

The Nature of Regional Representation in the Regional Representative Council According To the Indonesian Constitutional System

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Abstract: This research aims to explain, analyze and discover the essence of regional representation according to the constitutional system in Indonesia. Also, to explain, analyze and find the existence of members of the House of regional representatives as a form of regional renewal can be a representative of political parties. As well as to explain, analyze and find the electoral process of Regional Representative Council members in perspective can realize the values of people's sovereignty. This type of research uses normative legal research type. With this type of approach, the approach of legislation, the analysis/conceptual approach of law, the historical approach and philosophy approach. With legal materials sourced from primary legal materials, secondary legal materials, and tertiary legal materials.

Keywords: Regional Representation, Constitutional System

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I. INTRODUCTION

Indonesia's constitutional reform began when the amendment to the 1945 Constitution of the Republic of Indonesia hereinafter abbreviated (URI NRI 1945) after the New Order.¹The spirit of reform that has been raging since 1999, has created a climate conducive to the structuring of state institutions which in the New Order era were seen as less responsive to changing times. With the amendment of the 1945 Constitution the Republic of Indonesia has reformed State institutions, both at the legislative, executive and judiciary levels. The Constitutional Court, the Judicial Commission and the Regional Representative Council are state institutions which were only introduced in the 1945 Constitution of the Republic of Indonesia after the amendment.²

The formation of the Regional Representative Council hereinafter referred to as (DPD) is motivated by the desire to accommodate and accommodate regional aspirations while at the same time giving a greater role to the region in the process of making political decisions, especially in matters of principal and decisions of regional interests, as well as playing an active role and becoming an institution media balancer between center and region.³ The DPD is expected to be one of the chambers of the bicameral parliamentary system in the new format of Indonesian political representation. A unitary state that uses a two chamber system (assembly) is usually motivated by the consideration that one assembly can compensate and limit the power of the other assemblies, it is feared that the one chamber system provides an opportunity to abuse power, because it is easily influenced by political situations.⁴ Therefore there is a second room as an effort to create a mechanism of checks and balances between institutions.

DPD as an independent institution, because it is not a political party constituent, is absolutely necessary in order to realize equitable and equitable development in the Unitary State of the Republic of Indonesia and it is also necessary to improve the structure of the Indonesian constitutional system in order to realize checks and balances between State institutions.⁵

¹ Asshiddiqie, Jimly. (2004). *Format Kelembagaan Negara dan Pergeseran Kekuasaan dalam UUD 1945*. Yogyakarta: UII Press, p. 2.

² Manan, Bagir. (2004). *Perkembangan UUD 1945*. Yogyakarta: UII Press, p. 1.

³ Manan, Bagir. (2003). *DPR, DPD, dan MPR dalam UUD 1945 Baru*. Yogyakarta: UII Press, p. 53.

⁴ Purnomowati, Reni Dwi. (2005). *Implementasi Sistem Bikameral dalam Parlemen Indonesia*. Jakarta: Rajawali Pers. p 13.

⁵ D., Moh. Mahfud M. (2001). *Dasar & Struktur Ketatanegaraan Indonesia*. Jakarta: PT. Rineka Cipta, p. 32.

II. STATEMENT OF THE PROBLEM

1. What is the essence of regional representation according to the constitutional system in Indonesia?
2. How can the existence of members of the Regional Representative Council as an expression of the extension of the regional arm become a representative of political parties?
3. How can the process of selecting members of the Regional Representative Council effectively reflect the values of people's sovereignty?

III. THEORETICAL FRAMEWORK

A. Rule of Law Theory

It has been the commitment of the founding fathers of this country that Indonesia was established as a state of law (*rechtsstaat*) and not only based on mere power (*machstaat*). From a variety of existing literature on the rule of law, generally interpreted as a State where the actions of the government and its people are based on the law to prevent arbitrary actions on the part of the government (ruler) and people's actions carried out according to their own will.⁶

In general, in the theory of the rule of law, there are two kinds of conceptions about the rule of law, which consist of the concept of the rule of law in the sense of *rechtsstaat*, and the rule of law in the sense of the rule of law. The term *rechtsstaat* is known in Continental European countries, this understanding was developed among others by Immanuel Kant, Paul Laband, Julius Stahl, and Fichte. Whereas the rule of law, was developed in Anglo-Saxon countries, adherents of the common law, which was pioneered by A.V. Dicey is in England. However, basically the two conceptions have one similar purpose, namely the existence of protection of human rights, and respect for human dignity (the dignity of man)⁷

B. Democracy Theory

Departing from the theory of democracy basing power on the will of the people, if the power must be in accordance with or in accordance with the will of the people, according to Bagir Manan⁸ there are two notions of the will of the people:

- 1) The will of the whole people is called *volente de tous*.
- 2) The will of some people called *volente generale*. This means that the will of the whole people or *volente de tous* is only used by the whole people only once. That is when the State is about to be formed through community agreements. The purpose of *Volente de tous* is to provide a backrest so that the state can stand alone eternally, because all the people have agreed to it, if the State has been established based on community agreement, the agreement cannot be revoked. The will of some people or *volente generale* through the majority vote treatment after the State has been established so that the country can run.

1. Direct Democracy

Democracy in the formal sense is experiencing development, namely from direct democracy. As was done in the City State in ancient Greece, being an indirect democracy Indirect democracy is also called Representative Democracy, namely democracy carried out by people's representatives who sit in institutions/bodies of people's representatives.

Afan Gafar⁹ provides an understanding of democracy in two, namely Normative Democracy, which is an ideal thing to be done by a country, which is underestimated in the constitution of each country that prioritizes elements and principles of a democratic government and Empirical Democracy which prioritizes the influence the occurrence or implementation of the democratic government.

2. Indirect Democracy (Representative Democracy)

According to Thomas Meyer¹⁰, representative democracy fully entrusts decision making at the parliamentary level by elected representatives. Direct democracy will transfer as many decisions as possible to the sovereign people for example through plebiscites, referendums, popular opinion polls and people's decisions or return as many decisions as possible to the level of the local community. In a country where broad opportunities for the implementation of direct democracy are very limited. A plenary session that presents all the people is impossible. Plebiscites can only be done for a number of problems and only by preparing sufficient

⁶Adji, Oemar Seno. (1985). *Peradilan Bebas Negara Hukum*. Jakarta: Erlangga, in Indra, Mexsasai. (2011). *Dinamika Hukum Tata Negara Indonesia*. Bandung: Refika Aditama, p. 23.

⁷Djafar, Wahyudi. (2010). Menegaskan Kembali Komitmen Negara Hukum: Sebuah Catatan Atas Kecenderungan Defisit Negara Hukum di Indonesia. *Jurnal Konstitusi, Mahkamah Konstitusi RI*, 7(5), 151 – 174.

⁸Manan, Bagir. (1992). *Dasar-Dasar Perundang-Undangan Indonesia*. Jakarta: Ind-Hill Co., p. 3.

⁹Gaffar, Afan. (2002). *Politik Indonesia: Transisi Menuju Demokrasi*. Yogyakarta: Pustaka Pelajar, p. 3.

¹⁰Meyer, Thomas. (2003). *Demokrasi: Sebuah Pengantar untuk Penerapan*. Jakarta: Friedrich Ebert Stiftung, pp. 13 – 14.

time for most regional and national decision making that can be done is only representative democracy. But pure representative democracy often shows a tendency to ignore the will of the people and make identification and political participation of the people difficult.

C. Representative Theory

Mariam Budiarto said that in the context of modern theory representation is a mechanism of relations between the authorities and the people. So the relationship between the authorities and the people must be harmonious and must have full responsibility to the entire community in running the wheels of government, in order to create a balance in running the wheels of government¹¹. The sitting of a person in a Representative Institution, either by appointment or appointment or through a general election, naturally results in the emergence of a relationship between the representative and the person he represents, so that the relationship between the representative and the person he represents cannot be separated from the following theories:

a. Mandate Theory

The representative is considered to sit in the Representative Institution because he received a mandate from the people so that it is called a mandate.

b. Organ Theory

This theory explains that the state is an organism that has the means of equipment such as the executive, parliamentary and has people, all of whom have a separate function and are interdependent on one another.

c. Rieker Sociology Theory

This theory explains that the Representative Institution is not a political building but a building of society. The voter will elect his representatives who are truly experts in the field of state and who will truly defend the interests of the voter so that a Representative Institution is formed from the interests of the interests of the community.

d. Objective Legal Theory of Duguit

According to this theory the basic relationship between the people and parliament is solidarity. People's representatives can carry out their state duties only on behalf of the people while the people will not be able to carry out their state's tasks without the support of their representatives in determining government authority¹²

1. Representative System

Since democracy is the main attribute of the modern state, representation is a mechanism to realize the normative idea that government must be carried out in accordance with the will of the people. The authority of a government will depend on its ability to transform the will of the people as the highest value above the will of the state.

In other words in accordance with the concept of democracy with a representative system, the people do not directly exercise their sovereignty, but are carried out by people's representatives who sit in the People's Representative Body. So the people represent their representatives who sit in the House of Representatives to determine the course of government (democracy with representation).¹³

With representative democracy, what is meant is that state officials, who in principle are elected by the people, exercise power, authority and function representing the interests of the people they represent, either in certain districts or as a whole.¹⁴

2. People's Representative System

The concept of people's representation continues to develop and has several different patterns in accordance with the system of government adopted by a country. At the outline there are at least two prominent concepts in Western thought about the system of representation, namely first; concepts related to the relationship between representative institutions and the government. In connection with this there are two developing concepts, namely, first; representative institutions are intended to curb and prevent the king's arbitrary actions towards the people. So the people's representative institutions as a means to limit the power of the king over the people, secondly, the institutions of the people's representatives are meant to replace the direct democratic system, so that through their representative institutions the community can participate in determining the problems of state.

¹¹Agustino, Leo. (2007). *Perihal Ilmu Politik: Sebuah Bahasan Memahami Ilmu Politik*. Yogyakarta: Graha Ilmu, p. 93.

¹²Kusnardi, Moh., & Saragih, Bintang Regen. (1995). *Ilmu Negara* (Revisi ed.). Jakarta: Gaya Media Pratama, p. 240.

¹³Mashudi. (1993). *Pengertian-Pengertian Mendasar tentang Kedudukan Hukum Pemilihan Umum di Indonesia menurut Undang-Undang Dasar 1945*. Bandung: CV. Mandar Maju, p. 9.

¹⁴Fuady, Munir. (2009). *Teori Negara Hukum Modern (Rechtstaat)*. Bandung: Refika Aditama, p. 134.

The second concept, related to the relationship of representative institutions with their people, which in this case developed two concepts, namely first; representatives who sit in representative institutions are not dependent on the will or instructions of those who choose them, meaning that the representatives are free to act and make national policies based on their own beliefs. According to this concept, the elected representatives are not only to defend/take care of the interests of their voters but for the interests of the people as a whole. England and France, as well as Germany, embraced this concept. Second; based on the theory of popular sovereignty which teaches that representatives in representative institutions are only intermediaries (the people's agents). Therefore the representatives must follow the instructions of their voters or the people. The United States is a follower of this second concept.¹⁵

D. Sovereignty

Sovereignty is an element of a country's existence. From the perspective of linguistic sovereignty can be interpreted as a supreme power over state, regional, and so on. In the context of the science of state administration, Parthiana states that sovereignty can be interpreted as the highest authority that is absolute, whole, round and cannot be divided and therefore cannot be placed under other powers. However, in the process of further development, there has been a change in the meaning of state sovereignty.¹⁶

Mochtar Kusumaatmadja said that sovereignty is an essential characteristic of the state, where the country is sovereign, but has its limits, namely the space for the highest powers to be inidimited by the borders of the country, outside of its territory the state no longer has such authority.¹⁷ In this regard, sovereignty is not held up as something round and whole, but within certain limits it is subject to restrictions in the form of international law and the sovereignty of other fellow countries. Thus a sovereign country is still subject to international law and may not violate or harm the sovereignty of another country. In connection with this, it can also be said that at present the sovereignty of the state is a remnant of the power held within the limits established through international law.

1. Population Sovereignty

The theory of popular sovereignty was born as a reaction to the theory of king's sovereignty which mostly produced tyranny and misery for the people. Jean Jacques Rousseau, Mr. Theory of People's Sovereignty, through the book "Le Contract Social" expressed the theory of community agreements (social contracts) which states that in a country, natural liberty has turned into a civililliberty in which people have their rights. People's power is the highest in this case through representation based on the most votes. According to Rousseau, the decision of the majority vote (majority) always represented the public interest. However, in reality, supported by the most votes no longer question the truth but rather question about winning or losing¹⁸

The principle of popular sovereignty is usually organized through two choices, namely through a system of separation of power or distribution of power. The separation of powers is horizontal in the sense that power is divided into functions that are reflected in equal and mutually equitable state institutions (checks and balances). Whereas the distribution of power is more vertical in the sense that the manifestation of power is distributed vertically down to the high state institutions under the institutions that hold the people's sovereignty.

Put simply, that sovereignty means "full power" and popular sovereignty means full power in the hands of the people. It's just that in line with Rousseau's theory of popular sovereignty, the sovereignty of the Indonesian people was not carried out but was handed over to the People's Consultative Assembly (MPR). So according to the constitution of the 1945 Constitution, the MPR is the Supreme State Institution, because the institution can be said to be a miniature (small incarnation) of all the people of Indonesia.

2. State Sovereignty

The concept of state sovereignty covers two contexts of understanding, namely internal and external understanding. In an internal sense, sovereignty as the highest concept of power known so far in the world of legal and political philosophy includes the teachings of God's Sovereignty (Theocracy), People's Sovereignty (Democracy), Sovereignty of Law (Nomocracy), and King's Sovereignty (Monarchy). Whereas in an external perspective, the concept of sovereignty is commonly understood in the context of relations between countries. In

¹⁵Tambunan, A. S. S. (1998). *Fungsi DPR RI Menurut UUD 1945 Suatu Studi Analisis Mengenai Pengaturannya Tahun 1966 – 1997*. (Disertasi), Sekolah Tinggi Hukum Militer, Jakarta, p. 45.

¹⁶Hadiwijoyo, Suryo Sakti. (2011). *Perbatasan Negara dalam Dimensi Hukum Internasional*. Yogyakarta: Graha Ilmu p. 8.

¹⁷Kusumaatmadja, Mochtar. (2010). *Pengantar Hukum Internasional: Bagian Umum* (Vol. 1). Bandung: Bina Cipta. P. 7.

¹⁸Asshiddiqie, Jimly. (1994). *Gagasan Kedaulatan Rakyat dalam Konstitusi dan Pelaksanaannya di Indonesia: Pergeseran Keseimbangan antara Individualisme dan Kolektivisme dalam Kebijakan Demokrasi Politik dan Demokrasi Ekonomi selama Tiga Masa Demokrasi, 1945 – 1980-an*. (Disertasi), Universitas Indonesia, Jakarta.

international relations, ordinary people talk about the status of an independent sovereign country in and out. Because, in practice relations between countries is absolutely necessary for international recognition of the status of a country which is considered independent and sovereign. Without recognition, a country which claims itself unilaterally as a country will find it difficult to participate in international relations¹⁹

Realizing this, the drafters and drafters of our country's constitution in 1945 also declared explicitly the principle of the sovereignty of the Indonesian state, both in the Preamble and in the articles of the 1945 Constitution of the Republic of Indonesia. Opening paragraph states:

"That the real independence it is the right of all nations and therefore the occupation of the world must be abolished because it is not in accordance with the fairy-humanity and fairy-justice".

3. Rule of Law

The rule of law that presupposes that the highest leader in a country is not a figure or figure, but a system of rules. Humans are only puppets from scenarios that have been compiled and agreed upon by presenting the puppets as cast.; leadership by the system, not by figures or by individuals.²⁰

In short, in a variety of state activities, law determines everything. Law is the commander, the law is a system of rules. What leads us is the system of rules, not people who happen to occupy positions. People who hold public positions come and go dynamically, but the rule system is steady and relatively fixed. Therefore, Substitution of people may not necessarily result in a change in the rule system. All persons who occupy positions and are legally given the authority to act on behalf of the state, must be obeyed by all relevant legal subjects or those concerned as long as the official carries out the laws and regulations accordingly and can be made a role model in his obedient attitude to the legal rules.

4. God's Sovereignty

In the idea of God's Sovereignty, supreme power is considered to be in the hands of God. God is seen as the source of all sources of human power in the world. Humans are only mere executors of God's will. It can be said that this understanding is known to exist in or by all the major world religions in history. Hinduism, Christianity, and Islam have the same experience in dealing with ideas about state power. God is first seen as the source of all human power, including in state affairs.

Theocracy is still relevant as long as its manifestation is related to the idea of popular sovereignty and/or legal sovereignty, not to the idea of king's sovereignty as in the monarchy system. The 1945 Constitution of the Republic of Indonesia, also can be said to embrace the understanding of God's Sovereignty or Theocracy, namely the Sovereignty of God Almighty whose manifestations are related to the ideas of People's Sovereignty and Legal Sovereignty. The Sovereignty of God Almighty in the formulation of the Pancasila and the 1945 Constitution of the Republic of Indonesia, has different characteristics from the Theocracy concept which is considered negative as in its understanding in Europe in the past where God's Sovereignty or Theocracy was manifested in the Kingdom System (Monarchy).²¹

5. General Election System

In accordance with the classical democratic theory of elections is a "Transmission of Belt" so that power derived from the people can be shifted into state power which then changes form into the authority of the government to carry out government and lead the people. According to Bagir Manan General election which is held in a period of five to 5 years is when or when the momentum shows directly and visibly government by the people. It was during the general election that all candidates who dreamed of sitting as state administrators and government officials also depended entirely on the will or desire of their people²² Therefore, the general election demanded by democracy is not just any general election, but the general election with certain conditions. Elections that do not meet these conditions are merely symbols that do not mean much for the development of democracy. Although the provisions of the existing legislation already provide these conditions, such as the terms direct, general, free, confidential which if carried out according to the meaning contained in it already guarantees the implementation of democratic elections, but what is needed is to improve the quality of elections from general elections to general elections, so that elections held the longer the better.

¹⁹ Asshiddiqie, Jimly. (2009). *Green Constitution: Nuansa Hijau Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*. Jakarta: PT. Raja Grafindo Persada, p. 107.

²⁰ *Vide* Yogyakarta sultanate government system which by Article 18B Paragraph (1) of the 1945 Constitution of the State of the Republic of Indonesia, a unity that is privileged and regulated by Law No. 13 of 2012 concerning Keistimewaan Daerah Istimewa Yogyakarta, State Gazette No. 170 of 2012. Additional State Gazette No. 5339.

²¹ Asshiddiqie, Jimly. (2009). *Menuju Negara Hukum yang Demokratis*. Jakarta: PT. Bhuana Ilmu Populer, p. 227.

²² Manan, Bagir. (1993). *Perjalanan Historis Pasal 18 UUD 1945: Perumusan dan Undang-Undang Pelaksanaannya*. Karawang: Universitas Singaperbangsa Karawang, p. 47.

Based on the definition of the constitution above, it can be understood that the 1945 Constitution of the Republic of Indonesia is a constitution in a broad sense. Because the 1945 Constitution of the Republic of Indonesia is not only a legal document, but also contains non-legal aspects, such as worldview, moral ideals, philosophical basis, religious beliefs, and political understanding of a nation.

6. The Principle of Community Representation in Political Institutions

The ideal type of democracy is realized in different degrees, through different constitutions. Direct democracy is a democracy that has the highest degree. Direct democracy can be characterized by the fact that regulators, as well as the executive and legislative functions, are carried out by the public in public gatherings or public meetings. This kind of practice is only possible in small societies and under simple social conditions. Therefore, in the opinion of Hans Kelsen and most political thinkers and other state administration, this kind of direct democracy no longer has a place in the concept of modern democracy which is currently being discussed by many governments in the world.

The most likely thing to happen is a democracy where the legislative function is carried out by a parliament elected by the people, and the executive and judiciary functions are also carried out through elections that are guaranteed validity under these conditions, Hans Kelsen expressed his opinion that a government is a "representative" because as long as the officials are elected by the people, then these officials are fully responsible for their voters. If then the government cannot be fully responsible for its voters, then this cannot be called "real representation".²³

7. Division of State Power

The theory of separation of power and distribution of power which constitutes one of the contents of the constitution as a foothold in the administration of the state is often called the system of administering the state. The ideas of separation of power and division of power have a very close relationship with the doctrine of trias politica. Trias politica is the assumption that state power consists of three types of power, namely: First, legislative power or the rule making law (rule making function). Second, executive power or the power to implement the Act (rule application). Third, judicial power or the power to adjudicate on violations of the Act (rule judgement function). Trias politica is a normative principle that these powers should not be left to the same person to prevent abuse of power.²⁴

John Locke in La Ode Husen²⁵, divided the power over: first, the power to form laws (legislative); second, the power to implement the law (executive); and third, federative power. From the affirmation of the separation of powers and the distribution of power, in reality it turns out that it shows that the way of power distribution carried out by Montesquieu is more acceptable. This is more because the federative power in various countries is now exercised by the executive through their respective foreign departments.

Therefore, in this reform era, aspirations to further limit presidential power were developed by applying the principle of strict separation of powers between the legislative and executive functions. Both the theory of the separation of powers and the theory of the distribution of power which have been explained earlier, are in fact closely related to the building of presidential government systems. This can be seen from the strict separation between the legislative body (parliament) and the executive (government) in the presidential government system. Furthermore, in this system determine the president as head of state as well as head of government, then the president and parliament are elected by the people directly, so that the president and parliament get the mandate from the people individually and both are open to be valued by the people, and the executive is not responsible answer to parliament.²⁶

The above is based on the views of John Locke and Montesquieu previously described. John Locke stressed that the long conflict between the king of England and the parliamentary body was resolved well through the separation of the king of England as the executive from the parliamentary body as the legislature. solved, and each has its own power. While Montesquieu, who observed the political situation in England, expressed his support for the British government system which had manifested a separation of executive, legislative, and judicial powers that differed from Bourbons' spotism, however, in the end Britain preferred to choose its form of government by using a Parliamentary System. Historically. described in great detail by Locke and Montesquieu has had a profound effect on the formation of the United States Constitution, which clearly

²³Kelsen, Hans. (2006). *Teori Umum tentang Hukum dan Negara* (RaisulMuttaiqien, Trans.). Bandung: Nusamedia& Nuansa, p. 409.

²⁴Soekanto, Soerjono. (2002). *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*. Bandung: PT. Citra Aditya Bakti, p. 151.

²⁵Husen, La Ode. (2005). *Hubungan Fungsi Pengawasan Dewan Perwakilan Rakyat dengan Badan Pemeriksa Keuangan dalam Sistem Ketatanegaraan Indonesia*. Bandung: CV. Utomo, p. 78.

²⁶Asshiddiqie, Jimly. (2005). *Hukum Tata Negara dan Pilar-Pilar Demokrasi: Serpihan Pemikiran Hukum, Media dan HAM*. Jakarta: Konstitusi Press, p. 8.

regulates the separation of powers between the executive, legislative, and judiciary bodies by using presidential government buildings.²⁷

IV. DISCUSSION

A. The Essence of Regional Representation According to the State Administration System in Indonesia

1. Quality of Regional Representation in Parliament

a. Type of Regional Representative in the Constitutional System

Regarding the type of people's representatives/regions, at least the types of people's representatives that can be developed, which can be carried out, are carried out by a representative of the people in carrying out their functions. First, maybe he acts as a trustee or guardian, he acts in his own voice for the benefit of the region. Then the other type is the type of messenger or delegate type, that the representative of the people/region must voice and inevitably make decisions according to the wishes of their constituents. In this case, it can be seen that the actual purpose of the decision taken by the representative of the delegate type is the interests of the constituents, then also the interests of the local, local interest, then the voice of justification or the attitude of the constituents.

A status is a position in a (social) system, whereas a role is a pattern of behavior related to that status.²⁸ DPD members are legal persons from positions that have the status or position as regional representatives whose role is to channel regional interests. What is meant by the legal person of the position is regarding person in the sense of law including human rights and obligations, personification, responsibility, birth and disappearance of those rights and obligations, organizational rights, limitations and authority.²⁹ The nomination of DPD members generally includes three important stages, namely (1) selection of candidates; (2) screening and selection of nominees; (3) determination of the candidates and their serial numbers.

The mechanism for the transfer of people's sovereignty through their representatives is through an election mechanism. The electoral system is the earliest means of determining the desired representation system. Therefore, to get the desired representative system will be determined by the election system.

Such implementation is important for several reasons. First, people's opinions or aspirations regarding various aspects of shared life in society are dynamic, and develop over time. Second, the conditions of living together in society can change, both due to the dynamics of the international world and due to domestic factors. Third, changes in people's aspirations and opinions can also be possible due to the increasing number of residents/people who are mature as new voters. Fourth, general elections need to be held regularly with a view to guaranteeing a change of state leadership, both in the legislative and executive fields.

b. Regional Political Interests in Parliament

Regional political interests are an integrated part of national interests, and national interests harmoniously summarize regional interests. Regional interests and national interests are not in conflict and are not disputed. Unfortunately, the spirit of regionalism and the need for regional interests are often confused with issues concerning federalism, which are seen as taboo for the development of a unitary state. There is an assumption that giving a great opportunity to the region in making policy means that it will compare the concept of autonomy adopted by Indonesia with the understanding of federalism. This issue has emerged strongly and continues to be exhiled in the constitutional amendment process that has become the basis for consideration in giving birth to the birth of the DPD-RI.

There are at least four basic principles that are the reasons why the DPD must be maintained and even its position is equal to the DPR.

First, the DPD membership has stronger legitimacy because it is elected directly by the people based on the mechanism of individual direct elections, and in order to further strengthen democracy in Indonesia, and strengthen the decentralized system through regional autonomy, the role of the DPD RI needs to be more empowered.

Second, the existence of DPD members is the political will of all people, to elect and have their regional representatives directly in parliament. Considering that Indonesia is a large country, both population and area with a variety of interests that are born by the multiethnic and multicultural nature of this nation, which requires representation not only on the basis of the population, but Indonesia needs a stronger bicameral system.

Third, there is a tendency for DPR members to represent the population and be elected to represent political parties that are less responsive to the aspirations and conditions of the region and its constituents. This is in line with the increasingly reduced function of political parties as an aspiration channel for the broad interests of the people, because political parties tend to place more interests in the management elites.

²⁷*Ibid*, p. 9.

²⁸Ali, Zainuddin. (2012). *Sosiologi Hukum*. Jakarta: Sinar Grafika, p. 57.

²⁹Atmadja, I Dewa Gede. (2012). *Ilmu Negara: Sejarah, Konsep dan Kajian Kenegaraan*. Malang: Setara Press, p. 4.

Fourth, the existence of the DPD as an effort to balance power and control the performance of representative institutions such as the DPR and other branches of power both executive and judiciary that will have enormous dominance and superiority in the constitutional system if not maintained by each other and a balancing institution.

2. The Existence of the DPD-RI According to the Rule of Law

a. Legal Relationship between Regions and their Representatives

A people's representative in his nomination is through a political party and must be a political party, as well as a senator (DPD member) whose nomination is through an independent and elected by the people to represent the region and fight for regional aspirations, then the first legal relationship owned by the representative is with the party concerned and for DPD members the first legal relationship is with the people through the regions they represent. Furthermore, by electing him as the people's representative and regional representative, it means that the people and regions have given him the mandate to fight for aspirations into public policy. This was motivated during the general election, which determines whether or not someone as a legislator or senator is dependent on the people's choice. This condition causes legal relations between the representatives and the people as their constituents.³⁰

DPD-RI membership for the first time was elected in the 2004 legislative elections, to date the number of DPD RI members is 136 people consisting of 4 people from 34 provinces. The peculiarity of this DPD structure, because its members are regional representatives from each province, there is no grouping of members (a kind of faction in the DPR), DPD members are independent people who are not from political parties or professional politicians but come from various backgrounds for example as lawyers, teachers, scholars, business people, CSO leaders or NGOs, as well as some DPD members who are former ministers, governors, regents/mayors, and others.

b. Strengthening Parliament Against the Authority of the DPD

The DPR and DPD RI actually can still work together, because an effective representation system basically holds the interests of the people by maintaining the principle of checks and balances between the roles of the two representative institutions in the formation of laws, budgets, and supervision.

The steps and efforts to strengthen internal and external authority of the DPD are **first**, institutional strengthening of the DPD in internal institutions in the form of improving work procedures and institutional structure of the DPD RI. **Secondly**, strengthening the capacity of DPD RI members in the institutional relations of the DPR RI, the government and regional governments. **Third**, capacity building in relation to constituents and all regional stakeholders through optimal absorption of aspirations. **Fourth**, improvement of communication strategies and opinion development, as steps for the strategic imaging of DPD RI as a state institution.

The idea of establishing a DPD within the framework of Indonesia's legislative system is inseparable from the idea of forming a two-chamber parliamentary or bicameral structure. With the bicameral structure it is hoped that the legislative process can be carried out with a double check system that allows the representation of the entire population in relative terms can be channeled on a broader social basis. The DPR is a political representation while the DPD reflects the principle of territorial or regional representation.³¹

Even though in reality, the basic idea of the formation was not realized because in the 1945 Constitution the Amendment stated that the DPD did not have the authority to make laws and only had special oversight authority in the area of regional autonomy. Therefore, its position is only supporting or auxiliary to the functions of the DPR in the field of legislation, or referred to as co-legislators. In this case, the DPD can concentrate more on the field of supervision, so that its existence can be felt its effectiveness by the people in the regions.³²

Therefore, it can be said that actually the DPD is not institutionally as a legislative institution. Its existence is only supporting the function of the House of Representatives, although it is related to legislative power, especially with regard to specific bills, but its function is not referred to as the legislative function.³³

In addition to the concept of a unitary state that underlies the existence of an important DPD, another reason is the implementation of national policies concerning the implementation of regional autonomy to the

³⁰ Asshiddiqie, Jimly. (2006). Partai Politik dan Pemilihan Umum sebagai Instrumen Demokrasi. *Jurnal Konstitusi, Mahkamah Konstitusi RI*, 3(4).

³¹ Asshiddiqie, Jimly. (2006). *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*. Jakarta: Konstitusi Press, p. 138.

³² *Ibid.*, p. 139.

³³ Asshiddiqie, Jimly. (2008). Hubungan Antar Lembaga Negara Pasca Perubahan UUD 1945. In *Diklatpim Tingkat I Angkatan XVII*. Jakarta: Lembaga Administrasi Negara, p. 22.

broadest possible extent.³⁴ The trend is actually not only based on the internal conditions of the Indonesian state administration that want to move from the regime and authoritarian system of the new order era, but more than that, which is bringing the government closer to the people. The demands of external conditions that require improvement in the system and performance of local governments so far encourage the desire to be able to compete with other developing countries. This condition has actually placed the DPD as a state institution that is very capable of helping regions realize these changes and adaptations by bringing regional interests and needs (agenda setting) to the national level.

B. The Existence of Members of the Regional Representative Council who are Members of Political Parties

1. Position of Members and Power of DPD

a. DPD Members as Regional Representatives Elected by the People

Once again it is said, that the DPD does not have the authority to decide on the laws proposed and discussed by the DPD with the DPR in areas related to the authority of the DPD, where in deciding laws relating to the area of authority the DPD is still in the realm of the DPR. Therefore, its position is only supporting the function of the DPR in the field of legislation, or referred to as a co-legislator.

With that almost non-existent authority, it is natural that many parties later say that the existence of the DPD is nothing more than the DPR expert staff whose task is to provide input and consideration without any political implications for the interests they represent. The initial philosophy that the regional representative institutions are able to function as a counterweight to both executive and legislative power is very difficult to realize.

Regional interests mandated by the DPD in practice are not integrated into the realm of decision making in national legislation. From there it can be seen how the DPD is marginalized politically and constitutionally. Whereas the interests of the regions should be fought for proportionally by giving a legitimate role and having constitutional juridical implications in every decision-making and national policy that has direct implications on the regions. With such conditions, the DPD is nothing more than an accessory or a complement to sufferers in parliamentary politics in Indonesia.³⁵ Not to mention the internal conflict within the institution, and made worse by the migration of dozens of DPD members to political parties. This was deemed incompatible with the main objective of establishing the DPD as regional representation that was not affiliated with the interests of certain political parties. This will further erode public trust in the institution. From the inside alone there has been no attempt to seriously empower this institution.

Clarity of functions, the role of state institutions will be increasingly absurd. Therefore, the position of the DPR RI and the DPD RI should have equal authority, functions and rights so that weaknesses in one room can be covered by the massive performance of the DPD RI in other rooms. The democratic model that we are adopting today should provide more space and high respect for the interests and participation of local communities. Because this principle should underlie the spirit to build democracy in the context of a plural society.

An effort to provide local people with articulation and greater political participation to develop themselves. Thus the bicameral system must be implemented effectively (strong) in an effort to answer the problem of the lack of public political control that was only once carried out by the Indonesian Parliament. It is time for the DPD RI to be expected to become a new alternative capable of bringing political change nationally. For this reason, strengthening the DPD RI needs to have the support of all national stakeholders from various strategic groups such as non-governmental organizations, local organizations, educational institutions, and so on. Thus, the future of democracy in Indonesia can be more promising in the arena of parliamentary politics through the bicameral system.³⁶

b. The Granting of the Authority of the DPD in Amending the 1945 Constitution

Indonesia, according to Bagir Manan, is oriented to the United States with the presence of the DPD as regional representatives and the House of Representatives as representatives of the population such as the Senate (State representative) and the House of Representatives as representatives of all Americans, but in reality the authority of the two is different even though the DPD and the DPR are elected by the people directly should have the same authority in the field of legislation not only to submit bills relating to the regions, but also those

³⁴VideLaw No. 23 of 2014 concerningPemerintahan Daerah, State Gazette No. 244 of 2014. Additional State Gazette No. 5583.

³⁵Marzuki, Masnur. (2008). Analisis Kontestasi Kelembagaan DPD dan Upaya Mengefektifkan Keberadaannya. *Jurnal Hukum Ius QuiaIustum, Universitas Islam Indonesia*, 15(1), pp. 81 – 100. doi: <https://doi.org/10.20885/iustum.vol15.iss1.art7>

³⁶Jaweng, Robert Endi, Siahaan, Henry, Armanjaya, Lexy, &Adinabung, Adrian. (2005). *Mengenal DPD-RI: Sebuah Gambaran Awal*. Jakarta: Institute for Local Development (ILD), p. 79.

that are public, participate in discussing and deciding, and have the right to refuse bills deemed to be detrimental to the regions. Though the reason for the existence of the DPD is to improve the dynamics of democracy, accelerate development, and regional progress. Even to involve the regions in formulating national policies for the interests of the State and regions, with the DPD's authority under the DPR, the DPD will not be able to do much with the limited authority.³⁷

The hope for the future is that the bicameral system or the two-room system can bring benefits to the nation and the state by giving greater authority to the DPD so that it is in the same position as the House of Representatives (DPR), especially in the legislation process. This hope will be realized if political actors want to respond to the regional aspirations of the DPD, which has a very weak position in the field of legislation to make changes to the 1945 Constitution, which again concerns the authority of the two legislative bodies of the DPD and the DPR.

Unequal authority between the DPD and the DPR in the field of legislation, especially in the 1945 Constitution because of the political power in the MPR, does not agree to give the same authority. This is not the same as the initial purpose of establishing the DPD and the proposal of the expert team of PAH 1 BP MPR namely pure bicameral whose two chambers have the same legislative authority. As a result, the demand for the fifth amendment was always urged by the DPD as an effort to empower itself. It's just that it needs to be realized that to amend the 1945 Constitution is not easy so it is said to be "an important but not strategic step", ultimately changing the 1945 Constitution as a constitution whose requirements are relatively difficult, except if political forces want no problems, such as the 1945 Constitution which was sanctified by the new order. However, after political forces have agreed to an amendment, the 1945 Constitution can also be amended.

2. The Influence of Political Parties in the DPD-RI

a. Differences in Authority of the DPD and the DPR as a Representative Institution

The DPD RI is part of the spirit of democracy through strengthening regional autonomy. The DPD RI was formed in the hope that it would become a place for regional participation in national life, therefore DPD RI members were chosen based on the province, not political parties. So it is unfortunate if the DPD RI is politicized by party interests. Whereas its existence is expected to be able to supervise and fight for the aspirations of local communities.

The MPR RI which before the Amendment consisted of Members of the DPR, Regional Envoys and Group Envoys was completely overhauled to suit the spirit of reform, including:

First, all members of the MPR RI must not be appointed, all of them must be products of the general election;

Second, as a consequence, the Group Envoys and Regional Envoys who were previously appointed by the President as the Head of State were removed from the membership of the Indonesian MPR. And at the same time it emphasized the difference between the MPR and the DPR. MPR is a place and forum for deliberation for all elements of the nation and state, a place for deliberation of the combined strength of party-based political elements and the strength of non-party-based political elements;

Third, a new institution was formed as a State High Institution, namely the Regional Representative Council (DPD) which is different from the People's Representative Council (DPR) from all aspects, in particular the different colors of interests. DPR is practically a political party, DPD is a political practical non-party;

Fourth, the difference is that if the DPR is a people's representation, the DPD is a regional representation so that each region/province has the same number of DPD members, not taking into account the province's population at all. Central Java with a population of nearly 40 million has the same DPD membership as West Sumatra with a population of 6 million. It is different from the DPR which is a political force in which each region has a different number of representatives in the DPR.

Fifth, it was decided to ensure that every region in Indonesia was equal and equal, and that voting could not win regionally based ego-based votes because it relied on more votes;

Sixth, the existence of the DPD which is a representative of regional power is to balance the strength of the DPR which is the practical political party representative of the party.

The DPD focuses on representing and fighting for the regions while the DPR focuses on representing and fighting for constituents. And together the DPD and DPR are MPR Members. The DPD in the MPR can be said to replace the interests of the Group and Regional Delegates in the RI MPR, but unfortunately the amendment does not explicitly regulate DPD members to be independent of political parties and the amendment also does not give authority to the DPD which is equivalent to the DPR. Even just to discuss the Law on DPD, the DPD does not have voting rights, only the right to speak.

³⁷Manan, Bagir. (2003). *Op. Cit.*, p. 28.

b. Independence of DPD RI Members is a Form of Regional Representation

The Indonesian State representative system initiated the existence of a new State institution which was realized in the third amendment of the 1945 Constitution of the Republic of Indonesia, which included the DPD RI as a State institution that had the mandate to represent regional interests or regional representation.

Before registering as a candidate for DPD RI candidate, the candidate is obliged to resign from a political party so that concerns about political intervention from the party will disappear, besides that the Constitutional Court has also issued a ruling regarding this matter, where the Constitutional Court which prohibits members of the Political Party from concurrently position as member of DPD RI number 30/PUU-XVI/2018. This decision certainly affects the members of political parties who have registered themselves as candidates for the DPD RI 2019-2024 period to the KPU. Regarding this, the Constitutional Court asked the KPU to provide an opportunity for them to keep running for office on condition that they officially resign from the management of political parties.

According to the author, after the decision of the Constitutional Court Number 30/PUU-XVI/2018 that the DPD institutions could no longer be filled by representatives of political parties. That way, the people who fill the DPD institution must be figures that are far from political interests and outside political parties for the people of this decision really become the guardian of the 1945 Constitution.

In the constitutionalism of modern countries, where the administration of government is based on a representative democratic system, it always demands the representative to walk on the pillars of nationalism, so that the representative must always prioritize the interests of the people that are broader than the interests of individuals or groups. Thus, representative institutions become important for democratic governments, but they are not identical with democracy itself. Because representative institutions can not function, and only nominal values. Democracy does not only depend on the existence of representative institutions, but as far as institutions are concerned the most important thing is how the institution was formed and how it was formed and how the institution in question works.

C. Election of Members of the Regional Representative Council in Realizing the Values of People's Sovereignty

1. The Representation System in Indonesia According to the 1945 Constitution of the Republic of Indonesia

a. Representative System After the Amendment to the 1945 Constitution of the Republic of Indonesia

As a political product, the 1945 Constitution of the Republic of Indonesia contains the highest political decisions, which are the crystallization of the nation's political thoughts that will guide the nation's direction. And as a value system, the 1945 Constitution of the Republic of Indonesia also contains beliefs, principles, and noble ideals of the nation that are to be realized.³⁸

The constitution is the basis and main reference in carrying out people's sovereignty. The rules in the 1945 Constitution of the Republic of Indonesia that regulate and divide the exercise of people's sovereignty to the people themselves and/or to various state institutions. The position of each state institution depends on the authority, duties and functions given by the 1945 Constitution of the Republic of Indonesia.³⁹ In addition, it is also necessary to review the substance or implementation of the implementing regulations that exist under the 1945 Constitution of the Republic of Indonesia.⁴⁰

Based on the provisions of Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the 1945 Constitution of the Republic of Indonesia is the highest legal basis for the implementation of people's sovereignty. This means that the people's sovereignty is carried out by all constitutional organs with their respective functions and authorities based on the 1945 Constitution of the Republic of Indonesia. People are sovereign over their form, and all state power comes from the people. The state gains the trust of the people in exercising state power, with limited powers whose functions are also limited. Thus the sovereignty remains in the hands of the people and its implementation is directly distributed functionally to constitutional organs.

b. The Existence of Representative Institutions as State Institutions

Representative institutions or parliaments are called by various terms in accordance with the language used in each country. The shape, composition, position and authority also varies according to the development needs of each country. But in general, the people's representative institution was initially seen as an absolute representation of citizens in order to participate in determining the course of government. What is decided by parliament is what is considered the decision of the sovereign people.⁴¹

³⁸Fatwa, A. M. (2009). *Potret Konstitusi: Pasca Amandemen UUD 1945*. Jakarta: Kompas, p. 34.

³⁹*Ibid.*, pp. 46 – 47.

⁴⁰*Ibid.*, p. 34.

⁴¹Asshiddiqie, Jimly. (2008). *Pokok-Pokok Hukum Tata Negara Indonesia: Pasca Reformasi*. Jakarta: PT. Bhuna Ilmu Populer, p. 153.

This resulted in a representative system adopted after the changes to the 1945 Constitution could not be said to be a bicameral system as conceived, but a system of representation with three State institutions at once, namely the MPR, DPR and DPD.⁴² This can be justified because of the existence of the MPR as a separate institution in addition to the DPR and DPD. The 1945 Constitution of the Republic of Indonesia itself still authorizes the MPR separately from the authority of the DPR and DPD.⁴³ Thus the position of the three state institutions are equal to each other. The existence of the MPR itself is a separate forum for the DPR and DPD to make decisions outside the authority of the DPR and DPD itself.

The DPR runs the legislative function (forming the UU), and so does the DPD, although it has a limited legislative function, it can be said in terms of the legislative function that the Indonesian state adheres to a "bicameralism" representative system, but because the legislative function of the DPD is limited, it only proposes the proposed Draft initiative (Certain) laws, especially in the area of regional autonomy, so that the Indonesian bicameralism system is called "soft bicameralism" (soft bicameralism) as opposed to "strong bicameralism".⁴⁴ Thus the bicameral representation system adopted by the Indonesian representative institution is a soft bicameral system.

2. The Political System Approach in Carrying out Democratic Elections

a. The History of General Elections in Indonesia

Since independence in 1945, the State of Indonesia has held 12 general elections. Starting from the first election in 1955 until the 2019 election. The following is an explanation of the election journey in Indonesia from time to time and the results of these elections:

- 1) Election in 1955. (carried out based on Law Number 7 of 1953)
- 2) Elections in 1971 (conducted based on Law Number 15 of 1969)
- 3) Elections in 1977 (Held based on MPR Decree Number VIII/MPR/1973 concerning General Elections)
- 4) Elections in 1982 (Held based on Law No. 2 of 1980) Regional and delegate delegates are present.
- 5) Elections in 1987 (Held based on Law No. 2 of 1980) There are regional and group delegates.
- 6) Elections in 1992 (Held according to Law No. 2 of 1980) Regional and delegate delegates are present.
- 7) Elections in 1997 (Held based on Law Number 5 of 1996). There are regional and group delegates.
- 8) Elections in 1999. (Held based on Law Number 3 of 1999) the DPD is not directly elected.
- 9) Elections in 2004 (carried out based on Law Number 12 of 2003). The DPD is elected directly in conjunction with the DPR.
- 10) Elections in 2009, (carried out based on Law Number 10 Year 2008), the DPD is elected directly in conjunction with the DPR
- 11) In the 2014 elections (conducted according to Law Number 8 of 2012), the DPD was elected directly in conjunction with the DPR.
- 12) Elections in 2019 (held based on Law Number 7 of 2017), the DPD is elected directly in conjunction with the DPR.

In the political system approach, society is the main concept because the political system is only one of the structures that build society such as the economic system, social and cultural systems, belief systems and so forth. The political system itself is an abstraction (reality raised to the realm of concepts) around the distribution of values in society.

b. Electoral System and its Application in Indonesia

In popular sovereignty with representation, or democracy with representation (representative democracy), or indirect democracy (indirect democracy), those who exercise sovereignty are people's representatives. The people's representatives act on behalf of the people, and it is the people's representatives and regional representatives who determine the style and manner of governance, and what goals are to be achieved both in a relatively short period of time, and over a long period of time. In order for these representatives to truly act on behalf of the people/region, the representatives must be determined by the people themselves. And to determine it is usually used by the electoral institution.

So the general election is nothing but a way to choose people's representatives (legislators) and regional representatives (senators). And therefore for a country that calls itself a democracy, elections must be

⁴²Yuhana, Abdy. (2007). *Sistem Ketatanegaraan Indonesia Pasca Perubahan UUD 1945: Sistem Perwakilan di Indonesia dan Masa Depan MPR RI*. Bandung: Fokus Media, p. 148.

⁴³Nazriyah, Riri. (2007). *MPR RI: Kajian terhadap Produk Hukum dan Prospek di Masa Depan*. Yogyakarta: UII Press, p. 332.

⁴⁴Atmadja, I Dewa Gede. (2012). *Op. Cit.*, p. 113.

held at certain times.⁴⁵ The purpose of holding elections is to realize democratization, realize people's rights, and realize people's participation in politics to carry out political education and political development in society.⁴⁶ This is in accordance with the understanding of representative democracy which bases its existence on the principle of representation on the basis of election (representation by election). With all members of the DPR and DPD elected through elections, democracy is growing and the legitimacy of people's representatives and regional representatives is getting stronger.⁴⁷

Law Number 7 of 2017 concerning General Elections was formed based on the consideration of creating a degree of competition that is healthy, participatory, and has a higher degree of representation, and has a clear accountability mechanism.⁴⁸

Thus democracy strongly emphasizes the creation of political participation of citizens consciously and responsibly. Because general election is one way to determine the people's representatives and regional representatives who will sit in the People's Representative Council and the Regional Representative Council, there are naturally various electoral systems.

V. CONCLUSION

1. DPD-RI is a state institution that is important for democracy, because in that institution is the regional representative chosen by the people, but this institution is still weak in the design of the constitutional system which should be able to aggregate the interests of the regional voice because the parliamentary system in Indonesia still relies on the dominance of the institution DPR RI as the main legislative body (heavy legislature).
2. The existence of the DPD which is a representative of regional power is to balance the strength of the DPR which is a representative of the political power of the practical parties. a clear distinction between the DPD and the DPR and it is certain that they will easily serve the interests of the bearer parties rather than the regions they represent.
3. The provision that DPD members are elected through general elections is intended to realize the principle of popular sovereignty which implicitly animates the Opening of the 1945 Constitution of the Republic of Indonesia with the stipulation that all DPD members are elected directly by the people through the general election process. This provision is in accordance with the understanding of representative democracy which bases its existence on the principle of representation on the basis of election (representation by election).

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⁴⁵Kusnardi, Moh., & Ibrahim, Harmaily. (1988). *Pengantar Hukum Tata Negara Indonesia*. Jakarta: Pusat Studi Hukum Tata Negara FH-UI, pp. 328 – 329.

⁴⁶Hidajat, Imam. (2009). *Teori-Teori Politik*. Malang: Setara Press, p. 170.

⁴⁷*Ibid.*

⁴⁸Hariyanto, Nur Budi. (2012). Undang-Undang Politik Pasca Reformasi: Representasi versus Efektivitas Pemerintahan. In Andi Faisal Bakti, et al. (Ed.), *Literasi Politik dan Konsolidasi Demokrasi*. Jakarta: Churia Press, p. 90.

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