

Institutional Strengthening, Function and Authority of Regional Representative Council of Republic Indonesia In The Establishment of Law

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Abstract

This paper discusses the efforts of Institutional Strengthening of DPD RI, as well as efforts to strengthen the Function and Authority of DPD RI in the Establishment of Law. DPD RI institutions born since the third amendment of the 1945 Constitution are designed to offset the power of DPR in parliament. But in practice, institutionally the function and authority of DPD legislation is not strong enough to keep up with the DPR. DPD is only positioned as a complementary institution of DPR (auxiliary body) by the amenders of the 1945 Constitution. Therefore, this thesis examines how efforts to strengthen DPD institutions in parliament, as well as efforts to strengthen the functions and authorities of DPD in the establishment of laws. This type of research is juridical normative with qualitative approach. The results of the study authors propose First, to strengthen the institutional must be started from the selection process of candidates of DPD senators. So far, the nomination of DPD senators through quantity selection, namely the minimum requirement of support. In the future, this provision must be changed to quality selection, namely the screening of dpd candidates through academic institutions, professions, bureaucracy, entrepreneurs, religions or customs. The selection process is carried out to determine which candidates will fight in the election. Second, the composition of DPD must pay attention to the quantity and quality of dpd members. In quantity, the number of DPD members must be balanced with the number of DPR members, not one-third. In quality, dpd members must have one of the abilities in the academic, professional, bureaucratic, entrepreneur, religious or customary fields. Third, to strengthen the function and authority of DPD, DPD must be given the function of legislation to approve the law. The stronger the DPD institution, it is expected that the check and balances mechanism in the parliamentary body will run well. Thus will create a strong bikameral system.

Keywords: Institutional Strengthening, Function and Authority, Regional Representative Council of Republic Indonesia, The Establishment of Law.

I. INTRODUCTION

In a democratic system of government, the existence of a people's representative institution is seen as a necessity to articulate the interests of the people in the context of implementing a system of government in accordance with democratic principles. The institution of people's representatives is also one of the very fundamental elements in a democratic system of government, in addition to other elements, such as the electoral system, equality before the law, freedom of expression, freedom of association, and so on. Any democratic system is the idea that citizens are supposed to be involved in a certain matter in the field of making political decisions, either directly or through their elected representatives in representative

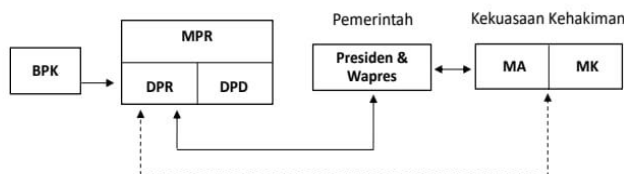
institutions. Generally, the functions that must exist of such representative institutions are legislative functions which are also juxtaposed with supervisory functions and budget functions.

Theoretically, the institution of people's representatives is the institution that has the strongest legitimacy in the formation of laws that will bind all citizens, including in order to supervise the exercise of government power. Legislation is the most widespread form of legislation. It can be said that there is no field of life and activity of statehood, government, society and individuals that cannot be reached to be regulated by law.¹

As a country that adheres to and recognizes the essence of democracy, the Indonesian state has constitutionally regulated the People's Representative Institution in the 1945 Constitution, both before and after the amendment. These institutions are called the House of Representatives (DPR), the Regional Representative Council (DPD), and the People's Consultative Assembly (MPR). DPR as a representation of political parties, DPD as regional representation, and MPR as an institution whose members are a combination of DPR members and DPD members.

Thus, the concept of people's representative institutions in Indonesia after the amendment of the 1945 Constitution was identified into 3 (three) types of state institutions, namely: MPR, DPR and DPD. All three are part of the constitutional superstructure of the same position, namely as a high institution of the state. There is no longer a distinction between higher institutions and the highest institutions of the state. The concept of distribution of power has changed to the concept of separation of power where each state institution is equally positioned and equal.

For details, it can be seen from the following chart:



If it is related to the theory of separation of powers, then the DPR and DPD are included in the legislative power organ which has 3 functions, namely 1) the legislative function, 2) the supervisory function and 3) the budget function. Meanwhile, the MPR is a constitution-forming institution, namely forming and amending the Basic Law. However, despite the separation and supervisory duties, between the branches of power there needs to be a harmony for the effectiveness of law enforcement and authority. This is as stated by Zainal Arifin Hoesein in the book *Constitutional Practice After the Amendment of the 1945 Constitution*, that the legislative organ (parliament) the executive organ (government bureaucracy), and the judicial organ (law enforcement bureaucracy) are a unified series of state institutions that have a harmonious workflow in the context of law enforcement. If the dynamics with regard to the whole aspect, element, hierarkhi and components do not work in a balanced and synergistic manner, then the law as a unified system cannot be expected to materialize as it should.²

¹ Hartati, *Menatap Masa Depan Dewan Perwakilan Daerah*, CV.Trisar Mitra Utama, Jambi, 2018 hal.1

² Prof. Dr. Zainal Arifin Hoesein, S.H.,M.H., *Praktik Ketatanegaraan Pasca Perubahan UUD 1945*, Penerbit Lembaga Pengembangan Pendidikan Anak Bangsa (LP2AB), tahun 2019, Jakarta, halaman 4-5.

Since the enactment of the 1945 NRI Constitution (post-amendment), the institution that has the strongest position in influencing the course of government is the DPR RI. Because in addition to having legislative, supervisory and budgetary functions, the DPR also has quite broad rights, namely the right of interpellation, the right to poll, and the right to express opinions. Plus each member has the right to ask questions, express suggestions and opinions and the right to immunity. This causes the position of the DPR as a legislative institution to be constitutionally stronger than that of the executive institution. Many experts argue that there has been a shift in power from executive heavy to legislative heavy.

The shift in legislative power can also be seen from the involvement of the DPR in the selection of filling the positions of other institutions, such as the election of Supreme Court Judges, Constitutional Judges, KPU Commissioners, KPK Commissioners, and KY Commissioners. This causes the position of the House to be very important and determines the electability of the person who will fill these positions.

Unfortunately, such a large authority is not balanced with the maximum performance of this institution. Mahfud MD as written by journalist Fadli Mubarak in the online media www.alinea.id/politik with the title "Mahfud MD: There is a Law Purchased, The Articles Are Ordered" said that legal governance in Indonesia is still in disarray. One of the reasons is the rampant practice of buying and selling laws and regulations. There are laws that are bought, the articles are made by order (Mahfud MD, 2019). Manunggal K.Wardaya, who also quoted Mahfud MD's opinion, said that the Act is a political product that has the potential to be used as a political instrument to perpetuate power. Before the Constitutional Court, there was no way to stop unconstitutional laws except for the 'good' of the DPR and the President as the maker to conduct legislative review.³

The DPR, which is a representation of political parties, certainly cannot be separated from the influence of political party interests. In carrying out their duties as representatives of the people, it is sometimes a dilemma for members of the DPR, between prioritizing the interests of the people or the interests of the political party elite. Bagir Manan argues that one of the 'ills' of a political party lies in its social behavior which always puts the interests of the political party elite ahead of putting the interests of the people first.⁴

When compared to other countries, this two-chamber system is similar to the parliamentary system in the United States consisting of the Senate and the House of Representatives. The Senate is a representation of state territory, while the house of representatives is a representation of a political party. In England, which is the oldest adherent of the parliamentary system of government, it also uses a 2-chamber parliamentary system, namely the House of Commons and the House of Lords. As the lower house, the house of commons is the representation of political parties, while the upper house of lords is the representation of the nobility and the majority is filled by the royal military higher-ups.

The historically, DPD has similarities with the Regional Envoy referred to in the 1945 Constitution before the amendment and the Senate in the RIS Constitution. In various literacies, it is stated that what is meant by regional envoys is a mission appointed by local governments, which is considered to be able to bring

³ Manunggal K.Wardaya, *Perubahan Konstitusi Melalui Putusan MK: Telaah Atas Putusan Nomor 138/PUU-VII/2009*, Jurnal Konstitusi Vol.7 Nomor 2, April 2010, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, Jakarta, hal.25

⁴ Prof. Bagir Manan, *Menemukan Kembali Undang-Undang Dasar 1945*, Jurnal Varia Peradilan No.317 April 2012, Diterbitkan oleh Ikatan Hakim Indonesia (IKAHI) , Jakarta, hal.20

the interests of the people in their respective regions and is considered to be the most aware and has a thorough review of state issues in general. Meanwhile, DPD is a representative directly elected by the people to accommodate regional interests, namely about regional autonomy, central and regional relations, the formation and expansion and merger of regions, management of natural resources and other economic resources, balance of central and regional finances. This is certainly better, because public participation is higher, namely through an election. So it can be said that the concept of forming DPD currently has a fairly strong people's legitimacy because its members are directly elected by the people.⁵

As an institution that was born to balance the power of the DPR, one of the functions and authorities of the DPD is to form laws together with the DPR and the President. DPD has a legislative function to fight for regional aspirations, meaning that legislative policies in the form of forming laws that are directly related to regional interests. DPD should not be born as a product of accommodation and compromise of political forces which is the embodiment of political representation such as the DPR and the President who are both elected by the people but the proposal in filling their positions is carried out through the means of political parties.⁶

Regarding filling positions, DPD Members are elected from each province through general elections. The nomination of DPD members is carried out individually, not through political parties. So it can be said that the nomination process for DPD members is much more onerous than the nomination of DPR members. Candidates for DPD members do not have a party machine that fights for their electability, while candidates for DPR members are assisted by a political party machine. Even the electability of candidates for members of the House of Representatives is helped a lot by the level of electability of political parties.

Based on the points of thought as outlined above, efforts to strengthen the institutions, functions and authorities of the DPD RI need to continue to be carried out so that the initial goals and ideals of the establishment of DPD as a balancing chamber in parliament can be achieved. Especially the strengthening of institutions, functions and authorities in the field of law formation (legislation). As part of these strengthening efforts, the author considers it important to conduct research on "Strengthening the Institutions, Functions and Authorities of the Regional Representative Council of the Republic of Indonesia in the Formation of Laws."

Based on the background above, there are several problems, namely:

1. How to strengthen the DPD RI institution in the people's representative institution?
2. What is the ideal institutional composition of DPD RI to create a strong bicameral system?

What is the ideal function and authority of DPD RI in the process of forming laws in order to create a strong bicameral system?

II. METHODOLOGY

This Legal research is classified as normative juridical research. This research does not only refer to certain laws and regulations, but more broadly, which includes certain legal theories. To find out the establishment

⁵ Hartati, *op.cit*, hal.7

⁶ Jurnal Konstitusi, Mahkamah Konstitusi, No.138, Agustus 2018, hal.15

of the Representative Institution of the Republic of Indonesia, first refer to the Constitution in force in the State of Indonesia, namely the 1945 Constitution and its amendments. This is to find out the institutions, functions, and authorities of DPD. Furthermore, the laws and regulations under it are also studied related to the composition and position of representative institutions, including the MD3 Law and its amendments. Then it is analyzed using related legal theories, including the theory of separation of powers, the theory of state institutions, and the theory of the constitution.

III. RESULTS AND DISCUSSION

A. DPD RI as an Institution

The term parliament with a legislative body actually has the same meaning, which is to describe a representative institution that exercises popular sovereignty. The term parliament is commonly used in European countries especially in the British state as the oldest adherent of the parliamentary system of government. Meanwhile, the term legislature is more familiarly used in the United States as an adherent of the presidential system of government. To facilitate the usual understanding of the parliamentary system is countered with the presidential system.

Judging from history, parliament was born as the antithesis of feudal power that oppressed the rights of the people, both the right to life and the right to politics in government. In England, as adherents of the oldest parliamentary system, the term "Lord" is known for feudal lords who come from kings or nobles. It was this lord who governed the entire affairs of the English government in the middle ages. The longer the existence of the Lord became bigger and bigger, until finally a representative chamber was formed called the "House of Lord". With the increasing power of the House of Lords, there was resistance from the middle class and the people who wanted the power of the House of Lords to be limited. There arose a representative institution of the people known as the "House of Commons." If the House of Lords represents the interests of kings and nobility, then the institution of the House of Commons represents the interests of the people to offset the power of the House of Commons. From here the forerunner of the existence of a parliamentary system that represents the aspirations of the people and the aspirations of the king or noble class.

First, the function of legislation is the function that parliament has to form laws that are abstract and general (regeling). This parliamentary product applies to all the people in a country. In other words, the products made by the people's representatives, are again used for the benefit of the people. This is in accordance with the concept of democracy that desires power from the people and for the people.

Second, the supervisory function is the function that parliament has to control government power as the implementation of checks and balances mechanisms between state institutions. This function is usually possessed by a country that adheres to a presidential system of government that aligns the legislative and executive institutions. Meanwhile, in a country that adheres to the parliament, automatic supervision is carried out by the parliament over the government led by the prime minister.

Third, the budget function is the function that the relevant parliament has in the preparation of the state budget. Meanwhile, the government is a budget implementing agency that has been prepared by parliament. So that the compiler and implementer of the budget are carried out by two different agencies. This is important to do so that there is no misuse of the budget caused by the accumulation of power in one institution.

Fourth, the participatory or representation function is the distribution of votes and the will of the people through people's representatives. Ideally a parliament is able to capture the voice of the people it represents so that it can carry out its representation function. The representatives of the people must certainly work in accordance with the interests of the people they represent, must not deny what the people have mandated to them. But in practice of its development, often the representatives of the people deny what has been mandated to him. People's representatives do not fight for the interests of the people, but instead fight for the interests of their own organizations and groups.

Fifth, the recruitment function is the function that parliament has to help determine the filling of important positions in a country. This is done in order to limit the power of the head of state and head of government in filling important positions. Thus, it can be said that the people participate in determining the government through their people's representatives in parliament.

The existence of a representative system indicates that the sovereignty of a country is in the hands of the people with the indirect implementation of democracy. People's representatives are an extension of the people represented to participate in determining the course of government. The exercise of sovereignty handed over by the people to their representatives must be returned for the benefit and welfare of the people. Therefore, the essence of the representative is the handing over of the mandate from the people to the people's representative.

The system of representation through political parties is considered by some experts to be one of the pillars of modern democracy. But its existence is seen as imperfect if it is not balanced with the power of representation of others. Therefore, many countries apply a combination of 2 types of people's representation, both the representation of political parties with territorial representation and the representation of political parties with functional representation. In federal states it is customary to apply the concept of representation over the representation of political parties and the representation of state territories. Unitary states usually implement a combination of representation of political parties with representation of autonomous regions. Whereas in the royal state it is usual to apply the representation of political parties and functional representations whose members consist of nobles or royal families. Usually the reason for checks and balances is one of the considerations why many countries implement 2 combinations of representations or representatives. There is a concern that if the people's representatives consist of only 1 type of representation, there will be a domination of power that will harm the interests of the people.

Taiwan, Denmark, Greece, Hong Kong, Lithuania, Norway, South Korea, Sweden, Finland and Indonesia before the amendment of the 1945 Constitution are examples of some countries that adhere to unicameral systems. Adherents of the unicameral system, especially small countries, believe that this system is the most democratic, since the people directly elect representatives who will sit in parliament. As for the bicameral system, one of its chambers is not elected by the people but by appointment. So the bicameral system is seen as undemocratic in placing people's representatives. The issue of political balance is also often a consideration for small countries to adhere to a unicameral system. Political problems are considered easily overcome by unicameral adherent countries compared to bicameral adherents. In England, the first chamber or lower house is called the house of commons as a representation of a political party, while the second chamber or upper house is referred to as the house of lords as a representation of the nobility or

royal family. In America, the first chamber is called the house of representatives as a representation of a political party, and the second chamber is called the Senate as a state representation (Mochtar, et al, 2018:43).

The formation of the second chamber is aimed at offsetting the power of the first chamber so that it is not dominant. The second room is seen as more established, independent and can correct the mistakes made by the first room. The process of selecting members of the second chamber is carried out through individuals without involving any particular political party. So it is very logical that the existence of its members is seen as more independent and more established. The existence of two chambers will be very advantageous because it can guarantee that all legislative products and supervisory measures are checked in a double check manner. Products produced through a double check mechanism will logically be more perfect when compared to one-handed checks.

Parliamentary systems with bicameral models in general can be divided into 3 types, namely: 1) strong bicameralism; 2) soft bicameralism; and 3) weak bicameralism. Countries that adhere to strong bicameralism or some call also balanced bicameralism give the authority to balance between the first room and the second room. With balanced authority, each institution can control each other. Meanwhile, in a country that adheres to soft bicameralism or weak bicameralism, the authority of one room is weaker than the other room.⁷

Meanwhile, Giovanni Sartori distinguishes bicameral models into 3 (three) types, namely:

- a. A weak bicameralism system (asymmetric bicameralism / weak bicameralism / soft bicameralism), namely unbalanced strength where one room is more dominant than the other.
- b. A bicameral system that is relatively equally strong or symmetrical (symmetric bicameralism/srong bicameralism), i.e. the strength of the two chambers is almost balanced or almost the same strong.
- c. A perfect bicameralism system, that is, when the strength of the two rooms is really balanced equally strong.⁸

Which Indonesia adheres to? before the amendment of the 1945 Constitution, or during the new order, Indonesia adhered to a unicameral system, where the DPR was the only state institution that was included in the realm of legislative institutions. There are also regional and group envoys who are part of the composition of the members of the DPR RI. After the third amendment, precisely in 2001, the chamber system in representative institutions changed. The presence of DPD has changed the room system that was originally adopted by the unicameral system into a bicameral system. The emergence of the idea of forming the DPD was to form a balancing institution within the DPR body so that there would be no domination of power. With the existence of a balancing institution, it is hoped that the checks and balances mechanism will run effectively. One of the countries that is a reference is the United States which implements a two-room system or bicameral system. The first chamber or Lower House is called the house of representatives, while the second chamber or Upper House is called the Senate. This system is exactly the same and was implemented in Indonesia during the RIS constitution in 1945 – 1949 where the DPR as the first chamber

⁷ Zainal Arifin Mochtar dan Saldi Isra, *op.cit.* halaman 44

⁸ Saldi Isra, *Pergeseran Fungsi Legislasi*, *op.cit.* halaman 272.

and the Senate as the second chamber. Currently, after the amendment of the 1945 Constitution, the DPR as the first chamber and the DPD as the second chamber. In theory both the senate and the DPD are both territorial representations. The difference is that the Senate is the representative of the state in the union state system while the DPD is the representative of the Region in the unitary state.

Regional Representation

The DPD is a state institution that was born out of long debates and political compromises of constitutional modifiers during the third amendment to the 1945 Constitution. In addition to historical considerations, the idea of an effective bicameral parliament was one of the many ideas that prompted the formation of the DPD. An effective parliament is one that limits the power of state institutions to other equivalent state institutions so as not to cause domination of power. Therefore, the presence of the DPD is in order to strengthen parliament by implementing a checks and balances mechanism against the DPR. So far, the DPR is the only people's representative institution that has legislative, supervisory and budgetary functions. All the aspirations of the people are channeled through political parties and represented through their representatives in the DPR. In the context of implementing regional autonomy, it certainly requires other channels that can really voice regional aspirations. Regional interests are not enough to be represented only in ideas (representation in idea), but regional interests need to be represented in the form of the presence of regional people (representation of present). So that DPD whose members contain regional people is the right choice to fight for regional interests at the central level.

As a regional representation, dpd is basically people's representatives who are in charge of fighting for the interests of the people in the regions through the formation of policies at the central level. For example, policies on regional autonomy, central and regional relations, the formation, expansion and merger of regions, as well as the balance of central and regional finances. It is these interests that are no longer reliable on the shoulders of the House. As Firman Noor, head of the Political Research Center of the Indonesian Institute of Sciences, said in the book written by Tamsil Linrung that the last few cases have seen the DPR increasingly have aspirations with the community. The House also has the potential to be used more on the issue of supporting and maintaining power alone, the DPR has the potential to abuse of power. The most pronounced impact is not only on the quality of policies and the attitudes of the people who increasingly consider the existence of the House of Representatives, but also on the future of our own democracy. It is in this context that it is faced that DPD can help implement the functions of the DPR.⁹

DPD RI Membership

Constitutionally, the membership of the DPD RI is regulated in Article 22C of the 1945 NRI Constitution which reads:

- 1) DPD members are elected from each province through general elections
- 2) DPD members from each province the number is equal to the number of all DPD members with the number of all DPD members not more than one-third the number of DPR members.

⁹ Tamsil Linrung, *Penguatan DPD Wujudkan DPD Berdaya*, Penerbit Bibliosmia Karya Indonesia, Jakarta, Cetakan I tahun 2019, halaman v.

No.	MPR Periode	Jumlah Anggota MPR	Jumlah Anggota DPR	Jumlah Anggota DPD
1	2004 – 2009	578	550	128
2	2009 – 2014	692	560	132
3	2014 – 2019	692	560	132
4	2019 – 2024	711	575	136

In the 2014-2019 period, the number of DPR RI members was 560 people from 80 constituencies, while the number of DPD RI members was only 132 people from 33 provinces. Meanwhile, for the 2019-2024 period, the number of members of the DPR RI is 575 people and the number of DPD RI members is 136 people from 34 provinces.

With an unbalanced composition, the DPD RI will have difficulty in building a bargaining position in conjunction with the DPR RI in MPR forums. This happened during the proposed fifth amendment to the 1945 Constitution at the MPR RI session on August 7, 2007. At that time, the proposal from the DPD RI did not get the support of one-third of the members of the People's Consultative Assembly of the Republic of Indonesia to be able to proceed to the discussion of the proposed fifth amendment to the 1945 Constitution. The support collected only reached 216 votes (128 votes of DPD RI members and only 88 votes from DPR RI members), even though what was needed was a minimum of 226 votes. As a result, the DPD RI proposal cannot be continued as an agenda for changes to the 1945 Constitution.¹⁰

Looking at the composition above, the strength of the number of DPD members is almost certainly not able to keep up with the strength of the DPR when voting in the MPR. A concrete example occurred when the DPD proposed changes to the constitution or the fifth amendment to the 1945 Constitution at the MPR session on August 7, 2007. At that time support for rolling out the fifth amendment to the 1945 Constitution garnered only 216 votes, consisting of 128 votes of DPD members and only 88 votes from DPR members. In fact, what was needed at that time was 226 votes from both DPD members and DPR members. As a result, the DPD's proposal to amend the 1945 Constitution ran aground due to lack of support. This shows that the power of the House is still domesticating and changes must be made to reduce its dominance. Changes must be made by determining the number of DPD members who are equal to or comparable to members of the DPR. It could be determined that the number of DPR members is as large as that of DPD members, or it could be that the number of DPD members is determined not to exceed the entire number of DPR members. As long as the composition of the number of DPD members is not changed, the DPD's bargaining position will forever be weak.

In terms of member quality, Stephen Sherlock also mapped DPD RI membership for the 2004-2009 period in five classification groups, namely (Linrung, 2019: 77).

- 1) DPD members of business groups or businessmen
- 2) DPD members of bureaucratic and government groups
- 3) DPD members of religious leaders groups
- 4) DPD members of traditional leaders groups;
- 5) DPD members of professional groups or activists.

¹⁰ Tamsil Linrung, *Ibid.* halaman 72.

Meanwhile, the international non-profit institution that observes democratic development, namely the International Institute for Democracy and Electoral Assistance (IDEA), makes a mapping of the composition of DPD RI members into 16 groups or backgrounds, namely:

Tabel: Latar Belakang Anggota DPD RI Periode 2004-2009

No.	Kategori	Jumlah
1	Golongan Karya	26
2	Partai Lain (PDIP, PPP)	2 (1,1)
3	MPR (utusan daerah dan utusan kelompok)	9 (6,3)
4	DPR	2
5	DPRD (Kabupaten/Kota, Provinsi)	8
6	Pebisnis	50
7	Eksekutif nasional (menteri)	2
8	Eksekutif daerah (gubernur, bupati, walikota)	6 (3,1,3)
9	LSM/ aktivis	8
10	Akademisi	20
11	Islam Tradisional	19
12	Islam Modernis	21
13	Organisasi Keagamaan Non-Islam	6
14	TNI/ Polri	5
15	Media	11
16	Hukum	4

Sumber : International IDEA dalam Sherlock yang dikutip oleh Tamsil Linrung (**Linrung, 2019:78**)

Basically, the composition of DPD members is individual, but if the results of the grouping or classification of DPD members according to Stephen Sherlock are associated with the areas that are the function of DPD legislation, then it can be matched into the following composition:

- 1) DPD members of the group of businessmen or entrepreneurs, suitable to handle the formation of legislation in the field related to the Management of natural resources and other economic resources.
- 2) DPD members of bureaucratic and government groups, suitable for handling the formation of laws related to Regional Autonomy, central and regional relations, the formation and expansion and merger of regions, the balance of central and regional finances.
- 3) DPD members of religious leaders' groups, suitable for handling the formation of laws related to Regional Autonomy, central and regional relations, the formation and expansion and merger of regions, the balance of central and regional finances.
- 4) DPD members of indigenous leaders, suitable for handling the formation of laws related to Regional Autonomy, central and regional relations, the formation and expansion and merger of regions, the balance of central and regional finances, the management of natural resources and other economic resources.
- 5) DPD members of professional groups or activists. Regional autonomy, central and regional relations, the formation and expansion and merger of regions, the balance of central and regional finances.

To strengthen the institution, in addition to the composition of the number of DPD members must be balanced with the DPR, also the quality of DPD members must meet one of the 5 qualities, namely academics, professions, bureaucracy, entrepreneurs, religious leaders or local traditional leaders.

Filling the Position of DPD RI

Theoretically, in general, there are 2 systems for filling the positions of members of the people's representatives, namely through appointment and through appointment, or usually called the organic election system and the general or mechanical election system. In its implementation, each country is not the same, because it is adjusted to the conditions of each country (Huda, 2017: 45).

Elections are an instrument or means to carry out democracy, even in many democracies elections are considered as a symbol as well as a benchmark of democracy. Even elections are said to be one of the 11 pillars of the democratic political system (Isra, 2019:11).

The filling of DPD positions adheres to a mechanical system or general elections, this is reflected in the provisions of Article 22E paragraph (2) of the 1945 NRI Constitution which states, General Elections are held to elect members of the House of Representatives, Regional Representative Council, President and Vice President, and Regional People's Representative Council. Furthermore, Article 22E paragraph (3) of the 1945 NRI Constitution states, Election Participants to elect DPD members are Individuals. Furthermore, Article 22C paragraph (1) of the 1945 NRI Constitution states that DPD members are elected from each province through elections. As for the number of members of each province, Article 22C paragraph (2) states that the number of DPD members from each province is the same and the number of all DPD members is not more than one-third of the number of DPR members.

After reading the provisions of the articles mentioned above, there are three important provisions in the 1945 NRI Constitution related to filling the position of DPD RI, namely:

1. Elections to elect DPD members are carried out directly by the people, as is the election of DPR members and the election of the spouses of the President and Vice President.
2. DPD members are provincial representatives with the same number for each province, and the number of DPD members is no more than one-third of the number of DPR members. Since the 2004 elections, DPD members have numbered 4 (four) people per province.
3. DPD members are individuals.

According to the provisions of Article 1 number 27 of the Law of the Republic of Indonesia Number 7 of 2017 concerning General Elections states that, "Election Participants are political parties for the election of members of the DPR, members of the Provincial DPRD, members of the regency/city DPRD, individuals for the election of DPD members, and pairs of candidates proposed by political parties or a combination of political parties for the Presidential and Vice Presidential Elections."

Furthermore, according to the provisions of Article 1 number 31 of the Ri Law Number 7 of 2017 states that, "Individual Election Participants are individuals who have met the requirements as DPD Member Election Participants."

As for the requirements for nomination of DPD members, it is regulated in Article 182 of the Ri Law Number 7 of 2017 which reads, Individuals as referred to in Article 181 can become election participants after fulfilling the requirements:

- a. Indonesian citizens who are 21 (twenty-one) years old or older;
- b. Be devoted to God Almighty;
- c. Reside in the territory of the Unitary State of the Republic of Indonesia;
- d. Can speak, read, and/or write in Indonesian;
- e. The lowest educated graduated from high school, Madrasah Aliyah, vocational high school, vocational Madrasah Aliyah, or other equivalent schools;
- f. Loyal to Pancasila, the 1945 Constitution of the Republic of Indonesia, the Unitary State of the Republic of Indonesia, and Bhineka Tunggal Ika;
- g. Never been sentenced to imprisonment based on a court decision that has obtained permanent legal force for committing a criminal offense that carries a penalty of imprisonment of 5 (five) years or more, unless it is openly and honestly stated to the public that the person concerned is an ex-convict;
- h. Physically and spiritually healthy, and free from drug abuse;
- i. Registered as a Voter;
- j. Willing to work full-time;
- k. Resign as regional head, deputy regional head, village head and village apparatus, Village Consultative Body, state civil apparatus, member of the Indonesian National Army, member of the National Police of the Republic of Indonesia, directors, commissioners, supervisory board and employees of state-owned enterprises and/or regional-owned enterprises and/or village-owned enterprises, or other entities whose assets are sourced from state finances, which is stated by an irrevocable letter of resignation.
- l. Willing not to practice as a public accountant, advocate, notary, land deed-making official, and/or not to perform the work of a provider of goods and services related to state finances and other work that may cause conflicts of interest with duties, authorities, and rights as a DPD member in accordance with the provisions of laws and regulations.
- m. Willing not to concurrently hold positions as other state officials, directors, commissioners, supervisory boards and employees of state-owned enterprises and/or regional-owned enterprises and other entities whose budgets are sourced from state finances.
- n. Nominate only for 1 (one) representative institution;
- o. Nominating only for 1 (one) constituency; and
- p. Obtaining minimal support from Voters in the constituency in question.

Specifically regarding the requirement of the letter l, the phrase "other work" has received interpretation through the Constitutional Court decision Number 30/PUU-XVI/2018 dated July 23, 2018. The phrase "other work" is interpreted to include also being an administrator (functionary) of a political party. Thus one of the conditions for the nomination of individual DPD members is that they cannot be administrators

or functionaries of political parties. At that time, the person directly affected was Osman Sapta Odang (OSO), who was still a functionary of the HANURA party, who was forced to be crossed out by the KPU from the List of Permanent Candidates for individual DPD RI members participating in the 2019 elections. Many times OSO clashed with the KPU over its removal from the DCT, but the KPU did not flinch OSO was still crossed off the list of DPD candidates.

Regarding the minimum support level, as referred to in Article 182 letter p above, Article 183 of the Law of the Republic of Indonesia Number 7 of 2017 specifies as follows:

- (1). The minimum support requirements referred to in Article 182 of the huruf p include
 - a. Provinces with a population of up to 1,000,000 (one million) people must have the support of at least 1,000 (one thousand) voters.
 - b. Provinces with a population of more than 1,000,000 (one million) to 5,000,000 (five million) people must have the support of at least 2,000 (two thousand) voters.
 - c. Provinces with a population of more than 5,000,000 (five million) to 10,000,000 (ten million) people must have the support of at least 3,000 (three thousand) voters.
 - d. Provinces with a population of more than 10,000,000 (ten million) to 15,000,000 (fifteen million) people must have the support of at least 4,000 (four thousand) voters.
 - e. Provinces with a population of more than 15,000,000 (fifteen million) people on the permanent voter list must have the support of at least 5,000 (five thousand) voters.
- (2). The support as referred to in paragraph (1) is spread over at least 50% (fifty percent) of the number of districts/cities in the province concerned.
- (3). The requirements referred to in paragraphs (1) and (2) are evidenced by a list of endorsements affixed with a signature or thumbprint of the finger and equipped with a photocopy of each supporter's identity card.
- (4). A supporter is not allowed to provide support to more than 1 (one) dpd candidate and commit fraudulent acts to mislead someone by coercion, by promising or by providing money or other materials to gain support for the candidacy of DPD members in elections.
- (5). Support given to more than 1 (one) dpd candidate as referred to in paragraph (4) is declared void.
- (6). The registration time schedule for DPD member election participants is set by the KPU.

Looking at the requirements that must be met by dpd candidates, it can be said that the requirements for voter support are quite a tough condition to be met, but the way to determine the candidate for the elected DPD member is simpler when compared to the candidate for the DPR member. For DPD candidates who get the first, second, third and fourth most votes, they are entitled to sit in the DPD seat. In certain cases, if the votes of the fourth elected candidate have the same number of votes, then to determine the selected candidate is based on the candidate who has the support of voters who are more evenly distributed throughout the districts/cities in the province.¹¹

¹¹ Saldi Isra, *op.cit.* halaman 129

The term of office of DPD members is 5 (five) years following the election period. However, it does not rule out the possibility that before the term of office expires, DPD members stop between times. There are 3 (three) possibilities for DPD members to quit between times, namely: First, due to death; Second, Resign; and Third, dismissed. According to the provisions of the Law of the Republic of Indonesia Number 17 of 2014 concerning the MPR, DPR, DPD and DPRD, DPD members are dismissed between times if:

- a. Unable to carry out duties on an ongoing basis or unable to remain as a DPD member for three consecutive months without any information;
- b. Violating the oath/promise of office and the DPD's ethical code;
- c. Found guilty based on a court ruling that has obtained permanent legal force for committing a felony that carries a penalty of imprisonment of five years or more.
- d. Not attending plenary sessions and/or meetings of DPD fittings which are his duties and obligations six times in a row without a valid reason.
- e. Is not qualified as a candidate for DPD member in accordance with the provisions of the laws and regulations regarding elections.
- f. Violates the provisions of the ban as a DPD member.

In terms of democratic legitimacy, filling offices through elections is arguably the most legitimate filling compared to appointments. Because in the elections, people's participation is wide open to determine who is trusted to sit as a dpd member. In the context of democratic life, the filling of DPD positions through elections needs to be maintained, only the nomination mechanism needs to be improved. DPD is synonymous with high chambers in parliament so nominations should be made involving 5 institutions, namely: 1) Academic or Professional Institutions; 2) Bureaucratic Institutions; 3) Religious Institutions, 4) Employers' Institutions, and 5) Customary Institutions. These five organizations are in accordance with the results of Stephen Sherlock's research which classified DPD members for the 2004-2009 period into 5 community groups. So that the involvement of these 5 institutions becomes important to determine the quality of dpd candidates who will be participants in the election. The minimum support requirement is no longer required when the initial selection of candidacy has been screened through the 5 institutions. So that the nomination process for DPD members is a mixture of the appointment process and the election process. The appointment is intended for there to be a quality screening process, while the electoral process is intended for regional representatives in the DPD to gain the highest democratic legitimacy.

B. The Function of DPD RI in the Formation of Laws (Legislation)

As a legislative body, DPD has the same functions as the DPR, namely the legislative function, the budget function, and the supervisory function. Regarding the legislative function of the DPD RI, we can find it in Article 22D of the 1945 NRI Constitution. Paragraph (1) states, *"The Regional Representative Council may submit to the House of Representatives a draft law relating to regional autonomy, central and regional relations, the establishment and expansion, as well as the merger of regions, the management of natural resources and other economic resources, and relating to the balance of central and regional finances."*

Furthermore, paragraph (2) states, “

"The Regional Representative Council shall participate in discussing draft laws relating to regional autonomy, central and regional relations, the establishment, expansion, and merger of regions, the management of natural resources and other economic resources, as well as the balance of central and regional finances, as well as giving consideration to the House of Representatives on the draft laws on the state budget and related draft laws with taxes, education and religion."

Based on the aforementioned article, it can be concluded that the proposed draft law from the DPD is submitted to the DPR, not submitted jointly to the President. So that in the legislative process the proposal will be considered as a proposal of the DPR to the President, not as a proposal of the DPD to the DPR and the President. This position is certainly not beneficial to the DPD because its position becomes unbalanced with the DPR and the President. Compare that to Article 5 paragraph (1) and Article 21 of the NRI Constitution which states that the President and the House of Representatives have the right to submit draft laws. Herein lies the imbalance of positions between the DPD and the President and the DPR. In fact, since its inception, the basic idea of the birth of the DPD was to balance the power of the DPR as the first chamber in parliament.

According to Article 248 paragraph (1) of the Law of the Republic of Indonesia Number 17 of 2014, there are 4 functions of DPD consisting of 2 legislative functions, 1 consideration function related to legislation and 1 supervisory function, namely:

- 1) Submission of draft laws relating to regional autonomy; relations of the center and the regions; formation, expansion and incorporation of regions; management of natural resources and other economic resources; central and regional financial balance to the DPR.
- 2) Participate in the discussion of draft laws relating to regional autonomy; relations of the center and the regions; formation, expansion and incorporation of regions; management of natural resources and other economic resources; central and regional financial balance.
- 3) Providing consideration to the House of Representatives on draft laws on the state budget and bills related to taxes, education, and religion.
- 4) Supervision over the implementation of laws regarding regional autonomy; relations of the center and the regions; formation, expansion and incorporation of regions; management of natural resources and other economic resources; balance of central and regional finances, implementation of the state budget, taxes, education, and religion.

Related to the legislative function, regarding the process of forming laws has been regulated in RI Law Number 12 of 2011 concerning the Establishment of Laws and Regulations as amended by RI Law Number 15 of 2019 concerning Amendments to RI Law Number 12 of 2011 concerning the Establishment of Laws and Regulations. In this law, it is regulated how the mechanism and linkage between law-forming institutions, namely the DPR, DPD and the President in the process of forming laws. However, this law does not show a balance between the power of DPD and other law-forming institutions. The impact is that there are continuous disputes over authority between the DPD and the DPR. A tug-of-war that has never ended since its inception. On the one hand, there are parties who want the power of the DPR to be unmatched, but on the other hand they want their power to be limited through the strengthening of the DPD.

Many times legal remedies are made, both through changes in the law (legislative review) and testing of the law (Judicial Review). All is done in order to fight for the position of DPD to return to its legislative function as a whole and balanced. What is interesting is when an application for Judicial Review was submitted against several articles in RI Law Number 27 of 2009 and RI Law Number 12 of 2011. The application was registered by the registrar of the Constitutional Court with case number 92/PUU-X/2012. On this application, the Constitutional Court granted the lawsuit filed by DPD.

One of the norms requested to be tested is about the authority of DPD in the stage of proposing draft laws both inside the prolegnas and outside the prolegnas. DPD considers that Law Number 12 of 2011 has reduced the authority of DPD at that stage. In its ruling, the Court considered that prolegnas is an inseparable part of the DPD's rights and authority in the process of forming laws. Furthermore, the Court also considered that the word "Can" in the phrase "Can submit to the House a draft law" is interpreted as a right and/or authority, so that it can be analogous to the rights and authorities of the President in Article 5 paragraph (1) of the 1945 NRI Constitution. Thus, the DPD has the same position and position as the DPR and the President in submitting draft laws. It was also affirmed by the Constitutional Court that the placement of the DPD initiative draft law as a DPR proposal was then discussed in the Badan legislasi DPR and then submitted to President and considered as a proposal of the DPR is a provision that reduces the authority of the DPD which has been regulated in Article 22D paragraph (1) of the NRI Constitution. The affirmation of the Constitutional Court is important to dispel the impression that the DPD is a subordinate of the DPR in the legislative function (Isra, 2020:101).

Since the decision of the Constitutional Court Number 92 / PUU-X / 2012, the prolegnas has been affirmed as part of the planning of the legislative process, so that the DPD has the authority to be on an equal footing with the DPR and the President to be involved in the preparation of the prolegnas. Likewise, the Constitutional Court's interpretation of the word "can" as a legislative right and/or authority owned by the DPD has implications for the parallel position of the DPD, DPR, and the President in submitting proposed draft laws. Of course, the draft law in question is limited to those related to regional autonomy, central and regional relations, the formation and expansion and merger of regions, the management of natural resources and other economic resources, as well as the balance of central and regional finances.

The next DPD legislative function which is strengthened by the decision of the Constitutional Court Number 92 / PUU-X / 2012 is related to the phrase "Participate in Discussing the Draft Law" in Article 22D paragraph (2) of the 1945 NRI Constitution. The phrase "Join the Discussion" must be interpreted to mean that the discussion of the draft law must involve the DPD since it starts the discussion at Level I by the commission or special committee of the DPR, that is, since delivering the introduction to the deliberations, submitting, and discussing the DIM and expressing a mini-opinion as the final stage in the discussion of Level I. Then the DPD is also entitled to express an opinion at the Level II discussion in the plenary meeting of the DPR before the Approval stage. Meanwhile, regarding the authority to approve the draft law, the Constitutional Court rejected DPD's application. The reason is because the original intent at the time of the formation of the DPD was not given the authority to approve the law. The institutions authorized to constitutionally approve only the President and the House.

In addition to the limitations in the legislative process, DPD also has limitations in the field of legislation under which it is authorized. DPD is only authorized to be limited to laws related to 5 (five) areas, namely

regional autonomy; relations of the center and the regions; formation, expansion and incorporation of regions; management of natural resources and other economic resources; and central and regional financial balance. Outside of that field, DPD has no legislative function. On the one hand, there is a truth, that DPD must focus on regionally related areas, considering that DPD is a regional representation designed to fight for regional interests. DPD was born as an antithesis to central and regional inequality, as well as the unevenness of development in the regions. So that within the framework of a democratic state, it is necessary to have a people's representative institution that fights for regional interests in the context of implementing regional autonomy and strengthening the unitary state of the Republic of Indonesia. But on the other hand, there are still many areas that are regional affairs and need to be fought through DPD.

Fields related to regionality can be seen from the provisions of the Law of the Republic of Indonesia number 32 of 2004 concerning Regional Government. In the Law, there are 33 areas of government authority handed over to the regions, namely: 1) Education; 2) Health; 3) Public Works; 4) Public Housing; 5) Spatial Planning; 6) Development Planning 7) Transportation; 8) Environment; 9) Defense; 10) Population and Civil Registry; 11) Women's Empowerment; 12) Family Planning and Prosperous Families; 13) Social; 14) Labor; 15) Cooperatives, small and medium-sized enterprises; 16) Investment; 17) Culture; 18) Youth and Sports; 19) National unity and domestic politics; 20) General government; 21) Staffing; 22) Community and Village Empowerment; 23) Statistics; 24) Archives; 25) Communication and informatics; 26) Agriculture; 27) Forestry; 28) Energy and Mineral Resources; 29) Tourism; 30) Marine and Fisheries; 31) Trading; 32) Industry; 33) Transmigration. These areas should be included in the legislative function of the DPD.

Furthermore, we consider the provisions of Article 22D paragraph (2) of the 1945 NRI Constitution in the phrase "giving consideration to the House of Representatives on the draft laws on the state budget and draft laws relating to taxes, education and religion". Based on the provisions of this article, in addition to having a legislative function (limited to the stage of submitting bills and the discussion stage), DPD also has a limited consideration function. The DPD serves to give consideration to the DPR limited to draft laws related to taxes, education and religion. As for draft laws in other fields, DPD does not have any function.

In contrast to similar institutions of the DPD in the United States, namely the Senate which has balanced authority with similar institutions of the DPR, namely the house of representatives. In the United States, the Senate has the authority to propose bills, discuss, approve, and reject bills (vetoes).

Regarding the function of DPD in the field of law formation, according to Jimly Asshiddiqie, the legislative function concerns four forms of activity, namely: ¹²

- a) Legislative initiation;
- b) Law making process;
- c) Law enactment approval;
- d) Binding decision making on international law agreement and treaties or other legal binding documents.

¹² Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara*, Penerbit Rajawali Pers, Depok, Cetakan ke-11, halaman 299-300

Based on Jimly Asshiddiqie's opinion above, a legislative institution has the function of legislation or the formation of laws if it has the authority to propose or initiate, discuss and approve a draft law into law. In the process of initiative or proposal, DPD has the authority to propose a draft law and is considered dpd's own initiative. So that in the discussion process, DPD gave an explanation to the DPR and the President throughout the draft law regarding the 5 areas of authority of the DPD. The President and the House of Representatives gave their views and presented an inventory list of issues to the DPD on the draft law. On the other hand, if the draft law comes from the initiative of the DPR or the President, the person who provides the explanation is the party who has the initiative of the draft law. Meanwhile, the DPD provides views and submits an inventory list of issues to the DPR and the President. Furthermore, the submission of mini-opinions in first-level talks and plenary meetings in level II talks or the approval of draft laws becomes law. It is in this level II discussion that DPD is no longer involved, because level II talks are about the approval or rejection of a draft law into law. So constitutionally DPD has no authority and is not involved in the process.

C. Authority of DPD RI in the Formation of Laws (Legislation)

Authority according to the provisions of Article 1 number 5 of the RI Law Number 30 of 2014 concerning Government Administration is the right possessed by government agencies and/or other government officials/state organizers to make decisions and/or actions in the administration of government. Meanwhile, authority is the power of government agencies and/or officials or other state organizers to act in the realm of public law.

In Ahmad Redi's opinion, basically the authority to form laws is within the power of the DPR, not the president or the DPD. The President and DPD are limited and have the right to submit draft laws to the DPR. Such authority does not constitute the authority of the formation of laws. This is based on the provisions of Article 20 paragraph (1) of the 1945 NRI Constitution which states that "the DPR holds the power to form laws".¹³

The opinion is not entirely correct, since the House cannot stand alone in the formation of legislation. The House of Representatives needs to discuss and approve the President in the formation of laws. The House of Representatives also needs to discuss with the DPD the draft laws in certain fields, namely on regional autonomy, central and regional relations, the formation and expansion and merger of regions, the management of natural resources and other economic resources, and the balance of central and regional finances.

- a. Regarding the authority of DPD in the formation of laws regulated in Article 249 paragraph (1) of RI Law Number 2 of 2018 concerning Amendments to RI Law Number 17 of 2014 concerning MD3, as follows: Submitting draft laws relating to regional autonomy, central and regional relations, the formation and expansion and merger of regions, the management of natural resources and other economic resources, and relating to the balance of central and regional finances to the House of Representatives;
- b. Participate in discussing draft laws relating to matters referred to in letter a;

¹³ Ahmad Redi, Hukum Pembentukan Peraturan Perundang-undangan, *op.cit.* halaman 3.

- c. Compile and submit an Inventory List of Issues of draft laws originating from the House or the President relating to matters referred to in letter a;
- d. Give consideration to the House of Representatives on the draft law on the state budget and draft laws related to taxes, education, and religion;
- e. Can supervise the implementation of laws regarding regional autonomy, the formation, expansion, and merger of regions, central and regional relations, natural resource management, and other economic resources, implementation of the state budget, taxes, education, and religion;
- f. Submit the results of supervision over the implementation of laws regarding regional autonomy, the formation, expansion, and merger of regions, central and regional relations, management of natural resources and other economic resources, implementation of state budget, tax, education, and religion laws to the DPR as consideration for follow-up;
- g. Receive the results of the examination of state finances from the CPC as material for making considerations to the DPR on draft laws related to the state budget;
- h. Give consideration to the DPR in the selection of BPK members;
- i. Develop national legislation programs related to regional autonomy, central and regional relations, the formation and expansion and merger of regions, the management of natural resources and other economic resources, as well as those related to the balance of central and regional finances;
- j. Monitoring and evaluating the draft regional regulations and regional regulations.

The regulation of DPD's authority in RI Law Number 12 of 2011 concerning the Establishment of Laws and Regulations is basically not much different from what has been regulated in the constitution of the 1945 NRI Constitution and RI Law Number 17 of 2014 and its amendments. Law of the Republic of Indonesia Number 12 of 2011 specifically regulates the authority of DPD in the process of forming laws. There are several stages of law formation involving DPD, and there are also stages of law formation that do not involve DPD.

In the planning stage, The Law of the Republic of Indonesia Number 12 of 2011 does not give the authority to prepare the Prolegnas to DPD. The activity of compiling the Prolegnas is the authority of the President and the House of Representatives. This law has distorted the legislative function of the DPD which should have been involved in the process of drafting the Prolegnas. In fact, DPD has constitutionally obtained attributive authority from the 1945 NRI Constitution to submit draft laws, although it is limited to 5 (five) areas related to regionalism, namely the field of regional autonomy; relations of the center and the regions; formation, expansion and incorporation of regions; management of natural resources and other economic resources; and central and regional financial balance. Thus some of the articles in this law are contrary to the constitution of the 1945 NRI Constitution. The preparation of the Prolegnas should be interpreted as part of the process of forming laws that are carried out before the process of submitting draft laws.

In the drafting stage, Law of the Republic of Indonesia Number 12 of 2011 does not regulate the authority of DPD in submitting draft laws directly. This law only recognizes the submission of draft laws made by the DPD through the DPR. So that this law only recognizes bills that come from the DPR and bills that

come from the President. Thus, the draft law proposed by the DPD will be considered as a draft law originating from the DPR when facing the President in the process of forming laws. Like a legislative body, the DPD should have the authority to submit draft laws to the DPR and the President in an equal position, not a sub-ordinate. This position makes the DPD's position in the lawmaking process still weak compared to the DPR and the President. Because they do not recognize the draft law at the initiative of the DPD, the authority to harmonize, round, and strengthen the draft law is not carried out by DPD fittings, but by DPR fittings that are specifically authorized in the field of legislation.

In the discussion stage, DPD has the authority to participate in the discussion of draft laws, both the DPR initiative draft law and the President's initiative bill. The authority of DPD in discussion activities is limited to draft laws related to 5 (five) areas, namely regional autonomy, central and regional authority; formation, expansion and incorporation of regions; management of natural resources and other economic resources; and central and regional financial balance. Meanwhile, for the other 4 (four) areas, namely the state budget (APBN), taxes, education and religion, the authority of the DPD is only limited to giving consideration to the DPR, not participating in the discussion.

In the discussion stage, there are 2 (two) levels of talks, namely level I talks and level II talks. Level I talks are conducted in commission meetings, joint meetings, legislative body meetings, budget body meetings, or special committee meetings. Meanwhile, level II talks were held in the plenary meeting of the DPR. Level I talks include 3 (three) activities, namely: 1) introduction to deliberations; 2) discussion of the inventory list of issues; and 3) mini-submission of opinions.

In the introductory activities of deliberations at the first level of talks, there are 2 activities, namely providing explanations and conveying views. The provision of explanations is carried out by institutions that take the initiative to submit draft laws, while the provision of views is carried out by other parties who do not take the initiative to submit draft laws. In this activity, DPD does not have the authority to provide explanations to the DPR or the President even though the draft law is related to 5 (five) areas of DPD authority. The one who gave the explanation of the draft law was the House to the President. This is because the draft law submitted by the DPD to the DPR is considered a draft law on DPR initiatives. On the other hand, if the President takes the initiative to submit a draft law related to 5 (five) areas of authority of the DPD, then the DPD together with the DPR faction have the authority to express views.

The next activity after the introduction to the deliberations is the submission of an inventory list of problems. The filing of an inventory list of issues was filed by an agency that did not take the initiative on the draft law. At this stage, DPD is not given the authority to submit an inventory list of issues, although the draft law relates to 5 (five) areas of DPD's authority. The authority to submit is the DPR to the President, while the DPD is only authorized to give consideration to the DPR. Again, this reason is due to the position of the DPD which is not on an equal footing with the DPR and the President, or a sub-ordinate of the DPR. The last activity of the level I series of discussions is the delivery of mini-opinions. In this stage, the DPD has the authority to express mini-opinions together with the DPR and the President factions. DPD's authority to express mini-opinions is not binding in level I talks.

Realizing the failure of the persuasive diplomacy approach, DPD finally submitted an Application for Judicial Review to the Constitutional Court. The articles tested in the Constitutional Court are articles of the law relating to the intersection of the authority of the DPD and the DPR that are detrimental to the

constitutional rights of the DPD. The law in question is first, The Law of the Republic of Indonesia Number 27 of 2009 concerning the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, and the Regional People's Representative Council, or abbreviated as the MD3 Law. Second, Law of the Republic of Indonesia Number 12 of 2011 concerning the Establishment of Laws and Regulations, or abbreviated as Law P3. The Constitutional Court registered the material test application submitted by the DPD with case register No. 92/PUU-X/2012.

Substantially, the application for a material test conducted by DPD against RI Law Number 27 of 2009 and RI Law Number 12 of 2011 the main issues are grouped into 5 DPD authorities, namely:

- 1) Regarding the authority of the DPD to submit draft laws;
- 2) Regarding the authority of the DPD, it also discusses the draft law;
- 3) Regarding the authority of the DPD to approve the draft law;
- 4) Regarding the involvement of DPD in the preparation of the Prolegnas;
- 5) Regarding the authority of DPD in giving consideration in the preparation of the state budget.

Of the 5 (five) authorities tested, 4 (four) of them are the main authority issues and have been debated since the beginning of the idea of forming a DPD. This problem is also one of the central issues during the discussion of RI Law Number 27 of 2009 and RI Law Number 12 of 2011.¹⁴

Since the decision of the Constitutional Court, in the discussion stage, the DPD has the authority to submit explanations to the DPR and the President about the draft law that is its proposal. DPD is also authorized to provide views on draft laws on the proposals of the DPR and the President related to 5 (five) areas of DPD authority. Likewise with the discussion of the inventory list of problems, the DPD has the authority to submit an inventory list of problems for the draft law proposed by the DPR and the President related to 5 (five) areas of authority of the DPD.

In the event that DPD's authority to approve the draft law, the Constitutional Court gives the following considerations: *"....Article 22D paragraph (2) of the 1945 Constitution has clearly determined that DPD is only authorized to participate in discussing draft laws relating to regional autonomy, central and regional relations, the formation and expansion and merger of regions, the management of natural resources and other economic resources, as well as those related to the balance of central and regional finances and do not participate and on the granting of final approval which is usually carried out at plenary meetings of the House of Representatives for level II discussions. This means that the DPD may participate in discussing and giving opinions during the plenary meeting of the DPR who discusses the draft law at level II, but does not have the right to give consent to the draft law in question. Approval of the draft law to become law, related to the provisions of Article 20 paragraph (2) of the 1945 Constitution which confirms that only the DPR and the President have the right to give approval to all draft laws. Such authority of DPD is in line with the original intent during the discussion of the formation of DPD in the third amendment to the 1945 Constitution which took place from 2000 to 2001. Originally, there was a proposal that the DPD's authority included approving the draft law to become law, but the proposal was rejected. Such an understanding is*

¹⁴ Saldi Isra, Lembaga Negara, op.cit. halaman 94.

in line with the systematic interpretation of Article 22D paragraph (2) of the 1945 Constitution linked to Article 20 paragraph (2) of the 1945 Constitution."

Regarding approval, DPD still does not have the authority to approve or reject a draft law in a plenary meeting. DPD is only authorized in level I talks, although in the Constitutional Court ruling it is said that DPD can still participate in level II talks until the activities before the approval or rejection of the draft law. The approval of a draft law into a law becomes the exclusive authority of the DPR and the President.

Like an institution that has the authority to make laws, DPD should have full legislative authority at all levels of law formation. Such authority should include planning, discussing and approving or rejecting a draft law. Approval or rejection is certainly limited to the draft law on areas that include regional autonomy, central and regional relations, the formation and expansion and merger of regions, the management of natural resources and other economic resources, and the balance of central and regional finances. Meanwhile, because it is only administrative in nature, it is enough for the president to have the authority to promulgate in the state gazette.

IV. CONCLUSION

Based on the results of the analysis above, it can be concluded that efforts to strengthen DPD institutions must begin from the process of filling member positions. DPD members must meet the requirements of competence and legitimacy. To meet the competency requirements, a prospective DPD member candidate no longer needs to get voter support requirements, but must pass the competency test conducted by the selection team. The membership of the selection team consists of academic institutions, professions, bureaucracies, entrepreneurs, and religious institutions or customary institutions. After passing the competency test, then the dpd member candidates will be determined by the election organizer (KPU) as candidates for DPD members who participate as election participants. Whoever is elected in the election, he is the one who has the right to sit as a member of the DPD RI. By passing the competency test and being elected in the elections, it is hoped that the quality of DPD members will be truly tested and gain legitimacy, so that institutionally DPD will be stronger.

The unbalanced composition of DPD members is an obstacle for DPD in offsetting the strength of the DPR in parliament. Therefore, the number of DPD members must be made balanced with the number of DPR members. With a balanced number of members, it is hoped that the checks and balances mechanism between DPD and DPR will run effectively.

Regarding the limited functions and authorities of DPD, then in the future the function of DPD in the formation of laws must be given in full. DPD, which has only submitted and discussed draft laws, must also be given the authority to approve or reject draft laws. With full authority, it can be said that the function and authority of DPD in the formation of laws becomes stronger. With the strengthening of the functions and authorities of DPD, it is hoped that the checks and balances mechanism will also run effectively.

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- Undang-Undang Nomor 1 Tahun 2015 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2014 Tentang Pemilihan Gubernur, Bupati, dan Walikota Menjadi Undang-Undang (Lembaran Negara Republik Indonesia Tahun 2015 Nomor 23, Tambahan Lembaran Negara Republik Indonesia Nomor 5656)

Court Decision

1. Putusan Mahkamah Konstitusi Nomor 30/PUU-XVI/2018 Tanggal 23 Juli 2018 tentang Pengujian Materi Pasal 182 huruf i Undang-Undang Nomor 7 Tahun 2017 Tentang Pemilihan Umum.
2. Putusan Mahkamah Konstitusi Nomor 92/PUU-X/2012 Tanggal 27 Maret 2013 tentang Pengujian Materi Undang-Undang Nomor 27 Tahun 2009 tentang Majelis Permusyawaratan

Rakyat, Dewan Perwakilan Rakyat, Dewan Perwakilan Daerah, dan Dewan Perwakilan Rakyat Daerah dan Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan PerundangUndangan

3. Putusan Mahkamah Konstitusi Nomor 79/PUU-XII/2014 Tanggal 17 Desember 2014 tentang Pengujian Materi Undang-Undang Nomor 27 Tahun 2009 tentang Majelis Permusyawaratan Rakyat, Dewan Perwakilan Rakyat, Dewan Perwakilan Daerah, dan Dewan Perwakilan Rakyat Daerah dan UndangUndang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan

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