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# ANALYSIS ON THE CONTROL FUNCTION OF THE DEWAN PERWAKILAN DAERAH (REGIONAL REPRESENTATIVES COUNCIL) THE REPUBLIC OF INDONESIA

Dr. Fatmawati, S.H., M.H.<sup>1</sup>

## *Abstract*

The Dewan Perwakilan Daerah (Regional Representatives Council - DPD) and the Dewan Perwakilan Rakyat (House of Representatives - DPR) are institutions which represent the people in the parliament of the Republic of Indonesia. However, these two institutions do not have equal powers, including the powers related to the control function. The DPD's function related to control is provided for under Article 22D paragraph (3), Article 23E paragraph (2), and Article 23F paragraph (1) of the Third Amendment to the 1945 Constitution of the Republic of Indonesia. The DPD can exercise control of the implementation of certain laws related to regional interests, the implementation of the State Budget, taxes, education and religion, reporting on the results of supervision exercised by it to the DPR; it receives the results of state finance audit conducted by the Badan Pemeriksa Keuangan (Audit Board - BPK), and provides its consideration to the DPR in electing members of BPK. Based on a comparison among various countries it is evident that although some countries have weaker control authorities compared to those of the DPD, it is the DPD elected directly through the general elections which has the weakest authority among them. Proportionate powers need to be granted to the DPD in order to ensure that that the objective of its establishment in representing the interests of the regions may be achieved.

**Key words:** DPD, DPR, control function, interests of the regions.

## I. Introduction

The Amendment of the 1945 Constitution of the Republic of Indonesia (hereinafter briefly referred to as the 1945 Constitution) has caused significant changes not only in the parliament's structure, namely not only in the position and powers of the *Majelis Permusyawaratan Rakyat* (People's Consultative Assembly - MPR) and in the powers of the *Dewan Perwakilan Rakyat* (House of Representatives DPR), but also by establishing a new institution, namely the Regional Representatives Council (hereinafter briefly referred to as the DPD).

The DPD was formed as a materialization of the idea of a bicameral system introduced during the deliberations on the amendment of the 1945 Constitution.<sup>2</sup> The DPD has its own structure, position and powers, which are

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<sup>2</sup> Refer to Jimly Asshiddiqie, (2006), *Konstitusi dan Konstitusionalisme Indonesia*, (The Constitution and Constitutionalism In Indonesia), rev. ed., 3rd edition, Jakarta: *Setjen dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia*, p. 186-187 and Bagir Manan, (2004), *DPR, DPD dan MPR dalam UUD 1945 Baru*, (DPR, DPD and MPR In the New 1945 Constitution), 2nd ed., Yogyakarta: FH UII Press, p. 59-60.

provided for in the Third Amendment to the 1945 Constitution. The DPD is a new state institution which has been formed with the aim of enhancing the role of the regions. However, considering its position as part of the parliament, the DPD's powers are rather limited. This seems to reflect the argument put forward by MPR members, namely that a strong bi-cameral Indonesian parliament in the future would cause the development of state organizational structure to move towards federalism.<sup>3</sup>

Even though the unicameral system is still the choice of many,<sup>4</sup> the majority of countries which play a significant role are applying the bicameral system.<sup>5</sup> The bicameral system is the concept which was expected to be adopted in the organizational structure of the parliament of the Republic of Indonesia following the amendment of the 1945 Constitution, to replace the one and a-half chamber system of the parliament of the Republic of Indonesia. In the context of forming the bicameral system, the DPD was established as the second chamber in parliament.<sup>6</sup> The DPD represents the people in the regional context and it is oriented towards the interests of the regions, while the DPR represents the people in general and it is national interest oriented.<sup>7</sup>

The amendments of the 1945 Constitution provide for the Parliament of the Republic of Indonesia consisting of 3 chambers, namely the DPR, DPD, and MPR. The DPR, DPD and MPR are independent institutions considering that, first, the DPR, DPD and MPR possess powers which correspond to the functions of the parliament. By possessing formal powers as the parliament, the DPR, DPD, as well as the MPR have their respective scope of office, which means that each of them have their own respective authorities, which are naturally based on their respective functions. Second, the DPR, DPD and MPR each have their own respective members, and third, the DPR, DPD as well as the MPR have their own institutional structure and procedural rules in their respective institutions.

The DPD's authorities related to the control function are provided for under Article 22D paragraph (3), Article 23E paragraph (2), and Article 23F

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<sup>3</sup> Refer to *Majelis Permusyawaratan Rakyat*, (2001), *Risalah Rapat Pleno ke-14 Panitia Ad Hoc 1 Badan Pekerja MPR 10 Mei 2001 Nomor: MJ 230/9/2001*, (Minutes of the 14<sup>th</sup> Plenary Meeting of Ad Hoc Committee I of MPR Board of Staff dated May 10, 2001 Number: MJ 230/9/2001), p. 24 and 32. This was stated by Jacob Tobing and Hobbes Sinaga (both of them are from the PDIP Faction) in the 14<sup>th</sup> Plenary Meeting on May 10, 2001.

<sup>4</sup> Refer to George Tsebelis and Jeannette Money, (1997), *Bicameralism*, (London: Cambridge University Press), p. 1. In the research conducted by George Tsebelis and Jeannette Money in 1997, 1/3 of all countries in the world are using the bicameral system, and 2/3 are using the unicameral system. Refer to Arend Lijphart, (1999), *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*, (New Haven and London: Yale University), p. 202. Based on the research involving 36 countries conducted by Arend Lijphart, the bicameral system is applied by more countries than the unicameral system

<sup>5</sup> C.F. Strong, (1952), *Modern Political Constitution an Introduction to the Comparative Study of Their History and Existing Form*, rev. ed., London: Sidgwick & Jackson Limited, p. 186. Refer also to Lijphart, *ibid.*, p. 202-203. This was also found in the research conducted by Arend Lijphart of 36 countries. The bicameral system is used by a greater number of countries and only small countries (the largest of them being Greece with a population of about 10 million) use the unicameral system. Out of the said 36 countries, all federal countries (9 countries) use the bicameral system; at the same time, 13 out of 27 unitary states countries use the unicameral system, and 1 country (Norway) uses the one and a-half chamber system.

<sup>6</sup> Manan, DPR..., op cit., p. 59-60. Bagir Manan states that the idea behind the formation of the DPD was to change the legislature to the bicameral system and to increase the participation of regions in the political life and management of the state.

<sup>7</sup> Jimly Asshiddiqie, (2005), *Hukum Tata Negara and Pilar-pilar Demokrasi Serpihan Pemikiran Hukum, Media, dan HAM*, (Constitutional Law and Pillars of Democracy, Some Thoughts On Law, the Media and Human Rights), 1st ed., Jakarta: Konstitusi Press, p. 27.

paragraph (1) of the Third Amendment to the 1945 Constitution. The DPD may conduct control of the implementation of certain laws related to the interests of the regions, the implementation of the State Budget, taxes, education and religion and it reports the result of control conducted by it to the DPR, receives results of the audit of state finances conducted by the BPK, and provides considerations to the DPR in electing members of the BPK. Based on a comparison among various countries it is evident that, although some countries have weaker supervisory authorities compared to those of the DPD, it is the DPD elected directly through the general elections which has the weakest authority among them.

An analysis of the DPD's powers related to the control function will be provided in this article, based on a theoretical study and comparison of DPD's control functions to other countries, in order to enable DPD to attain proportionate powers with the aim of ensuring that the objective of the formation of the DPD as a people's representative institution representing the interests of the regions may be achieved.

## II. Analysis of the DPD's Control Function

This article will deal only with the control functions of the DPR and DPD as provided for in the 1945 Constitution, as both of these institutions have the function of supervising the implementation of government administration. The following are the provisions of the 1945 Constitution, among other things, concerning the DPR and DPD:

1. Members of the DPR are elected through general elections.<sup>8</sup>
2. The DPR has the power to make law.<sup>9</sup>
3. The DPR has legislative, budgetary and control functions.<sup>10</sup>
4. Members of the DPR have the right to propose bills.<sup>11</sup>
5. The DPD is elected from each province through general elections.<sup>12</sup>
6. The total number of members of the DPD from each province shall be the same, and the total number of members of the DPD shall not be more than one-third of the total number of members of the DPR.<sup>13</sup>
7. The DPD may propose to the DPR certain bills which are related to interest of the regions.<sup>14</sup>

<sup>8</sup> Republic of Indonesia, *Perubahan Kedua Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, (Second Amendment to the 1945 Constitution of the State of the Republic of Indonesia), State Gazette No. 12, Year 2006, Article 19 paragraph (1).

<sup>9</sup> Republic Indonesia, *Perubahan Pertama Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, (First Amendment to the 1945 Constitution of the State of the Republic of Indonesia), State Gazette No. 11, Year 2006, Article 20 paragraph (1).

<sup>10</sup> Republic of Indonesia, *Perubahan Kedua...*, (Second Amendment), op cit., Article 20A paragraph (1).

<sup>11</sup> Republic of Indonesia, *Perubahan Pertama...*, (First Amendment), op cit., Article 21.

<sup>12</sup> Republic of Indonesia, *Perubahan Ketiga Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, (Third Amendment to the 1945 Constitution of the State of the Republic of Indonesia), State Gazette No. 13, Year 2006, Article 22C paragraph (1).

<sup>13</sup> *Ibid.*, Article 22C paragraph (2).

<sup>14</sup> *Ibid.*, Article 22D paragraph (1) sets forth as follows: "*Dewan Perwakilan Daerah* may propose to the *Dewan Perwakilan Rakyat* bills related to regional autonomy, relationship between the center and regions, the formation and expansion as well as the merger of regions, management of natural resources and other economic resources, as well as bills related to the financial balance between the center and regions." - *Unofficial translation*

8. The DPD shall take part in elaborations on bills related to the interest of the regions and shall provide considerations to the DPR regarding the bill on the *Anggaran Pendapatan dan Belanja Negara* (State Revenues and Expenditures Budget - APBN) and bills related to taxes, education and religion.<sup>15</sup>
9. The DPD may conduct control of the implementation of certain laws which are related to the interests of the regions, the implementation of the State Budget, taxes, education and religion and submits the results of the supervision conducted by it to the DPR.<sup>16</sup>

If the authorities of the DPD under the 1945 Constitution are considered in comparison to the authorities of the Senate under the Constitution of the *Republik Indonesia Serikat* (the Federal Republic of Indonesia – RIS), there are certain similarities. According to Bagir Manan, the similarity between the above mentioned Constitutions is that the formulation of the DPD's authorities follows the pattern of authorities of the RIS Senate, however, a fact overlooked is that the RIS Senate consisted of representatives of sub-regions formed as part of the design of the Dutch colonial government, in addition to the fact that the Republic of Indonesia itself did not want the Senate to be equal to the DPR.<sup>17</sup> If we take another look, it becomes evident that the Senate had even greater authorities during era of the RIS Constitution compared to the authorities of the DPD.

The formal authorities of the two chambers in Parliament provided for under the RIS Constitution were as follows:

1. The approval of the Senate and DPR had to be obtained for the federal government to implement governmental duties in the sub-regions.<sup>18</sup>
2. The following authorities had to be exercised in a joint session:
  - a. Granting approval for the declaration of war by the federal government.<sup>19</sup>
  - b. Exercising the authorities of the *Konstituante*, however, by adding the number of members to become twofold of the previous total of members.<sup>20</sup>
3. The proposal, deliberation and decision on Bills concerning the amendment of the RIS Constitution could only be implemented if approved by 2/3 of the

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<sup>15</sup> *Ibid.*, Article 22D paragraph (2) sets forth as follows: “*Dewan Perwakilan Daerah* shall take part in deliberations on bills related to regional autonomy; relationship between the center and regions; the formation, expansion and merger of regions; the management of natural resources and other economic resources, and the financial balance between the center and regions; and shall give considerations to *Dewan Perwakilan Rakyat* on bills related to the state revenues and expenditures budget and bills related to taxes, education and religion.” - *Unofficial translation*

<sup>16</sup> *Ibid.*, Article 22D paragraph (3) sets forth as follows: “*Dewan Perwakilan Daerah* can oversee the implementation of laws concerning: regional autonomy, the formation, expansion and merger of regions, the relationship between the center and regions, the management of natural resources and other economic resources, the implementation of the state revenues and expenditures budget, taxes, education, and religion, and shall present the results of such oversight to *Dewan Perwakilan Rakyat* as input for consideration to be followed up.” - *Unofficial translation*

<sup>17</sup> Bagir Manan, DPR, ..., *op cit.*, p. 4.

<sup>18</sup> Refer to Republik Indonesia Serikat (Federal Republic of Indonesia), *Keputusan Presiden tentang Mengumumkan Piagam Penandatanganan Konstitusi Republik Indonesia Serikat dan Konstitusi Republik Indonesia Serikat*, (Presidential Decree concerning the Charter for the Signing of the Constitution of the Federal Republic of Indonesia and the Constitution of the Federal Republic of Indonesia), Presidential Decree No. 48, State Gazette No. 3, Year 1950, Article 54 paragraph (2).

<sup>19</sup> *Ibid.*, Article 183.

<sup>20</sup> *Ibid.*, Article 188.

attending members of the DPR and Senate.<sup>21</sup>

The following provisions of the RIS Constitution set out the Senate's formal authorities under the Constitution:

1. Propose candidates for the Chairperson of the Senate to the President for appointment, and elect the Vice Chairperson from among its members.<sup>22</sup>
2. Formulate internal rules of procedure.<sup>23</sup>
3. Invite ministers to participate in the deliberations and make statements in the sessions.<sup>24</sup>
4. Approve the appointment of the Chief Justice, Vice Chief Justice, and members of the Supreme Court prior to regulation under Federal Law.<sup>25</sup>
5. Approve the appointment of the Chairperson, Vice Chairperson, and members of the Financial Supervisory Board prior to regulation under Federal Law.<sup>26</sup>
6. Hear important matters of specific nature concerning sub-regions or their administrative units, related to the relationship between the RIS and the regions, and related to Emergency Bills dealing with the implementation of federal government in matters that, if the Senate is heard, are set out in a decree by the Government.<sup>27</sup>
7. Request the Government to provide explanation.<sup>28</sup>
8. Jointly with the DPR formulate laws concerning important matters of specific nature related to sub-regions or their units and related to the relationship between the RIS and the regions.<sup>29</sup>
9. Propose Bills concerning sub-regions, their respective units, and related to the relationship between the RIS and the regions.<sup>30</sup>

Jimly Asshiddiqie defines the function of control as follows:<sup>31</sup>

- 1) Control of policy making;
- 2) Control of policy executing;
- 3) Control of budgeting;
- 4) Control of budget implementation;
- 5) Control of government performance;
- 6) Control of appointment of public officials by acceptance or rejection, or in the form of consideration by the DPR.- *translation*

Carl J. Friedrich defines the parliament's functions as the representative assemblies and deliberative assemblies. In implementing its function as representative assemblies, the parliament's main function is legislation.<sup>32</sup> In implementing its function as deliberative assemblies, parliament exercises

<sup>21</sup> Refer to *Ibid.*, Article 190

<sup>22</sup> Refer to *Ibid.*, Article 85.

<sup>23</sup> Refer to *Ibid.*, Article 95.

<sup>24</sup> Refer to *Ibid.*, Article 96.

<sup>25</sup> Refer to *Ibid.*, Article 114 paragraph (1).

<sup>26</sup> Refer to *Ibid.*, Article 116 paragraph (1).

<sup>27</sup> Refer to *Ibid.*, Article 123.

<sup>28</sup> Refer to *Ibid.*, Article 124.

<sup>29</sup> *Ibid.*, Article 127.

<sup>30</sup> *Ibid.*, Article 128.

<sup>31</sup> Jimly Asshiddiqie, (2006), *Pengantar Ilmu Hukum Tata Negara Volume II*, (An Introduction to the Science of Constitutional Law Volume II), 1st edition, Jakarta: *Sekretariat Jenderal and Kepaniteraan Mahkamah Konstitusi RI*, p. 36. The President and Vice President are elected public officials. Refer to Jimly Asshiddiqie, (2007), *Pokok-Pokok Hukum Tata Negara Indonesia Pasca Reformasi*, (The Fundamentals of Indonesia's Post-Reform Constitutional Law), Jakarta: PT Bhuana Ilmu Populer, p. 380-381.

<sup>32</sup> Carl J. Friedrich, (1949), *Constitutional Government and Democracy Theory and Practice in Europe and America*, rev. ed., Boston: Ginn and Company, p. 297.

control of fiscal and government administration,<sup>33</sup> and control of foreign affairs.<sup>34</sup>

The DPD's authorities related to the supervisory function are provided for under Article 22D paragraph (3), Article 23E paragraph (2), and Article 23F paragraph (1) of the Third Amendment to the 1945 Constitution. The DPD can conduct control of certain laws related to the interests of the regions, the implementation of the State Budget, taxes, education and religion and submits the results of supervision conducted by it to the DPR, receive results of the audit of state finances conducted by the BPK, and provide considerations to the DPR for selecting members of the BPK.

The DPD's authorities related to limited control function as provided for in the Amendment to the 1945 Constitution are certainly extremely small compared to the parliament's function of control as stated by Jimly Asshiddiqie and Carl J. Friedrich. This has been due to the objection of the factions in the MPR which have the power to amend the 1945 Constitution against the strengthening of the regional delegates (*Utusan Daerah*) institutionally or even more so in terms of authorities.<sup>35</sup>

Based on a comparison with several other countries it is evident that even though all of its members are elected directly, the DPD's authorities are extremely limited. Compared to the Second Chamber in the Kingdom of Spain which is also elected directly but has asymmetric authorities as opposed to the first chamber, not only are the DPD's authorities asymmetric, they are extremely limited and the DPD is not independent in implementing its functions as representative assembly and deliberative assembly. However, compared to the Arab Republic of Egypt where 2/3 of members are elected directly, the DPD has broader authorities, as in the Constitution of the Arab Republic of Egypt it is expressly stated that the power of the Second Chamber of its parliament consists only of providing an opinion to the First Chamber and the President concerning certain matters for which it should be consulted under the provisions of the Constitution.<sup>36</sup>

The direct election of its members is supposed to strengthen the DPD's position, as stated by Lijphart, namely that the direct election of the secoThe following statement was made by Bambang Soeroso in Constitutional Law

<sup>33</sup> *Ibid.*, p. 324.

<sup>34</sup> *Ibid.*, p. 347.

<sup>35</sup> Refer to among other things Secretariat General of MPR-RI, *Risalah Rapat Pleno Ke-32 Panitia Ad Hoc I BP MPR 19 September 2001*, Nomor 230/28/2001, (Secretariat General of the MPR of the Republic of Indonesia, Minutes of the 32<sup>nd</sup> Plenary Meeting of Ad Hoc Committee I of the MPR Board of Staff, September 19, 2001, Number 230/28/2001), p. 36. Asnawi Latief stated as follows: "Therefore, as we stated in the previous discussions concerning the MPR chapter, in our Faction we all share the view that the MPR consists of members of DPR and Delegates or representatives of the regions. It is not referred to as *Dewan* (Council), and neither is it an institution or a permanent *baand* or body, rather than that, it is an agglomeration of the aspirations of regions so that in its manifestation it will only be dealing with the Regional Representatives Faction.

Whether it is referred to as representatives (*perwakilan*) or delegates (*utusan*) is not an issue to us, however, it is not a Council (*Dewan*). Accordingly, the MPR consists of members of the DPR representing the many or the people in general, while the *Utusan Daerah* (Delegates of the Regions) or PD (*Perwakilan Daerah* - Representatives of the Regions) are representatives representing their respective areas or regions." - *Unofficial translation*

<sup>36</sup> Refer to Article 37 Amended Constitution Articles 2011 in "Constitutional Declaration: A New Stage in the History of the Great Egyptian People", [www.sis.gov.eg/en/lastpage.aspx?category\\_id=155](http://www.sis.gov.eg/en/lastpage.aspx?category_id=155), accessed on February 1, 2013.

Study Center of the Faculty of Law, Universitas Indonesia (Pusat Studi Hukum Tata Negara Fakultas Hukum Universitas Indonesia PSHTN-FHUI), “Meninjau Kembali Agenda dan Prospek Perubahan Kelima Undang-Undang Dasar Negara Republik Indonesia Tahun 1945”, (“A Review of the Agenda and Prospects of the Fifth Amendment to the 1945 Constitution of the State of the Republic of Indonesia”), One-day Seminar, Djokosoetono Assembly Hall, Faculty of Law, Universitas Indonesia, Depok, November 21, 2007, p. 8-9. The chamber can expand its limited power. As a matter of fact, in the context of the amendment to the 1945 Constitution, in the Proposed Text of the Fifth Amendment it was suggested, among other things, by the DPD group in the MPR, by Maswadi Rauf, as well as by various research and survey conducted, that the DPR and DPD should have equal powers. According to the Proposed Text of the Fifth Amendment proposed by the DPD Group in the MPR, the DPR and DPD both hold legislative powers,<sup>37</sup> the DPR and the DPD have the function of legislation, the function of controlling, the function of making appointments to public offices, and the function of representation,<sup>38</sup> and that in implementing their respective functions, the DPR and DPD have the right to propose Bills, the right to interpellation, the right to inquiry, and the right to state opinion.<sup>39</sup> Maswadi Rauf links the DPD’s authorities to its democratic legitimacy, namely the fact that its members are elected directly by the people in general elections through an election process which is just as rigorous as the election of DPR members, therefore the DPD’s role should be equal to the DPR.<sup>40</sup>

In cases where the Second Chamber has the authority to conduct control, the Constitution of several countries provides that such authority may be implemented directly, without the obligation to go through the First Chamber as provided for under the 1945 Constitution. Almost all countries applying the presidential governance system provide in the Constitution that the second chamber in parliament has the authority to summon ministers requesting them to provide an explanation (except for the United State of America)

Article 22D paragraph (3) of the Third Amendment to the 1945 Constitution sets out that the DPD can conduct control of the implementation of the law related to the DPD’s authorities and report the results of such control conducted by it to the DPR as input for further consideration and follow up.<sup>41</sup> Ideally, there should be a way of ensuring that the results of control conducted by the DPD can be communicated directly to the government in order to avoid situations such as the current one, whereby according to members of the DPD there is no way of ascertaining the extent to which the results of their work are being further realized at the DPR, while a huge amount of about 250 billion is allocated every year for the work of the DPD.<sup>42</sup> This was denied by one of the DPR members,

<sup>37</sup> Refer to Kelompok DPD di MPR RI, (2008), “*Naskah Amademen Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*,” (DPD Group in the MPR of the Republic of Indonesia, Text of the Amendment to the 1945 Constitution of the State of the Republic of Indonesia), Article 18.

<sup>38</sup> Refer to *Ibid.*, Article 23 paragraph (1).

<sup>39</sup> Refer to *Ibid.*, Article 23 paragraph (2).

<sup>40</sup> Maswadi Rauf, “*Keterwakilan dan Demokrasi*”, *Diskusi Publik Wacana Amandemen UUD 1945*. (“Representation and Democracy”. Public Discussion on the Discourse on the Amendment of the 1945 Constitution), Hotel Millenium, Jakarta, May 13, 2008, p. 2.

<sup>41</sup> Refer to Republic of Indonesia, *Perubahan Ketiga...*, (Third Amendment), *op cit.*, Article 22D paragraph (3).

<sup>42</sup> The following statement was made by Bambang Soeroso in Constitutional Law Study Center of the Faculty of Law, Universitas Indonesia (Pusat Studi Hukum Tata Negara Fakultas Hukum Universitas Indonesia PSHTN-FHUI), “*Meninjau Kembali Agenda dan Prospek Perubahan Kelima Undang-Undang Dasar*



stating that inputs from members of the DPD are taken into account, as evident from the introduction of *Dana Alokasi Khusus* (Special Allocation Funds - DAK) for the regions in the State Revenues and Expenditures Budget (APBN) which did not exist in the past, so that in his view there is actually a need for further provisions in the Law Concerning the Organizational Structure and Position of the MPR, DPR, DPD, and DPRD regarding the mechanism for DPR to report back to the DPD.<sup>43</sup> Even if such provisions concerning the mechanism for reporting back by DPR to the DPD on the results of control conducted by the DPD were included in the Law Concerning the Organizational Structure and Position of the MPR, DPR, DPD, and DPRD, it would be a certainly more effective, transparent and accountable mechanism to discuss the results of supervision conducted by DPD with the government directly, as opposed to being proposed through the DPR and then being reported back to the DPD.

The DPD was formed as the second chamber with expectations as described in the amendment to the 1945 Constitution, namely that in addition to accommodating the interests of regions to ensure that the general public interests are fulfilled, with both the direct interests of the people as well as the interests of regions being better represented in the decision making process at the level of public policy making and thus consolidating the Unitary State of the Republic of Indonesia, the DPD as the second chamber is also expected to implement checks and balances in the parliament of the Republic of Indonesia related to the interests of regions.<sup>44</sup>

Even though Indonesia is a unitary state, with the pluralistic characteristics of human and natural resources in each of its regions, as well as with the provisions of Article 18 paragraph (5) of the Second Amendment to the 1945 Constitution stating that: "Regional Governments shall exercise autonomy to the broadest possible extent, with the exception of governmental affairs which are determined by law as the affairs of the central government",<sup>45</sup> it would appear theoretically that this is the federalist governance principle, as in fact it seems that the concept of residual power is applied to the Regional Government.<sup>46</sup> By

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*Negara Republik Indonesia Tahun 1945*", ("A Review of the Agenda and Prospects of the Fifth Amendment to the 1945 Constitution of the State of the Republic of Indonesia"), One-day Seminar, Djokosoetono Assembly Hall, Faculty of Law, Universitas Indonesia, Depok, November 21, 2007, p. 8-9.

<sup>43</sup> Stated by Agun Gunandjar, *ibid.*, p. 16.

<sup>44</sup> It was stated about checks and balances by Golkar Party Faction (Refer to Sekretariat Jenderal MPR-RI, *Risalah Rapat Pleno Ke-32 Panitia Ad Hoc I BP MPR...2001*, (Secretariat General of the MPR of the Republic of Indonesia, Minutes of the 32<sup>nd</sup> Plenary Meeting of *Ad Hoc* Committee I of the MPR Board of Staff, 2001), *op cit.*, p. 17-20, refer also to among other things Sekretariat Jenderal MPR-RI, *Risalah Rapat Ke-32 Panitia Ad Hoc I BP MPR 17 Mei 2000*, (Secretariat General of the MPR of the Republic of Indonesia, Minutes of the 32<sup>nd</sup> Plenary Meeting of *Ad Hoc* Committee I of the MPR Board of Staff, May 17, 2000), p. 17), PBB Faction (Refer to Sekretariat Jenderal MPR-RI, *Risalah Rapat Ke-32 Panitia Ad Hoc I... 2000*, (Secretariat General of the MPR of the Republic of Indonesia, Minutes of the 32<sup>nd</sup> Plenary Meeting of *Ad Hoc* Committee I of the MPR Board of Staff, 2000), p. 7), PDKB Faction (Refer to Sekretariat Jenderal MPR-RI, *Risalah Rapat Pleno Ke-38 Panitia Ad Hoc I BP MPR 31 Mei 2000*, (Secretariat General of the MPR of the Republic of Indonesia, Minutes of the 38 Plenary Meeting of *Ad Hoc* Committee I of the MPR Board of Staff, May 31, 2000), p. 15), and TNI/POLRI Faction (Refer to Sekretariat Jenderal MPR-RI, *Risalah Rapat Pleno Ke-32 Panitia Ad Hoc I BP MPR...2001*, (Secretariat General of the MPR of the Republic of Indonesia, Minutes of the 32<sup>nd</sup> Plenary Meeting of *Ad Hoc* Committee I of the MPR Board of Staff, 2001), *op cit.*, p. 26).

<sup>45</sup> Republic of Indonesia, *Perubahan Kedua...*, (Second Amendment), *op cit.*, Article 18 paragraph (5).

<sup>46</sup> Ashiddiqie, *Konstitusi dan...*, *op cit.*, p. 214. Concerning residual powers in a federal state, refer also to Eko Prasajo, (2005), *Federalisme dan Negara Federal: Sebuah Pengantar*, (Federalism and the Federal State: An Introduction), Jakarta: Departemen Ilmu Administrasi FISIP UI, p. 75-76.

focusing on region oriented laws, the aspirations of regions can be accommodated to a greater extent, which is in line with the purpose of establishing the DPD. The formulators of the RIS Constitution instituted the RIS Senate with this basic idea in mind.

*...pertama-tama bertoeagas mendjaga kepentingan daerah bagian, kedoea mempunjai arti oentoek menghindarkan poetoesan jang tergesa-gesa dan oentoek memelihara soeatoe kelandjutan dalam kebidjaksanaan negara sebagai imbangan dari "waan van de dag". Selain daripada arti kelandjoetan oentoek pelaksanaan toegasnja pertama dengan baik, mereka karena alasan itoe poela dalam senaat ingin mengadakan soeatoe anasir kesetimbangan dengan djalan pilihan anggota oentoek waktoe jang lebih lama dan menghentikannja berangsoer-angsoer.<sup>47</sup>*

...first [it] has the duty to safeguard the interests of sub-regions, second it has the significance of avoiding precipitous decisions and ensuring continuity in state policy as a counterpart of "waan van de dag". In addition to the intended continuity in the appropriate implementation of the first stated duties, for the same purpose members of the senate wish to create an element of balance by electing members for a longer period of time and dismissing them gradually." - *translation*

However, unlike the RIS Senate, the DPD was formed without the support of a strong will by the formulators of the Constitution to empower it, even considering it as an obstacle in the implementation of the functions of the parliament, both the representatives assembly as well as the deliberative assembly functions, hence its powers had to be limited. While the second chamber was formed, its benefits as a second chamber could not be felt as was the case with the RIS Senate under the RIS Constitution.

As mentioned above, the existence of the DPD as second chamber does have its justification, however, due to its limited functions including the legislative function, the advantages of a bicameral system as described by George Tsebelis and Jeannette cannot be eventually found in the Parliament of the Republic of Indonesia. Moreover, compared to various countries all over the world which have second chamber with legislative powers, including the Senate as second chamber under the RIS Constitution, the above described limited authorities of the DPD cannot be found in the second chamber of any other country.

As a result of the DPD's limited powers, there have been proposals by various parties for its dissolution, based on a variety of arguments. The argument proposed by Effendy Choirie for the dissolution of the DPD is that it is a waste of budgetary funds and by dissolving it, an anomaly in the Indonesian parliament

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<sup>47</sup> MOEKTAMAR FEDERAL BANDOENG 1948 PANITIA PERSIAPAN KENEGARAAN LAPOERAN BOENDEL I (STUK No. 104/Ind.). (FEDERAL CONFERENCE BANDUNG 1948 STATE PREPARATORY COMMITTEE REPORT BUNDLE I (STUK No. 104/Ind.), p. 43-44. Refer to *Bentuk dan Susunan Pusat NIS Bagian III Badan Perwakilan Butir 45*: "...first [it] has the duty to safeguard the interests of sub-regions, second it has the significance of avoiding precipitous decisions and ensuring continuity in state policy as a counterpart of "waan van de dag". In addition to the intended continuity in the appropriate implementation of the first stated duties, for the same purpose members of the senate wish to create an element of balance by electing members for a longer period of time and dismissing them gradually." - *Unofficial translation*

would be eliminated.<sup>48</sup> Based on the constitutional practices of various countries, Louis Massicotte also mentions the high cost of the second chamber as a cause for its dissolution, in addition to the argument that the authorities of the first chamber and the second chamber are redundant, even though the second chamber serves against a breakdown of the whole constitutional regime.<sup>49</sup> Direct elections do not guarantee that the second chamber cannot be dissolved.<sup>50</sup> Massicotte also states that 17 countries which had dissolved their second chambers subsequently restored them, with most cases of restoration occurring in countries in which the second chambers had been dissolved by an authoritarian regime and were restored after the fall of such regime.<sup>51</sup>

In general, despite their relatively weak authorities, there is a need for second chamber with a view to membership composition, whereby the second chamber is the representation of a different category as opposed to the first chamber.<sup>52</sup> Some countries even make it mandatory to have representation of customary communities,<sup>53</sup> representation of laborers,<sup>54</sup> representation based on descent,<sup>55</sup> representation based on the profession of faith,<sup>56</sup> and representation

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<sup>48</sup> A. Effendy Choirie, "Mengapa DPD Perlu Diperkuat", ("Why Does the DPD Need to Be Strengthened"), [http://www.indopos.co.id/index.php?act=detail\\_c&id=272631](http://www.indopos.co.id/index.php?act=detail_c&id=272631), accessed on November 1, 2008. Effendy Choirie states the following arguments in view of the proposal for the dissolution of the DPD: "First, letting the DPD with its currently existing authorities is a waste of state money which cannot be allowed to continue. The amount of state budgetary funds expended since the formation of this institution has reached Rp.300 billion. These budgetary funds have been used for salary payments to members, secretariat staff, supporting expert staff, and building procurement cost. Second, maintaining the DPD's current format means preserving an anomaly in the system of Indonesia's parliament. The DPD is an institution with an unknown gender. It is not a legislator, even though it is in the legislative power branch. It is not the DPR's Advisory Council, because politically it has an equal position with the DPR. In its present shape, the DPD assumes the form of an absurd institution."

<sup>49</sup> Louis Massicotte, (2001), "Legislative Unicameralism: A Global Survey and a Few Case Studies," *Journal of Legislative Studies*, vol.1, issue 1, p. 156. Massicotte explains that there 34 countries which have dissolved their second chambers, for 2 types of reasons, namely second chambers of developing countries formed by a right-oriented authoritarian regime which were dismissed after the fall of such regime, and second chambers which over time became almost identical to the first chambers, were high-cost or anti-democratic. *Ibid.*, p. 155-156.

<sup>50</sup> *Ibid.*, p. 156. Louis Massicotte provides the example of countries with directly elected, but subsequently dissolved second chambers, namely Nebraska (1973), Cuba (1960), Equador (1979), Nicaragua (1979), Turkey (1980), Peru (1992), and Venezuela (1999).

<sup>51</sup> *Ibid.*, p. 157.

<sup>52</sup> Refer to Samuel C. Patterson and Anthony Mughan, (2001), "Fundamentals of Institutional Design: The Functions and Powers of Parliamentary Second Chambers", *Journal of Legislative Studies*, vol.1, issue 2, p. 52.

<sup>53</sup> Members of the Second Chamber of the State of Bostwana are appointed from among customary community chiefs (that is why Lipjhart categorizes Bostwana, along with the United Kingdom, as *between medium-weak bicameralism*). In the State of the Federal Democratic Republic of Ethiopia, the Second Chamber consists of representatives of Nations, Nationalities and Peoples. Article 171 of the Constitution of Colombia provides for 2 additional senators from the Indian tribes in the Second Chamber of the parliament of Colombia.

<sup>54</sup> In the state of the Arab Republic of Egypt, ½ of members of the First Chamber and 2/3 of members of the Second Chamber come from laborers and farmers.

<sup>55</sup> Members of the Second Chamber in the United Kingdom of Great Britain and Northern Ireland are appointed to represent the class of lords and bishops.

<sup>56</sup> In addition to the United Kingdom of Great Britain and Northern Ireland, the state of Lebanon also provides that the second chamber consists of "spiritual families". Refer to "Bicameralism in the Africa and Arab World", (February 2001), <http://www.senat.fr.senatsdumonde/bicamerafrica2001english.html>, p. 12, accessed on April 9, 2009.

of women in the Secondary Chambers of their parliament.<sup>57</sup> The purpose of providing for the representation of certain categories of citizens in the community, particularly representatives of customary communities in several Arab and African countries, is to ensure that the interests of communities in the regions are accommodated in policy making at the national level, as well as to guarantee greater stability of the state concerned.<sup>58</sup> In some of these countries the Second Chambers do not have the power to make law because their preferred function is that of a conciliation institution being the primary factor in the social and institutional stability of such countries, as stated by Lord Bryce: "Legislatures contain too little of the stores of knowledge, wisdom and experience which each country possesses."<sup>59</sup> Unlike the bicameral system in western countries, the bicameral system in Arab and African countries has been established to function as a stabilization and conciliation factor.<sup>60</sup> The bicameral system in Arab and African countries has basically developed in 2 phases, namely stabilization in which the Second Chambers serve as a balance to the various existing forces, and then they take on the role of law making and supervision.<sup>61</sup>

As Afan Gafar states, in addition to checks and balances, the basic philosophy for applying the bicameral system is the degree of representiveness in countries with a high level fragmentation enabling them to accommodate the dynamics developing in society.<sup>62</sup> As explained above, even though as the second chamber the DPD does not have voting right (the right to reject) there is still a need for its presence as second chamber. The DPD is an upgrade of the *Utusan Daerah* (Regional Delegates) in the MPR prior to the Amendment of the 1945 Constitution. Unlike the *Utusan Golongan* (Functional Representation), all

<sup>57</sup> Refer to Taiwan Constitution, Article 26 of the Constitution of the Republic of China. In the state of the Islamic Republic of Afghanistan, the President appoints 1/3 of members of the Second Chamber, with a percentage of 50% of women who have expertise and experience.

<sup>58</sup> Pamela Martino, "Africa: Algeria, Burundi, Congo, Egypt, Ethiopia, Gabon, Lesotho, Liberia, Madagascar, Mauritania, Morocco, Namibia, Nigeria, Repubblica democratica del Congo, Rwanda, Swaziland", [http://www.csfederalismo.it/DocumentFolder/Mastro\\_Africa\\_enpdf](http://www.csfederalismo.it/DocumentFolder/Mastro_Africa_enpdf), accessed on April 9, 2009, p. 3. Refer also to "Bicameralism in Africa and the Arab World,(2001)," *loc cit.*, p. 11-12. It is stated that the as a result of the representation of customary communities, the aspirations of customary communities are accommodated at the national level in the process of law making, and this is better than making institutional agreements, because it is more authentic and therefore it creates stability.

<sup>59</sup> Lord Bryce as quoted by Pamela Martino, *ibid.*

<sup>60</sup> "Bicameralism in the Africa and Arab World", *loc cit.*, p. 14-15.

<sup>61</sup> *Ibid.*

<sup>62</sup> Sekretariat Jenderal MPR-RI, *Risalah Rapat Pleno Ke-15 Panitia Ad Hoc I BP MPR 15 Mei 2001*, Nomor: MJ 230/10/2001, (Sekretariat General of the MPR of the Republic of Indonesia, Minutes of the 15<sup>th</sup> Plenary Meeting of Ad Hoc Committee I of the MPR Board of Staff, May 15, 2001, Number: MJ 230/10/2001), p. 12. "Second, the philosophy related to the degree of representiveness. In a society or state with an extremely high degree of fragmentation the bicameral mechanism is usually applied, and this is what we see happening in various countries in the context of accommodating the abundance of aspirations developing in the community.

Therefore, my appeal to you is to consider the reason for adopting the bicameral system based on these two philosophical premises, rather than in view of your interest, but first, the checks and balance mechanism, let there be no institution control another institution, and then the representativeness of the representative institutions should also be genuinely guaranteed, thus providing a guarantee to all of the existing groups in society.

We have an extremely high level of fragmentation, moreover, it is obvious that such consolidation of economy, class, ethnicity, religion, language, archipelago cannot possibly be accommodated by a single people's representative institution alone; therefore, a people's representative institution capable of truly accommodating this degree of aspirations needs to be considered, as well as the working mechanism between these two institutions, which again depends on the rules of procedure applicable at these two institutions in various countries." - *Unofficial translation*

factions agreed to keep and strengthen the existing *Utusan Daerah* (Regional Delegates) in the MPR. The philosophical basis for the formation of the DPD stated by the factions in the MPR at the time of the amendment of the 1945 Constitution was basically that the DPD was expected to represent the people and institutions representing the interests of the regions, with the expectation that the interests of the people in general, both the direct interests of people as well as the interests of the regions, would be represented in a more representative manner in the decision making process at the public policy level.<sup>63</sup> In the case of a country like Indonesia, having a vast territory with a diverse archipelago, natural and human resources, where certain areas are bordering directly with neighboring countries, the interests of the regions must be managed properly.

The second chamber, even though weak, is still needed in a country like Indonesia, as well as in other countries which have a dense population and extensive territories, particularly countries with heterogeneity both in terms of human as well as natural resources. This is to prove that the existence of the second chamber is not merely a competition between the first chamber and the second chamber,<sup>64</sup> because the basis for forming the second chamber, in addition to the representation of various interests of the community, is also primarily for it to serve as a precaution against the emergence of tyranny by the majority, tyranny by the minority, as well as the tyranny of individual leaders.<sup>65</sup>

While the state of the Republic of Indonesia is a unitary state, the wish to strengthen the regions has led to the transformation of the Regional Delegates (*Utusan Daerah*) into the DPD. Accordingly, despite Lijphart's statement that there is a strong empirical relationship between bicameral-unicameral and a dichotomy between federal-unitary; all federal states are using the bicameral system in their parliaments, while some non-federal states are using the bicameral system and others the unicameral system,<sup>66</sup> based on the wish to accommodate the regions, a second chamber in addition to the DPR, namely the DPD, was also accommodated. There is also certain contradiction in Lijphart's statement related to the population size, whereby according to Lijphart, large countries tend to use strong bicameralism,<sup>67</sup> while the Republic of Indonesia is using medium-strength bicameralism. This is also related to the opinion that it would be more difficult to implement the law making and supervisory functions if the DPD had equal formal powers with the DPR.

The second chamber also plays an important role in safeguarding the Constitution, whereby despite its asymmetrical formal powers compared to the first chamber, the second chamber has a responsibility in the amendment

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<sup>63</sup> *Ibid.*, p. 30-31.

<sup>64</sup> Refer to Bivitri Susanti, "Mewakili Daerah-kah Dewan Perwakilan Daerah", ("Does the Regional Representatives' Council - DPD Actually Represent the Regions"), paper in the discussion "*Eksistensi Dewan Perwakilan Daerah dalam Rangka Pelaksanaan Otonomi Daerah di Indonesia*," ("The Existence of the Regional Representatives' Council (DPD) in the Context of the Implementation of Regional Autonomy in Indonesia," Depok, Faculty of Law, Universitas Indonesia (FHUI), May 9, 2005, p. 4. "The key word in bicameral parliament is competition between the upper house and the lower house. Regardless of the membership model applied ..., the bicameral concept is certain to have a mechanism whereby the two houses compete against each other in implementing their respective authorities as provided for under the constitution."

<sup>65</sup> Refer to George Tsebelis and Jeannette Money, (1997), *Bicameralism*, (London: Cambridge University Press), p. 35-36.

<sup>66</sup> Arend Lijphart, *Patterns...op cit.*, p. 213.

<sup>67</sup> *Ibid.*

of the Constitution.<sup>68</sup> Members of the DPD, who are also members of the MPR, have powers in amending the 1945 Constitution. Consequently, the DPD has the powers to channel the aspirations of the regions for safeguarding or even amending the Constitution.

The second chamber also has the power to influence policy, despite its limited powers, by issuing statements as members of parliament in connection with bills under deliberation, and by implementing its functions as deliberative assembly.<sup>69</sup> High quality Bills proposed by the DPD and considerations stated in writing by the DPD can encourage the parliament's overall performance, both the DPR and particularly the DPD, especially when the DPD's high-quality views and opinions can be communicated to the public more optimally.

Various countries which have second chamber with formal powers that are asymmetrical to those of the first chamber have been implementing a series of institutional strengthening, by developing their abilities as the people's representatives and by taking a more active role in overseeing the government.

Today, the senates of the world undergoing change. Some, like the Canadian Senate, are under strong pressure to reform. Others, like the U.S Senate, have become more institutionally open and more electorally sensitive. The British House of Lords has developed greater professionalism as a legislative body and become more effective. The German Bundesrat has been called upon to absorb representation from the states of formerly Communist East Germany. In other setting-Poland, Romania, South Africa, Spain-senates have recently become substantially more democratic.<sup>70</sup>

The DPD can do the same, by conducting internal strengthening. The fact that the system of weak bicameralism is applied in the parliament of the Republic of Indonesia does not mean that the DPD is unable to function maximally. Out of a total of 22 countries analyzed, 2 countries are using perfect bicameralism, 7 countries are using strong bicameralism, 11 are using weak bicameralism, and 2 countries are using very weak bicameralism. Based on the foregoing it is evident that weak bicameralism is the most frequently used category. The above mentioned 11 countries include German and France. As it was explained earlier, bills proposed by the Second Chambers of these two countries receive serious attention, and so do their recommendations related to bills proposed either by the First Chamber or by the government. Accordingly, the DPD needs to enhance further its quality and performance.

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<sup>68</sup> Refer to Meg Russel, "Responsibilities of Second Chambers: Constitutional and Human Rights Safeguards", *Journal of Legislative Studies*, vol.1, issue 2001, p. 61. Refer also to Samuel C. Patterson and Anthony Mughan, "Fundamentals of Institutional Design: The Functions and Powers of Parliamentary Second Chambers", *Journal of Legislative Studies*, Vol.1., Issue 1., Spring 2001, p. 52. They both state that this representation function is just another role of the second chamber, whereas its primary role is to safeguard institutional stability and constitutional integrity implemented in the amendment to the Constitution.

<sup>69</sup> This is also discussed by Roger Scully, "Dealing with Big Brother: Relations with the First Chamber", *Journal of Legislative Studies*, vol.1, issue 1, Spring 2001, p. 98. "A lack of formal powers may condemn the upper house to a fair degree of political impotence. This does not necessarily mean, however that the chamber will be completely insignificant. An alternative role to that of powerful legislator may evolve, in which the upper chamber seeks to its status as part of the parliament to exercise a 'Voice function. That is, the chamber, or at least some of its membership, may seek to act as something of a lobbying group for particular viewpoints, and perhaps attempt to embarrass those in authority by raising particular issues."

<sup>70</sup> Refer to Samuel C. Patterson and Anthony Mughan,(1999),"Senates and the Theory of Bicameralism", *Senates: Bicameralism in the Contemporary World*, eds. Samuel C. Patterson and Anthony Mughan, (Ohio: The Ohio State University), p. 18-19.

It is important to strengthen the DPD bearing in mind the objectives of forming the DPD in the context of the constitutional structure of the Republic of Indonesia, which are as follows, among other things:<sup>71</sup>

- 1) strengthen the bonds among regions within the Unitary State of the Republic of Indonesia and strengthen national unity in all regions;
- 2) enhance aggregation and the accommodating of aspirations as well as the interests of the regions in the formulation of national policy related to the State and the regions;
- 3) encourage the acceleration of the process of democratization, development and progress of the regions in a harmonious and balanced manner.

As a consequence of the DPD's weak authorities in the control function, it is unlikely that the objective of the DPD's formation will be achieved. In the context of the DPD's authorities related to control what needs to be considered further is not primarily only the DPD's control of laws related to the interests of the regions, but the fact that the results of such supervision are reported to the DPR rather than directly to the government. Under Article 22D paragraph (3) of the Third Amendment to the 1945 Constitution it is provided that the DPD may conduct control on the implementation of laws related to the DPD's authorities and report the results of such control conducted by it to the DPR as input for further consideration and follow up.<sup>72</sup>

In cases where the Second Chamber has the authority to conduct control, the Constitution of several countries provides that such authority can be exercised directly, without having to go through the First Chamber as provided for in the 1945 Constitution. The Constitution in almost all countries applying the presidential governance system sets out that both chambers of the parliament have the authority to summon ministers to request them to provide explanation (with the exception of the United States of America).

Compared to federal states, a unitary state such as the Republic of Indonesia obviously devotes greater space to the relationship between the central government and the regions. For instance, even though it is set forth under Article 10 paragraph (3) of Law Number 32 Year 2004 that the regional government deals with all affairs except for foreign politics, defense, security, judiciary and fiscal matters, as well as religion, when we speak of judicial power, the aspirations of the regions must be taken into account as they are related to regional interests such as the shariah judicature, which is a special judicature in Nangroe Aceh Darussalam. Along the same line, Bhenyamin Hoessein states that the DPD's involvement in a bill does not necessarily have to be all encompassing, rather, it may be related to a single or several articles or to a certain chapter of the bill concerned.<sup>73</sup>

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<sup>71</sup> Sekretariat Jenderal MPR-RI, (2007), *Panduan Dalam Memasyarakatkan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945: Latar Belakang, Proses, dan Hasil Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Sesuai dengan Urutan Bab, Pasal, dan Paragraph*, (Secretariat General of the MPR of the Republic of Indonesia, (2007), Jakarta: Sekretariat Jenderal MPR-RI, p. 93.

<sup>72</sup> Refer to Republic of Indonesia, *Perubahan Ketiga...*, *op cit.*, (Third Amendment), Article 22D paragraph (3).

<sup>73</sup> Bhenyamin Hoessein as quoted in Inosentius Samsul, et al., (2003), *Ruang Lingkup dan Mekanisme Pelaksanaan Fungsi Legislasi Dewan Perwakilan Daerah: Laporan Hasil Penelitian*, (Scope and

Accordingly, in principle there are in fact a great number of bills which also fall under the scope of the DPD's authority to the extent that their substantive content is related to the interests of a region.<sup>74</sup> The DPD may make proposals and participate in the deliberations even though the bill concerned is not related to the interests of the regions, because the DPD's authority does not depend on whether or not the substance of the bill is a regional government affair as intended in Law Number 32 Year 2004; however, if the substance of the bill concerned is related to interests of the regions, it is indeed part of the DPD's authority.

If not understood clearly, it can cause misconceptions by confusing the basis of mandate and the agenda for its implementation, and thus it can create conflict between the people in the regions and the regions concerned.<sup>75</sup> Basically, members of the DPD obtain the basis for their mandate when they are elected by the people in the general elections, after they fulfill the requirement of minimum support for being nominated as member of the DPD of a certain province.<sup>76</sup> When members of the DPR strive for the interests of the people in the regions, members of the DPD also automatically strive for the interests of the regions, because the interests of the people that they are striving for are based on the perspective and the interest of the region concerned. This means to imply that the interests of the people in a region and the interests of the region are in fact not different, let alone contradictory. Ramlan Surbakti gave a statement along these lines during the deliberations on the third amendment to the 1945 Constitution, describing the interests of regions as follows:

*Dan kemudian yang dimaksud kepentingan daerah itu apanya sebetulnya kalau masalah lingkungan hidup tentu tidak dalam DPD, kepentingan daerah juga adalah kepentingan rakyat didaerah tersebut sesuai dengan pembukaan.*<sup>77</sup>

The next question is what is actually meant by regional interest? If it refers to environmental issue, then it does not fall within the authority of DPD.

Implementation Mechanism of the Legislative Function of the Regional House of Representatives - DPRD: Research Report), (Jakarta: P3I Setjen DPR-RI, p. 60.

<sup>74</sup> In the state of Germany, in practice the second chamber (*Bundesrat*) has the powers to approve more than half of the bills proposed as they are related to the interests of the regions. Refer to Werner J. Patzelt, "The German Bundesrat", *Senates...*, *op cit.*, p. 77.

<sup>75</sup> Refer to Satya Arinanto et al., "*Struktur Organisasi dan Kerangka Prosedural bagi Penyempurnaan Rancangan Kelembagaan DPD RI: Suatu Studi Pendahuluan*", ("Organizational Structure and Procedural Framework for Improving the Institutional Design of the DPD of the Republic of Indonesia; A Preliminary Study"), research report Parliamentary Reform Initiatives and DPD Empowerment Secretariat General of DPD of the Republic of Indonesia in cooperation with the United Nations Development Programme, 2006, p. 112. "Third, the relationship between the DPR and DPD and governmental institutions at the regional level is apparently marked with reverse logic. On the one hand, the DPD as the representative of regions tends to have a formal-procedural relationship. This means that, generally, the four members of the DPD as a unit of representatives of a province do not really have a mandatory basis or solid support from the region represented by them. Moreover, due to the ambiguity of the agenda of the region granting such mandate and support, DPD Members receive an overflow of seemingly unlimited hopes and aspirations. Consequently, we often hear the statement which may sound rather strange, namely that DPD Members wish to "be accountable" only to their constituents, rather than to the region represented by them." - *translation*.

<sup>76</sup> Refer to Republic of Indonesia, *Undang Undang Tentang Pemilihan Umum*, (Law Concerning General Elections), Law No. 8, State Gazette No. 117, Year 2012, Supplement to the State Gazette No. 4440, Article 13.

<sup>77</sup> Refer to Sekretariat Jenderal MPR-RI, *Risalah Rapat Pleno Ke-15 Panitia Ad Hoc I BP MPR..* (Secretariat General of the MPR of the Republic of Indonesia, Minutes of the 15th Plenary Meeting of Ad Hoc Committee I of the MPR Board of Staff ...), 2001, *op cit.*, p. 24.



Regional interest is also interest of the people in the region as stated in the Preamble (of the Constitution). – *translation*

### III. Conclusion

In conclusion it can be stated that the DPD's authorities related to the control function are provided for in Article 22D paragraph (3), Article 23E paragraph (2), and Article 23F paragraph (1) of the Third Amendment to the 1945 Constitution. The DPD may conduct control on the implementation of certain laws related to the interests of the regions, the implementation of the State Budget (APBN), taxes, education and religion, report the results of such supervision conducted by it to the DPR, receive reports on the audit of state finances from BPK, and provide considerations to the DPR in electing members of the BPK. If analyzed based on the theory of the powers of parliament to implement the control function, and if analyzed in comparison to various countries which have second chamber, it becomes evident that the DPD's above mentioned powers are extremely limited. There is a need to strengthen the DPD's authorities not only to ensure that there is no wasting of budgetary funds, but also to ensure that the objectives of the DPD can be achieved for a continued consolidation of the unitary state of the Republic of Indonesia which consists of a vast territory and an extremely heterogeneous population.

Under the existing limitations of the DPD's formal authorities, the following steps could be taken towards its institutional strengthening:

1. Enhance the capacity of DPD members, by maximizing their liaising role in promoting the interests of their constituents, and by making continuous endeavors to maintain the DPD's integrity and commitment in their capacity as representatives of the regions with their limited powers.
2. Revitalize the DPD's Secretariat General and conduct Capacity Building for the Staff of DPD Secretariat General. It is extremely important to continue improving the quality and performance of the DPD's Secretariat General as an important supporting system for supporting the activities of DPD members.
3. Structure institutional relationships, particularly with its partner in parliament, namely the DPR, with the government and institutional relationships with the Regional Governments and the Regional House of Representatives (DPRD).

### Bibliography

#### Books

- Asshiddiqie, Jimly. (2005), *Hukum Tata Negara dan Pilar-pilar Demokrasi Serpihan Pemikiran Hukum, Media, dan HAM*. (Constitutional Law and Pillars of Democracy, Some Thoughts On Law, the Media and Human Rights). 1st Ed. Jakarta: Konstitusi Press.
- \_\_\_\_\_. (2006), *Konstitusi dan Konstitusionalisme Indonesia*. (The Constitution and Constitutionalism In Indonesia). 3rd Rev. Ed. Jakarta: Setjen dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia.

- \_\_\_\_\_. (2006), *Pengantar Ilmu Hukum Tata Negara Jilid II*. (An Introduction to the Science of Constitutional Law Volume II). 1st Ed. Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI.
- \_\_\_\_\_. (2006), *Pokok-Pokok Hukum Tata Negara Indonesia Pasca Reformasi*. (The Fundamentals of Indonesia's Post-Reform Constitutional Law). Jakarta: PT Bhuna Ilmu Populer.
- Friedrich, Carl J. (1949). *Constitutional Government and Democracy Theory and Practice in Europe and America*. Rev. ed. Boston: Ginn and Company.
- Lijphart, Arend. (1999). *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*. New Haven and London: Yale University.
- Majelis Permusyawaratan Rakyat (People's Consultative Assembly - MPR). *Risalah Rapat Pleno ke-14 Panitia Ad Hoc 1 Badan Pekerja MPR 10 Mei 2001 Nomor: MJ 230/9/2001*. (Minutes of the 14th Plenary Meeting of Ad Hoc Committee I of MPR Board of Staff dated May 10, 2001 Number: MJ 230/9/2001). Jakarta: Sekjen MPR, 2001.
- Manan, Bagir. (2004). *DPR, DPD dan MPR dalam UUD 1945 Baru*. (DPR, DPD and MPR In the New 1945 Constitution). 2nd Ed. Yogyakarta: FH UII Press.
- Patterson, Samuel C. and Anthony Mughan, eds. (1999). *Senates: Bicameralism in the Contemporary World*. Ohio: The Ohio State University.
- Prasojo, Eko. (2005). *Federalisme dan Negara Federal: Sebuah Pengantar*. (Federalism and the Federal State: An Introduction). Jakarta: Departemen Ilmu Administrasi FISIP UI.
- Samsul, Inosentius et al. (2003). *Ruang Lingkup dan Mekanisme Pelaksanaan Fungsi Legislasi Dewan Perwakilan Daerah: Laporan Hasil Penelitian*. (Scope and Implementation Mechanism of the Legislative Function of the Regional House of Representatives - DPRD: Research Report). Jakarta: P3I Setjen DPR-RI.
- Sekretariat Jenderal MPR-RI. (Secretariat General of the MPR of the Republic of Indonesia). (2007). *Panduan Dalam Memasyarakatkan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945: Latar Belakang, Proses, dan Hasil Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Sesuai dengan Urutan Bab, Pasal, dan Paragraph*. (Guide for the Dissemination of the 1945 Constitution of the State of the Republic of Indonesia: The Background, Process, and Results of the Amendment to the 1945 Constitution of the State of the Republic of Indonesia In Sequential Order of Chapters, Articles and Paragraphs). Jakarta: Sekretariat Jenderal MPR-RI.
- Strong, C.F. (1952). *Modern Political Constitution an Introduction to the Comparative Study of Their History and Existing Form*. Rev. ed. London: Sidgwick & Jackson Limited.
- Tsebelis, George and Jeannette Money.(1997). *Bicameralism*. London: Cambridge University Press.

## Articles and Papers

- C. Patterson, Samuel and Anthony Mughan. "Fundamentals of Institutional Design: The Functions and Powers of Parliamentary Second Chambers." *Journal of Legislative Studies*. Vol.1. Issue 1. Spring 2001.
- Massicotte, Louis. "Legislative Unicameralism: A Global Survey and a Few Case Studies." *Journal of Legislative Studies*. Vol.1. Issue 1. Spring 2001.
- Rauf, Maswadi. "Keterwakilan dan Demokrasi." *Diskusi Publik Wacana Amandemen UUD 1945*. ("Representation and Democracy". Public Discussion on the Discourse on the Amendment of the 1945 Constitution). Hotel Millenium, Jakarta, May 13, 2008.
- Russel, Meg. "Responsibilities of Second Chambers: Constitutional and Human Rights Safeguards." *Journal of Legislative Studies*. Vol.1. Issue 1. Spring 2001.
- Scully, Roger. "Dealing with Big Brother: Relations with the First Chamber", *Journal of Legislative Studies*. Vol.1. Issue 1. Spring 2001.
- Susanti, Bivitri. "Mewakili Daerah-kah Dewan Perwakilan Daerah." ("Does the Regional Representatives' Council - DPD Actually Represent the Regions"). Paper in the discussion "The Existence of the Regional Representatives' Council (DPD) in the Context of the Implementation of Regional Autonomy in Indonesia", Depok, FHUI, May 9, 2005.
- Soeroso, Bambang. "Meninjau Kembali Agenda dan Prospek Perubahan Kelima Undang-Undang Dasar Negara Republik Indonesia Tahun 1945." ("A Review of the Agenda and Prospects of the Fifth Amendment to the 1945 Constitution of the State of the Republic of Indonesia"). One-day Seminar, Djokosoetono Assembly Hall, Faculty of Law, Universitas Indonesia, Depok, November 21, 2007.

## Research and Documents

- Arinanto, Satya *et al.* "Struktur Organisasi dan Kerangka Prosedural bagi Penyempurnaan Rancangan Kelembagaan DPD RI: Suatu Studi Pendahuluan." ("Organizational Structure and Procedural Framework for Improving the Institutional Design of the DPD of the Republic of Indonesia; A Preliminary Study"). Research report Parliamentary Reform Initiatives and DPD Empowerment Secretariat General of DPD of the Republic of Indonesia in cooperation with the United Nations Development Programme, 2006.
- Kelompok DPD di MPR RI, "Naskah Amandemen Undang-Undang Dasar Negara Republik Indonesia Tahun 1945."* (DPD Group in the MPR of the Republic of Indonesia, Text of the Amendment to the 1945 Constitution of the State of the Republic of Indonesia).
- MOEKTAMAR FEDERAL BANDOENG 1948 PANITIA PERSIAPAN KENEGARAAN LAPOERAN BOENDEL I (STUK No. 104/Ind.).* (FEDERAL CONFERENCE BANDUNG 1948 STATE PREPARATORY COMMITTEE REPORT BUNDLE I (STUK No. 104/Ind.).

## Website

- "Bicameralism in the Africa and Arab World", (February 2001)", <http://www.senat.fr/senatsdumonde/bicamerafrica2001english.html>. Accessed on April 9, 2009.
- Choirie, Effendy. "Mengapa DPD Perlu Diperkuat", ("Why Does the DPD Need to Be Strengthened"), [http://www.indopos.co.id/index.php?act=detail\\_c&id=272631](http://www.indopos.co.id/index.php?act=detail_c&id=272631). Accessed on November 1, 2008.
- "Constitutional Declaration: A New Stage in the History of the Great Egyptian People". [www.sis.gov.eg/en/lastpage.aspx?category\\_id=155](http://www.sis.gov.eg/en/lastpage.aspx?category_id=155). Accessed on February 1, 2013.
- Martino, Pamela. "Africa: Algeria, Burundi, Congo, Egypt, Ethiopia, Gabon, Lesotho, Liberia, Madagascar, Mauritania, Morocco, Namibia, Nigeria, Repubblica democratica del Congo, Rwanda, Swaziland", [http://www.csfederalismo.it/DocumentFolder/Mastro\\_Africa\\_enpdf](http://www.csfederalismo.it/DocumentFolder/Mastro_Africa_enpdf). Accessed on April 9, 2009.
- Taiwan Constitution, Constitution of the Republic of China. <http://www.woefre.unibe/icl/>.

## Laws and Regulations

- Republik Indonesia Serikat. (Federal Republic of Indonesia). *Keputusan Presiden tentang Mengumumkan Piagam Penandatanganan Konstitusi Republik Indonesia Serikat dan Konstitusi Republik Indonesia Serikat*. (Presidential Decree concerning the Charter for the Signing of the Constitution of the Federal Republic of Indonesia and the Constitution of the Federal Republic of Indonesia). *Keppres No. 48. LN No. 3. LN Tahun 1950*. (Presidential Decree No. 48, State Gazette No. 3, Year 1950).
- Republik Indonesia. (Republic of Indonesia). *Perubahan Pertama Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, (First Amendment to the 1945 Constitution of the State of the Republic of Indonesia). *LN No. 11. LN Tahun 2006*. (State Gazette No. 11, Year 2006).
- \_\_\_\_\_. *Perubahan Kedua Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*. (Second Amendment to the 1945 Constitution of the State of the Republic of Indonesia). *LN No. 12. LN Tahun 2006*. (State Gazette No. 12, Year 2006).
- \_\_\_\_\_. *Perubahan Ketiga Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*. (Third Amendment to the 1945 Constitution of the State of the Republic of Indonesia). *LN No. 14, LN Tahun 2006*. (State Gazette No. 14, Year 2006).
- \_\_\_\_\_. *Undang Undang Tentang Pemilihan Umum*. (Law Concerning General Elections). *UU No. 8. LN No. 117. Tahun 2012. TLN 4440*. (Law No. 8. State Gazette No. 117 Year 2012. Supplement to the State Gazette No. 4440).

## Other Sources

- Sekretariat Jenderal MPR-RI, *Risalah Rapat Ke-32 Panitia Ad Hock I Panitia Ad Hoc I BP MPR 17 Mei 2000*. (Secretariat General of the MPR of the Republic

of Indonesia, Minutes of the 32<sup>nd</sup> Plenary Meeting of Ad Hoc Committee I of the MPR Board of Staff, May 17, 2000).

Sekretariat Jenderal MPR-RI, *Risalah Rapat Pleno Ke-38 Panitia Ad Hoc I BP MPR 31 Mei 2000*. (Secretariat General of the MPR of the Republic of Indonesia, Minutes of the 38<sup>th</sup> Plenary Meeting of Ad Hoc Committee I of the MPR Board of Staff, May 31, 2000).

Sekretariat Jenderal MPR-RI, *Risalah Rapat Pleno Ke-15 Panitia Ad Hoc I BP MPR 15 Mei 2001, Nomor: MJ 230/10/2001*. (Secretariat General of the MPR of the Republic of Indonesia, Minutes of the 15<sup>th</sup> Plenary Meeting of Ad Hoc Committee I of the MPR Board of Staff, May 15, 2001, Number: MJ 230/10/2001).

Sekretariat Jenderal MPR-RI, *Risalah Rapat Pleno Ke-32 Panitia Ad Hoc I BP MPR 19 September 2001, Nomor 230/28/2001*. (Secretariat General of the MPR of the Republic of Indonesia, Minutes of the 32<sup>nd</sup> Plenary Meeting of Ad Hoc Committee I of the MPR Board of Staff, September 19, 2001, Number 230/28/2001).