

**IMPROVING THE AUTHORITY OF THE REGIONAL
REPRESENTATIVE COUNCILS IN THE STATE GAZETTE OF THE
REPUBLIC OF INDONESIA ACCORDING TO THE 1945
CONSTITUTION OF THE REPUBLIC OF INDONESIA**

Dadang Gandhi

dadanggandhi@yahoo.co.id

Faculty of Law Universitas Pamulang

Abstract

The existence of the Regional Representative Council (DPD) which is regulated in Article 22D of the 1945 Constitution of the Republic of Indonesia (UUDNRI of 1945) with the authority of the DPD as regulated in Law Number 2 of 2018 concerning the Second Amendment to Law Number 17 of 2014 Regarding the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council and the Regional People's Representative Council (MD3), in particular Article 249 Paragraph (1) letter e. Article 22D of the 1945 Constitution places the position of the DPD as an institution that has the authority to submit a Bill relating to regional autonomy, central and regional relations, the formation and expansion of regions and the merger of regions, management of natural resources and other economic resources as well as related also by placing the DPD position to monitor and evaluate the Draft District / City Regional Regulations and Regency / City Regional Regulations according to Law Number 2 of 2018 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council (DPR) (MD3). This authority will cause problems especially those regulated in Law Number 2 of 2018 concerning MD3, because the Regency / City Regional People's Representative Council and the Governor as representatives of the central government do the same thing as is done by the DPD as regulated in Law Number 23 2014 concerning Regional Government, particularly in the provisions of Article 149 Paragraph (1) and Article 153 Paragraph (1). While the form of coordination that will be carried out by the DPD and the Regional Government has yet to exist, in addition to the DPD's position as a high state institution will cause problems when coordinating with the Regency / City DPRD as an element of the regional government.

Keywords: The telescope, Position, DPD, State Administration, Republic of Indonesia

INTRODUCTION

With the completion of the People's Consultative Assembly Session of the Republic of Indonesia in the deliberative forum, the assembly Session of the Republic of Indonesia sessions for the 1999-2002 period have succeeded in completing one of the reform mandates, namely implementing amendments to the 1945 Constitution of the Republic of Indonesia (Indrayana, 2007; Ranadireksa, 2002)

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The results of these changes gave birth to a new state institution in the Indonesian constitutional structure, namely the Regional Representative Council (DPD), with the presence of this DPD in the Indonesian representative system, the House of Representatives (DPR) is supported and strengthened by the DPD whose authority is regulated in Article 22C and Article 22D (Akbarudin, 2013; Golap, 2017). DPR is a representative institution based on the aspirations and political understanding of the people as the holder of sovereignty. At the same time, the DPD is a representative institution channeling the diversity of regional ambitions (Julpikar, 2016; Nirahua, 2011).

As a channel for the diversity of regional aspirations, the DPD's position is the same as that of the DPR and the MPR as state institutions, but from its authority, of course, the three-state institutions are each different, with this difference theoretically the three state institutions reflect a very distinctive parliamentary structure Indonesia (Isman, 2018; Kholik, 2019).

In the field of legislation, the DPR has the power to form laws, while the DPD can submit specific bills to the DPR and participate in joint discussions with the DPR and the government, but does not participate in deciding and participate in supervising the implementation of specific laws, while the MPR holds power to change and enact the constitution. (Toding, 2017; Zada, 2015)

Furthermore, with the decision of the Constitutional Court of the Republic of Indonesia Number 92 / PUU - X / 2012 and strengthened by the conclusion of the Constitutional Court of the Republic of Indonesia Number 79 / PUU - XII / 2014, the Constitutional Court decision essentially reaffirms that the DPD has the same authority as the DPR and the President to submit and discuss draft laws, but not in terms of decision making. (Pasaribu, 2010; Tinambunan & Prasetio, 2019)

Furthermore, the MPR also reaffirmed through the MPR RI decision Number 4 / MPR / 2014 concerning the Recommendations of the MPR RI for the 2009-2014 term, which contained "Need to reorganize the constitutional system in Indonesia, including strengthening the position and role of the DPD" (Suroto, 2019). It seems that the continuation of the MPR RI decision above has been followed up by the issuance of Law Number 2 of 2018 concerning MD3,

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particularly in Article 249 Paragraph (1) letter e. which regulates "that the DPD carries out monitoring and evaluation of the draft Regency / City Regional Regulations and Regency / City Regional Regulations.(Hardianto & Herwati, 2020; Ifzi, 2019; imelda Sapitri, 2019)

For the granting of authority to the DPD, the Regency / City Regional People's Representative Council (Regency / City DPRD) also does the same according to Article 153 Paragraph (1) letter an of Law Number 23 the Year 2014 concerning Regional Government.

About these provisions, what is the form of coordination between the DPD and the Regency / City DPRD, until now there has been no precise regulation, considering the position of the DPD and the Regency / City DPRD also needs to be discussed, because the DPD is a high state institution. In contrast, the area of the Regency / City DPRD is an element of the regional Government.

Besides, by granting the authority to carry out monitoring and evaluation of the draft District / City Regional Regulations and District / City Regional Regulations, is this a setback for the DPD in its position as a high state institution, even though the DPD is a representative institution channeling the diversity of regional aspirations in the implementation of Article 22C of the 1945 Constitution.

Based on the description above, in this research, several problems can be formulated. Namely, the DPD is a state institution resulting from the amendments to the 1945 Constitution having the authority to submit a specific bill to the DPR, and in addition to that, based on Law Number 2 of 2018 concerning MD3 it is given the authority. To carry out monitoring and evaluation of the draft district/city regional regulations and district/city perda, while the Regency / City DPRD and the Governor as representatives of the central Government in the regions have the same function as the DPD's authority as regulated in the Regional Government Law.

Thus the implication of having the same authority between the DPD and the Regency/City DPRD and the Governor as representatives of the central Government and the form of coordination to be carried out by the DPD with regional governments is also unclear as to what kind of position the DPD is as a high state institution, it will cause problems in the

implementation of coordination with government officials in the regions as well as the granting of authority to the DPD to carry out monitoring of the draft District / City Regional Regulations and District / City Regional Regulations, whether this is a step forward or a step backwards for the DPD which holds as a high state institution in the Indonesian constitutional system, while all DPD members wish to increase their participation in their position as a top state institution, not only as a state institution that can only propose specific draft laws and does not have the authority to jointly decide with the DPR and the Government in a process. Enactment of laws.

METHODOLOGY

This type of research is a study of library materials where the data sources are obtained through research on various literature sources that are relevant to the object of research that the author did. As a study that traces the principles and theories of norm dualism between the 1945 Constitution of the Republic of Indonesia and Law Number 2 of 2018 concerning MD3, it is related to the DPD's position as a high state institution.

The type of this research is descriptive qualitative analytical, meaning that this research is conducted by describing, qualitatively analyzing data related to positive law and its implementation to conclude the subject matter.

RESULT AND DISCUSSION

The 1945 Constitution has been amended by the People's Consultative Assembly (MPR), according to the MPR's position of duties and authority as regulated according to the provisions of Article 1 Paragraph (2), Article 2 Paragraph (1), Article 3, Article 6, Article 37 and the explanation of the 1945 Constitution.

Regarding the requirements for the amendment of the 1945 Constitution as stipulated in Article 37, the article states that the MPR has the authority to amend and specify the Constitution that at least 2/3 of the number of MPR members must attend. Decisions are made with the approval of at least 2/3 of the number of members present.

Therefore, with demands for changes in the Reformation Era, the MPR formed a Workers'

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Body to implement amendments to the 1945 Constitution. The MPR Workers Body then formed an Ad Hoc Committee during the session years 1999-2000, 2000-2001, 2001-2002, and 2002-2003.

The rationale behind the amendments to the 1945 Constitution are as follows:

1. The 1945 Constitution establishes a constitutional structure that is based on the supreme power in the hands of the MPR, which fully exercises the people's sovereignty. This results in the absence of mutual supervision and balance (checks and balances) in the state administration institutions.
2. The 1945 Constitution provides enormous power to the holders of executive power (Executive Heavy), such as prerogatives and powers as legislators.
3. The 1945 Constitution does not adequately regulate constitutional provisions, which contain basic rules regarding democratic life, the rule of law, empowerment of the people, protection of human rights. So that this opens opportunities for the development of state governance practices that are inconsistent with the preamble to the 1945 Constitution.
4. The 1945 Constitution gives too much authority to the power of the President to regulate important matters by law; besides that, the President also holds legislative power so that the President can formulate essential issues according to his will in the law. This has led to regulations regarding the MPR, DPR, BPK, MA, HAM and local governments being drawn up by the power of the President in the form of submitting a bill to the DPR;
5. The 1945 Constitution contains articles that are too flexible so that they can lead to more than one interpretation (multiple interpretations), for example, the provision of Article 7 "The President and Vice President hold their positions for five years after which they can be re-elected.

Before making amendments to the 1945 Constitution, the MPR had issued the following decrees:

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- a. MPR Decree Number VIII / MPR / 1998 Concerning the Revocation of MPR Decree Number IV / MPR / 1983 Concerning the Referendum.
- b. Decree of the MPR Number XIII / MPR / 1998 concerning the Cancellation of the Term of Office of the President and Vice President of the Republic of Indonesia.
- c. Decree of the MPR Number XVIII / MPR / 1998 concerning Human Rights.

The issuance of the aforementioned decree is the first step in making amendments to the 1945 Constitution. From the results of the amendments to the 1945 Constitution, the nomenclature of the 1945 Constitution becomes the 1945 Constitution of the Republic of Indonesia (UUDN RI 1945). The 1945 Indonesian Constitution has regulated new state institutions, including the Regional Representative Council (DPD) as regulated in Article 22 C and Article 22 D, with the following explanation:

Article 22 C

- 1) Members of the Regional Representative Council are elected from each province through a General Election.
- 2) The number of members of the DPRD from each area is the same, and the total number of members of the DPRD is not more than one-third of the number of members of the DPRD.
- 3) The Regional Representative Council convenes at least once a year.
- 4) The composition and position of the Regional Representative Council shall be regulated by law.

Article 22 D

- a) The Regional Representative Council may submit to the House of Representatives a draft law relating to regional autonomy, central and local relations, the formation and expansion of regions and the merger of areas, management of natural resources and other economic resources, as well as those related to equilibrium. Central and regional finance.
- b) The Regional Representative Council shall participate in discussing draft laws relating to regional autonomy, central and local relations, the formation and

expansion of regions and the merger of areas, management of natural resources and other economic resources, as well as those relating to the balance of central and regional finances. , as well as providing consideration to the House of Representatives on the draft law on state revenue and expenditure budget and draft laws relating to taxes, education, and religion.

- c) The Regional Representative Council may supervise the implementation of laws on regional autonomy, formation, expansion, and merger of regions, central and local relations, management of natural resources and other economic resources, implementation of the state budget and state expenditures, taxes, education. And religion and convey the results of their supervision to the House of Representatives as a material for consideration to be followed up.
- d) Members of the Regional Representative Council may be dismissed from their posts; the conditions and procedures are regulated by law.

From the regulation of the article, the existence of the DPD institution is a new institution and is a broader elaboration of the provisions of Article 2 Paragraph (1) of the 1945 Constitution (before the amendment), namely The People's Consultative Assembly consists of members of the People's Representative Council plus representatives delegates from regions and groups according to the rules established by law.

From the understanding of Article 2 Paragraph (1) above, adhering to the principle that all must be represented, institutionalize the three principles of political representation, territorial representation, and functional representation as well as in institutional membership in the MPR.

Thus, a distinction must be made between the DPD's function in the field of legislation and the area of supervision. Although in the field of guidance, the existence of the DPD is central (Main Constitutional Organ), which is equal and equally important to the DPR, in the area of legislation, the DPD's function is only as a co-legislator beside the DPR. The nature of its duties in the field of legislation is only to support (the Auxiliary Agency) the constitutional responsibilities of the DPR in the process of forming a law or legislation, and the DPD does not

have the power to decide or play a role in the decision-making process at all.

From this explanation it seems that the position of the DPD is similar to that of the Supreme Advisory Council (DPA) in the 1945 Constitution, only the difference is that DPA gives consideration to the president's questions and has the right to submit proposals to the government while the DPD to the DPR, therefore the position of the DPD is only supporting or auxiliary towards the function of the DPR so that the DPD at the most distant can only be called a co-legislator rather than a full legislator.

In fact, the term co-legislator itself is detrimental to its weak position in the field of legislation, because it is only supportive. However, if it is said that the DPD does not have a legislative function at all, it is also inaccurate, because according to the background of the idea of its formation, the DPD was intended to work in the legislative field.

In fact, the requirements for support to become members of the DPD are much more onerous than the requirements for help to become members of the DPR, meaning that the quality of the legitimacy of the DPD members is not at all balanced by the quality of their authority as representatives of the regional people (Regional Representation).

With a position like this, and with the existence of Law Number 2 of 2018 concerning the Second Amendment to Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the City Regency Regional People's Representative Council, in particular Article 249 Paragraph (1) letter J, namely "The Regional Representative Council has the authority to monitor and evaluate the Draft District / City Regional Regulations and Regency / City Regulations," including being able to supervise the implementation of specific laws by Article 249 Paragraph (1). letter e, and submits a report on the results of its supervision to the DPR by Article 249 Paragraph (1) letter f. The law mentioned above.

With the additional authority of the DPD according to the provisions mentioned above, the DPD must always coordinate with the Regency / City Regional People's Representative Council (Regency / City DPRD).

Given that the district/city DPRD according to Law Number 23 of 2014 concerning

Regional Government, in particular, Article 149 Paragraph (1) has the following functions:

1. Establishment of district/city regional regulations
2. Budget and
3. Supervision

The tasks mentioned above, including implementing the proposed Regional Regulation Draft until its formation, can be observed in Article 150 of the Regional Government Law, namely implemented by:

- a. Discussed with the regent/mayor, and approving or not approving the Draft District / City Regulation.
- b. Submitting Draft District / City Regulations.
- c. Compiling a program for the formation of Regency / City Regulations (Perda district/city) together with the regent/mayor.

Apart from that, the district/city DPRD also supervise, among other things, the supervision of the implementation of district/city regional regulations as regulated in Article 153 Paragraph (1) letter a of the Regional Government Law.

Besides, the Governor, as the representative of the Central Government, evaluates the District / City Regional Regulation Draft on regional taxes. Local levies consult with the minister (minister of home affairs), and then the minister coordinates with the minister (finance minister) as regulated in Article 245 Paragraph (4) Regional Government Law.

Furthermore, the question now is what is the form of monitoring and evaluation carried out by the DPD on the draft district/city Regional Regulations and the district/city Regional Regulations and what type of coordination will be carried out by the DPD with the district/city DPRD and the Governor as representatives of the central government, considering the district/city DPRD and the Governor do the same thing with the additional duties of the DPD. It seems that with the provisions of Article 249 Paragraph (1) letter e and letter j Law Number 2 of 2018 concerning MD3 and the duties of the DPD have not been followed up with its implementing regulations, given the provisions on the powers and duties of the DPD as regulated in Article 249 Paragraph (1) letters e and j the Law on MD3 is a step backwards

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related to the position of the DPD in the constitutional system of the Unitary State of the Republic of Indonesia, given that the DPD's authority as regulated in Article 22D of the 1945 Constitution concerns the authority to carry out legislative functions on certain draft laws and also to supervise the implementation. certain laws, although the DPD in carrying out its legislative functions with the DPR does not have the authority to decide, because indeed the DPD is not the legislators but apart from that at the time the DPD was also given the authority to monitor and evaluate the Draft District / City Regional Regulations and Regional Regulations. District/city, then between the positions of the Draft The hierarchical hierarchy of the laws with the Draft Perda on districts/cities is too far.

According to Article 7 Paragraph (1) of Law Number 12 the Year 2011 concerning the Formation of Legislation, the position of district/city Regional Regulations is a statutory regulation which has the lowest level in the Republic of Indonesia's regulatory system, while the area of law is in third after the 1945 Constitution and the MPR Decree. Furthermore, Law, Government Regulation. Presidential Regulations, Provincial Regulations, and Regency / City Regulations. This means that it contains an understanding that when the DPD is given the position to exercise the authority to submit a certain bill to the DPR according to the provisions of Article 22 D of the 1945 Constitution, but on the other hand the DPD is also given additional tasks to monitor and evaluate the Draft Regional Regulation for districts/cities and District/city regulations. According to the provisions of Article 249 Paragraph (1) letter e and letter j according to the Law on MD3.

Whereas if you study and understand the decision of the Constitutional Court of the Republic of Indonesia Number 92 / PUU-X / 2012 and further strengthened by the decision of the Indonesian Constitutional Court Number 79 / PUU -XII / 2014, the essence of the decision reaffirms that the DPD has the same authority as the President and DPR, to propose and discuss the Draft Law, but not in terms of decision making.

With the decision of the Constitutional Court of the Republic of Indonesia Number 92 / PUU-X / 2012, the Constitutional Court has reconstructed the authority of the DPD following the 1945 Constitution of the Republic of Indonesia. Still, the legislators have not accommodated

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the contents of the DPD's power as decided by the Constitutional Court in the decision, so that the DPD re-filed a formal and material review of Law Number 17 of 2014 concerning MD3, the same constitutional issue in case Number 79 / PUU-XII / 2014.

Besides that, with the MPR RI Decree Number 4 / MPR / 2014 concerning the Recommendation of the People's Consultative Assembly of the Republic of Indonesia for the 2009-2014 term, the contents "need to be restructured into the constitutional system in Indonesia, including strengthening the position and role of the DPD."

With the Constitutional Court decision and the MPR decision which are actually above the DPD in the constitutional system of the Unitary State of the Republic of Indonesia according to the 1945 Constitution, but instead followed by giving the DPD authority to carry out training and evaluation of the Draft District / City Regional Regulations and District / City Regional Regulations has been determined in Article 249 Paragraph (1) letters e and j of Law Number 2 the Year 2018 concerning MD3. So that three elements conduct training and evaluation of the draft District / City Regional Regulations and District / City Regional Regulations themselves, namely the Regency / City DPRD, the Governor as the representative of the central government and the DPD itself based on the authority that comes from Article 249 Paragraph (1) letter e. and letter j Law on MD3.

Besides, related to the cancellation of the District / City Regional Regulation there are problems, namely that there are no regulations made by the central government, for example, the President (Perpres) Number 87 Number 2014 which is the implementation of Law Number 12 of 2011 concerning the Formation of Legislation. -The law, besides that there is also the Minister of Home Affairs Regulation (Permendagri) Number 80 of 2015 related to regional legal products, which are the implementation of Law Number 23 of 2014 concerning Regional Government.

Between Perpres No. 87/2014 and Permendagri No. 80/2015, there are differences in determining the cancellation of a district/city regulation. According to Perpres 87/2014, that against a district/city regional regulation that has been canceled by the government, the region can apply to the Supreme Court (MA). In contrast, according to Permendagri Number 80 of

2015, the regional requirement does not accept the cancellation of a district/city-regional regulation. The Regent / The mayor can declare his approval of the district/city regulations that have been canceled to the Minister of Home Affairs through the Director-General of Regional Autonomy at the Ministry of Home Affairs.

With the existence of two regulations that have disharmonious substance, the regions will face the problem of dualism if they choose to file an objection to the cancellation of the district/city regional regulations. If the Regional Government in filing a complaint wants the two available channels, the problem is what if the results of the two agencies assessing the objection conflict with one another. With the position mentioned above, then what are the results of monitoring and evaluation that have been carried out by the DPD on the Draft District / City Regional Regulations and District / City Regional Regulations that have been canceled by the Government, whether the results will be submitted to the Minister of Home Affairs through the Director-General of Regional Autonomy, or the DPD will coordinate with the Regency / City Government to provide input as material in filing objections either to the Supreme Court or to the Minister of Home Affairs.

These matters need to be harmonized between institutions in the regions and the DPD as one of the implementers of monitoring and evaluation of the Draft District / City Regional Regulations and District / City Regional Regulations.

CONCLUSION

1. With the provisions of Article 249 Paragraph (1) letter e and letter j of the Law on MD3, in which the DPD in its position as a high state institution is given additional authority to carry out monitoring and evaluation of the Draft District / City Regional Regulations and Regency / City Regional Regulations. In contrast, according to the provisions of Article 22D of the 1945 Constitution of the Republic of Indonesia, it has the authority to submit specific Drafts to the DPR, with these provisions, it will cause problems, whether the power to carry out monitoring and evaluation is a step forward or backward for the DPR's position as a high state institution.

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2. Besides, with the existence of Law Number 23 of 2014 concerning Regional Government, namely, the Regency / City DPRD and the Governor as representatives of the central government in the regions do the same thing, as is done by the DPD as a high state institution. The problem is how the form of coordination should be recognized between the DPD as the top institution of the state and the Regency / City DPRD as an element of regional government until now there is no regulation. Also, the position of the DPD as a high-ranking institution and the Regency / City DPRD as an element of regional government will cause problems when coordinating.

Besides, the author will also provide some suggestions on the observation of the Authority of the Regional Representatives Council in the State Administration System of the Republic of Indonesia according to the 1945 Constitution, including the following:

1. By giving the DPD the authority as a high state institution to carry out monitoring and evaluation of the Draft District / City Regional Regulations and Regency / City Regional Regulations is a step backward for the DPD's position, it is better if all DPD members conduct an evaluation of this additional authority, unless the DPD is comfortable with this additional authority, he was added as co-legislator of the DPR's duties.
2. On the other hand, if the DPD members consider it a step backward, it is better if Article 249 Paragraph (1) letter e of Law Number 2 of 2018 concerning MD3 asks to be reviewed and replaced with a balanced position and authority if they want to be granted the status of a high state institution in Indonesian constitutional system according to the 1945 Indonesian Constitution.

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