influence and can even be a compensation to expand the limits of its authority.

Judging from this, the DPD whose selection method is chosen directly through the general election as well as the DPR is an advantage in itself. The direct election of DPD members is a strong legitimacy modality for the DPD to develop its political influence and also an opening of a Pandora's box for the DPD to expand the limitations of its authority through constitutional practices. However, the selection method through direct election is not enough. According to C.F. Strong, what the second chamber also needs to possess is the ability to develop itself and maintain its power. Without this, it is difficult to achieve further progress (C.F. Strong, 2008). Therefore, in the end, the skills of DPD members are also very necessary for how to have a strong bargaining position with the DPR.

In academic and practical discourse, there is also an opinion that the DPD is said to have no legislative function, because its involvement in the process of forming laws is only in the submission and discussion of bills and does not reach the final stage. This opinion has actually been refuted by the Constitutional Court's Decision as discussed above, because in the decision the Constitutional Court clearly affirmed the function of DPD legislation in the corridor of Article 22D paragraphs (1) and (2) of the 1945 Constitution. In addition, based on Fatmawati's comparative research, there are even countries adhering to the bicameral system whose two chambers of parliament do not have a legislative function but are still classified as bicameral, namely Egypt and Ethiopia.

The implementation of *strong bicameralism* in the structure of the Indonesian parliament which shows the characteristics of the balance of power between the DPD and the DPR is an ideal ideal (Safaraz, Azmi Mirza, 2021). In fact, in the initial idea of the formation of the DPD through the amendment of the 1945 Constitution, several factions in the MPR had conceptualized strong bicameralism. However, in its development, there was a dynamic of debate among the MPR factions which led to the weakening of the authority of the DPD so that it was not balanced with the DPR. As said by Dahlan Thaib and I Dewa Gede Palguna, the weakening of the authority of the DPD is deliberately carried out because if the DPD is given a strong function (balanced with the DPR), it is feared that in the future regional autonomy will be strengthened and can endanger the existence of the Unitary State of the Republic of Indonesia and it is feared that it will bring Indonesia to a federal state. In fact, according to Saldi Isra, this is an excessive fear.

3.3. The Efforts to Strengthen the Role of DPD in Tripartite Bill Discussion

Strengthening the authority of the DPD through the amendment of the 1945 Constitution is still a utopian ideal because unlike ordinary laws that can be programmed to be formed every year, the change of the Constitution is something that cannot be predicted. At one time, the amendment to the Constitution may be carried out smoothly, but at another time the amendment feels difficult. This is experienced by Indonesia. From 1999 to 2002, the 1945 Constitution was periodically amended every year and resulted in four amendments. But after running for 23 (twenty-three) years until 2025, there has been no change anymore (Darusman, Yoyon Mulyana, 2023).

Therefore, the DPD can only optimize the existing authority in the framework of strengthening the legislative function through the Constitutional Court's Decision. In the Constitutional Court's Decision, both Decision No. 92/PUU-X/2012 and Decision No. 79/PUU-XII/2014 as stated above have affirmed the equal function of legislation between the DPD and the DPR, at least within the scope of the formation of laws that

are the area of authority of the DPD. So far, the DPD has been involved in various discussions of the law. In the period 2022-2025, the DPD together with the House of Representatives and the government in a tripartite manner have discussed the Law on the State Capital and its revisions, the Provincial Law, the Law on Regencies/Cities, the Law on Special Regions of Jakarta and its revisions, the revision of the Law on the Election of Governors, Regents and Mayors (Marzuki, M., 2022). The discussion of the last bill was postponed due to the many rejections of the public (www.kompas.com).

However, in the implementation of the DPD's authority in the field of legislation as a whole, it is also not fully in accordance with the mandate of the Constitutional Court's Decision above.

1. Bills submitted by the DPD are often ignored or not followed up by the DPR. It is recorded that there are several DPD initiative bills that have not been followed up by the House of Representatives to date such as the Archipelago Regional Bill, the Bill on amendments to Law No. 11 of 2006 concerning the Government of Aceh, the Bill on the Fifth Amendment to Law No. 23 of 2014 concerning Regional Government. In 2023, the DPD through the fittings of Committee I has also initiated a Bill on the Special Region of Jakarta. However, during the tripartite discussion of the bill, what was used was the government version of the bill and the DPD version of the bill was not used as a comparison.

2. The Problem Inventory List (DIM) of the Bill and the Views of the DPD are often ignored during the discussion of the bill in a tripartite manner with the House of Representatives and the Government, for example in the discussion of the Provincial, Regency/City Bill and the revision of the Law on the State Capital.

3. The Constitutional Court's decision as described above allows the DPD to be involved until the second level of discussion until before the stage of making joint agreement between the House of Representatives and the President (government). Therefore, in fact, the DPD can still give its views at the second level of discussion before the joint approval of the DPR-President. But in reality, the DPD has never been included in the discussion of the bill at level II.

The three things above are actually the main problems in the current power relationship between the DPR-DPD. This certainly cannot be allowed to drag on. On the one hand, the DPR must respect the legislative function of the DPD as confirmed by the Constitutional Court's Decision, by giving the DPD its proper role in accordance with the mandate of the Constitutional Court's Decision. In this regard, Yusril Ihza Mahendra said that the House of Representatives and the Government must comply with the Constitutional Court's decision (Yusril, 2025). On the other hand, attributed to C.F. Strong's opinion above, the DPD must also be able to develop itself and maintain its power competence before the DPR. The acceleration team formed by the DPD to lobby the DPR so that the bills that have been initiated by the DPD so far can be passed in the discussion stage is a good first step. However, this team still needs to increase its dignity and prestige in front of the honorable members of the House of Representatives.

4. CONCLUSION

The DPR and the government must respect the legislative function owned by the DPD in terms of planning, submission, and discussion of bills as mandated in the Constitutional Court's Decision. Among them, the Constitutional Court is of the view that the DPD can

participate in the discussion of the bill that is its area of authority up to level II before the joint approval between the House of Representatives and the President (Government), so the practice of tripartite legislation should be able to run in accordance with the mandate of the Constitutional Court Decision. The House of Representatives as a people's representative institution with greater power than the DPD must have constitutional awareness to respect the legislative function of the DPD. Obstructing the legislative function of the DPD means the same as violating the original intent of Article 22D paragraphs (1) and (2) of the 1945 Constitution as interpreted by the Constitutional Court. Meanwhile, on the other hand, the DPD with the existing authority must also be able to develop its dignity and authority and maintain its power before the DPR.

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