

Research Article

Disparities and Strengthening of the Authority of the DPD in the Indonesian Constitutional System

Asroful Maghfur*, Moh. Ikmal, Imam Syafi`i

Pancasila and Citizenship Education Study Program, STKIP PGRI Sumenep, Sumenep, Jawa Timur, Indonesia

*Corresponding Author: asrofulmaghfur041@gmail.com | Phone: +6281915668822

ABSTRACT

This research is to analyze the role and function of the representative system in Indonesia from an institutional perspective can be interpreted as adhering to a soft bicameral system, that legislative power essentially has three functions, namely, legislative, supervisory and representation functions. The current state of Indonesia which claims to be bicameral in accordance with the 1945 Constitution of the Republic of Indonesia (article 2 paragraph 1), bicameral is equality between its institutions is not far apart, while in Indonesia that claims bicameralism in its implementation is not so, in accordance with laws and regulations and Constitutional Court Decisions such as Law No. 17 of 2014, Law No. 15 of 2019, DPR Regulation No. 1 of 2020 and Constitutional Court Decision No. 92/PUU-X/2012, DPD is very limited which only has the right to submit drafts and participate in discussions, the rest is dominated by the DPR, starting from submission, discussion to approval. So actually, if you look at the legislative process, Indonesia adheres to a one-chamber system (unicameral plus), because the DPD does not have a full legislative function like the DPR.

Keywords: Parliamentary Room; Indonesian Constitutional System; House of Representatives; DPR; DPD; Bicameral; Checks & Balances

1. INTRODUCTION

The ambiguity of the parliamentary chamber in the Indonesian constitutional system refers to the lack of clarity or confusion in the structure and function of the legislative institution. The starting point for the discussion of the state branch of power cannot be separated from its original source, namely Baron de Montesquieu, a French philosopher and at the same time as the foundation for the concept of the division of power, which he developed from the doctrine of John Locke's thought. Baron de Montesquieu wrote a famous book entitled *"The Spirit of the Laws"* or the legal spirit about the division of power, which cannot be separated from his analysis of the phenomenon of the constitutional system in England, thus giving birth to the concept of Trias Politica. This thought was present as a response to him, because of the absoluteness of the king's power at that time who held three full branches of power at once, namely *law-giver, the executor of the law and the judge* in one hand. Seeing this reality, then the concept of separation of powers was born (*separation of power*) (Baron de Montesquieu, 1748).

The shift in the function of legislation in the context of the discussion of the system of government aimed at guaranteeing the rights of citizens is an important topic in the doctrine of separation of powers. This doctrine was developed to establish and create a system of government where individual rights can be better protected and guaranteed. In its explanation, this doctrine clearly divides the power of government into three main branches, namely legislative power, executive power, and judicial power. According to this view, the three types of power must be separated from each other, both in terms of the duties and functions carried out and in terms of the tools or organs that carry them out. This separation is considered important to prevent excessive concentration of power in one institution, which can potentially threaten freedoms and human rights. In particular, the independence of the judiciary is a point that Montesquieu strongly emphasizes, since it is through these institutions that individual independence and human rights are guaranteed and at stake. Without judicial independence, the system of government can easily fall into authoritarianism, where the rights of citizens are no longer respected or protected. Similarly, there is no freedom if the power of the judiciary is not separated from the legislative and executive powers. The shift in the function of legislation must be understood within the framework of maintaining balance and separation of powers, which ultimately aims to protect the rights of citizens and ensure justice in the system of government. According to him, legislative power is the power to make laws, executive power which includes the implementation of laws (but by Montesquieu actions in the field of foreign policy are prioritized), while judicial power is the power to adjudicate for violations of laws. Independence can only be guaranteed if the three functions are not held by one person or entity, but by three separate persons or entities. He said: "If the legislative power and the executive power were

united in one person or in one governing body, then there would be no guaranteed independence. But it would be a catastrophe if one person or one body, whether composed of the nobility or of the common people, were entrusted with the exercise of these three powers, namely, the power to make laws, to administer public decisions, and to adjudicate matters between individuals." Montesquieu, with his theories, wanted a guarantee for the independence of the individual against the arbitrary actions of the rulers. And that, in his view, is only possible if there is an absolute separation between the three powers. Montesquieu's doctrine greatly influenced America at the time its constitution was formulated, so it is considered to have most reflected the Trias Politika in its original concept.

In the Indonesian constitutional system, the parliament or legislative institution consists of two chambers, namely the House of Representatives (DPR) and the Regional Representative Council (DPD). This system is known as the bicameral system, which adopts a two-chamber model to ensure broader and balanced representation in the legislative process. However, there is an imbalance between these two chambers, especially in terms of authority and function. Thus, a distinction must be made between the functions of the DPD in the legislative field and the field of supervision. Although in the field of supervision, the existence of the DPD is mainly (*main constitutional organ*) which is equal and equally important to the DPR, but in the field of legislation, the function of the DPD only supports the constitutional duties of the DPR. Although the DPD performs the legislative function, but based on Article 22D paragraph (1) of the 1945 Constitution, the DPD does not have a position as a *Co legislator* or *auxiliary state organ* much less *legislator* or *primary constitutional organ*, because the DPD is only limited to proposing draft laws, and does not reach the formation area. The DPD cannot be categorized as a fully legislative institution because it does not have a regulatory or legislative function. The position of the DPD is more supportive (auxiliary) to the legislative function of the DPR, or often referred to as a co-legislator. With very limited authority, the existence of the DPD does not have a significant impact on the representative system in Indonesia. This is due to the limited authority of the DPD, so there is not much that can be done by this institution. As a result, realizing the principle of checks and balances in the people's representative institutions in Indonesia today is something difficult to achieve (MPR RI, 2017).

The purpose of this study is to examine and analyze more deeply about the ambiguity of the parliamentary chamber in the Indonesian constitutional system. This study not only aims to understand the root of the problem, but also to provide constructive recommendations to strengthen Indonesia's parliamentary system to be more effective and representative.

2. RESEARCH METHOD

This research method uses the library *research* method, with a qualitative approach. to understand substantively the ambiguity of the parliamentary chamber in the Indonesian constitutional system. Secondary data was collected from various sources of literature, including books, scientific journals, and official documents such as the 1945 Constitution of the Republic of Indonesia (1945 Constitution), as well as related laws and regulations. The data collection technique is carried out through the literature study method, which includes reading, taking notes, and analyzing in depth the material available in books and other relevant sources. A thematic analysis approach will be used, where the data obtained will be classified into main themes that correspond to the focus of the research. This analysis aims to compare the authority and function of the House of Representatives (DPR) and the Regional Representative Council (DPD) in the context of the Indonesian constitutional system. Through historical, legal, conceptual approaches and comparative approaches.

3. RESULTS AND DISCUSSION

The specific discussion of the concept of separation of power, is explained by G. Marshall in his book entitled "*Constitutional Theory*" that one of the aspects in the concept of separation of powers is the concept of "*check and balances*", which he called the existence of mutualism between the three branches of power to interconnect, supervise and compensate each other as a preventive effort to prevent arbitrary actions from one of the branches of power (Marshall, 1971). The concept of checks and balances itself was first used by the second President of the United States, namely John Adams in his speech entitled "*Defense of the Constitution of the United States*". The branch of legislative power, or familiarly called parliament, has a very central function and role in a State (John Adams, 1735-1826). This was expressed by Will Rogers who said that "Never blame the legislature for not doing something. When they don't do anything, they don't hurt anyone. When they do something, they become dangerous."

Legislative power basically has three main functions, including the legislative function, the supervisory function and the representation function. This paper will focus on the third function of legislative power, namely the function of representation. Representation functions can still be categorized into (*representation in presence*) and (*representation in Ideas*) (Asshiddiqie, 2006). Representation in presence refers to the function of representation in the formal sense that legislative power represents through physical presence. Meanwhile, representation in ideas refers to legislative power as a representation that accommodates aspirations and ideas, where the function of the latter representation is very significant

and substantive. The representative function in the constitutional system of countries in the world is divided into 3 concepts of representation, namely (I) Political representation system; (II) Territorial representation system (*territorial representation*); and (III) Functional representative systems (*functional representation*).

Jimly Asshiddiqie in his book *Perkembangan dan Konkonación Instituting State Institutions Post-Reformasi*, clearly explains that the MPR structure after the amendment of the 1945 Constitution created a system that was not completely bicameral. The DPD, although part of the MPR, does not have the same legislative power as the DPR. This creates a "pseudo-chamber" in which the DPD acts more of a symbolic counterweight than an effective legislative institution (Asshiddiqie, 2010).

Phenomenon *Checks and Balances* in her research by Miriam Budiardjo *Fundamentals of Political Science* also touches on this aspect. He noted that the imbalance of power between the DPR and DPD resulted in the weak checks and balances mechanism in the Indonesian constitutional system. The existence of the DPD in the event of its role and function is not able to be an effective counterbalance to the DPR (Miriam Budiardjo, 2008).

In his research, Jimly Asshiddiqie explained that the DPD can be categorized as a pseudo-chamber of parliament because it is seen from the aspect of its limited function in the legislation process. Although the DPD has the authority to propose draft laws (RUU) related to regional autonomy, central-regional relations, and natural resources, its authority is not entirely equivalent to that of the DPR (Asshiddiqie, 2006). The DPD does not have the right to pass laws, so its position is more supportive in the Indonesian legislative system. An in-depth perspective on the position of the DPD as a pseudo-chamber of parliament in the Indonesian constitutional system. That although the DPD has a legislative role, its limited authority makes it not entirely equivalent to the actual parliamentary chamber. This reflects the dynamics of the imperfect bicameral system in Indonesia. The DPD is very minimalist in its authority compared to the DPR. Although the DPD has a role in the legislation process, its authority is limited and does not cover the passage stage of legislation. This makes the DPD play a more supporting role in the imperfect bicameral system in Indonesia (Indrayana, 2008).

A country that adheres to 1 or even 3 concepts of representation functions will be a reference to see the structure of people's representative institutions in a country. If a country only uses 1 representative function, then it can be ascertained that the country in question uses a one-chamber system, in the sense that the structure of the people's representative institution adopted by the country uses the unicameral parliament representation system. Furthermore, if a country uses these 2 representative functions, then the country in question uses the structure of the people's representative institution with a 2-chamber parliamentary system or (bicameral parliament). It is recorded, in the official document of the 1945 Constitution before the amendment, in article 2 paragraph (1), Indonesia has implemented a representation function with the structure of a people's representative institution consisting of a 3-chamber parliament (tricameral parliament) (Scott, 2008).

After the third amendment to the 1945 Constitution, Indonesia no longer used a 3-chamber parliament, but transformed into a two-chamber parliament (bicameral parliament). The 2-chamber parliament is reflected in article 2 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that the MPR consists of members of the House of Representatives and members of the DPD. This is where various problems began to arise regarding the concept of the parliamentary chamber applied in Indonesia (Saldi Isra. Zainal Arifin Mochtar, 2018).

The first analysis will refer to the content of article 2 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which reads "The People's Consultative Assembly consists of members of the House of Representatives, and members of the Regional Representative Council who are elected through general elections and further regulated by law". If the article is interpreted using grammatical interpretation, there will be several irregularities in the article that will have an impact on the Indonesian constitutional system. There is the phrase "members of the House of Representatives and members of the Regional Representative Council". This phrase actually makes Indonesia not bicameral, but tricameral because the MPR is an independent institution that stands alone. This is a form of logical consequence of the use of the phrase "members" where in the bicameral system, the elements in it are not members (in a personal sense) but institutions or bodies which in this case are the DPR and DPD. So that the phrase "members" in article 2 paragraph (1) of the 1945 Constitution of the Republic of Indonesia indirectly makes Indonesia shift into a tricameral, because the MPR is an independent institution whose members consist of members of the House of Representatives and members of the DPD, so that the MPR does not become a forum for *joint sessions* that bring together the House of Representatives and the DPD in the legislative process. It is like the MPR is a house that should consist of two rooms, namely the DPR chamber and the DPD room, instead of making the MPR a house in which there is no room but only mentions being inhabited by people, which in this case refers to the phrase "members" as intended above.

This model is very different from the bicameral concept in the United States, where Congress becomes a joint forum in which a joint session (*joint session*) between *House of Representative* and *Senate* (2 institutions) are not like Indonesia which uses the phrase "members" (Mochtar, 2022). The Constitution of the United States in Article I Section I states as follows: "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

The next problem is still around the MPR, where the evidence that the MPR is an independent institution, refers to article 3 paragraphs (1), (2) and (3) which states that the MPR is an institution that has its own functions and roles in the form of amending the Constitution, inaugurating and dismissing the president or vice president. The reading of the article further strengthens that Indonesia uses the tricameral concept, because basically, in the bicameral concept, the MPR as a forum that should combine the DPR and DPD should not have its own functions and roles, because the MPR should only be a forum for these 2 institutions. Thus, with the MPR having its own function and role, Indonesia is defeated as a country that adheres to the concept of bicameral. Because, if we refer to the United States constitution above, it becomes clear that in the bicameral concept, Congress (United States) or MPR (Indonesia) is just a forum that has a legislative function as a combination of *the House of Representatives* (DPR) and Senate (DPD).

Even if Indonesia still wants to claim to be bicameral, it will still be lost. Starting this analysis, I use Giovanni Sartori's opinion on several categories of bicameralism based on the relationship between institutions, one of which is a weak bicameral system (*weak bicameralism*), bicameral in this category refers to the authority of one chamber that dominates the authority of the other. It is an undeniable fact that the authority of the DPR is much greater than the authority of the DPD (Saldi Isra, 2010). Even from several laws and regulations and Constitutional Court Decisions such as Law No. 17 of 2014, Law No. 15 of 2019, DPR Regulation No. 1 of 2020 and Constitutional Court Decision No. 92/PUU-X/2012, the DPD only has the right to submit a draft and participate in discussions, the rest is dominated by the DPR, starting from submission, discussion to approval (Mahmuzar, 2019). So actually, if you look at the legislative process, Indonesia adheres to the one-chamber system (*unicameral plus*), because the DPD does not have a full legislative function like the DPR. While in the constitution of the United States, both *House of Representative* (DPR) and *Senate* (DPD) both have a full legislative function. It is clear that the DPR has extraordinary authority compared to the DPD or even the MPR, so it is clear as Prof. Ni'matul Huda thinks that Indonesia has actually experienced a shift from *executive heavy* become *legislative heavy* (Ni'matul Huda, 2010).

The above function of the DPD when connected with the function of the representative institution looks unusual because as a representative institution, the DPD should be given a proper function, both in the fields of legislation, supervision and budget. In the field of legislation, representative institutions are said to have a legislative function that determines if the representative institution concerned is given the authority to submit bills, participate in discussing and stipulating bills into laws, either independently or together with the government. The ideal function of representative institutions as mentioned above is not owned by the DPD as a regional representative in the Indonesian representative institution. On the other hand, the DPD has a very limited or very limited function as mentioned earlier. The limitations of the functions of the DPD above, according to Subardjo, occurred because the political forces in the MPR did not want to provide a balanced function to the DPD and the DPR in the implementation of the bicameral parliamentary system (Subardjo, 2008).

Still using Giovanni Sartori's opinion about the bicameral category based on the composition of the members in it, one of these categories is a very different bicameral (*differentiated bicameralism*) (Sartori, 1997), this type of bicameral refers to the composition of the members of the chamber that differ greatly based on their status. It is clear that the DPR and DPD are indeed both elected through general elections, but there are very fundamental differences between the two. The House of Representatives departs in general elections using an open proportional system and through political parties (article 168 paragraph (2) of Law No. 7 of 2017 and article 22 E paragraph (3) of the 1945 Constitution of the Republic of Indonesia. It is different from the DPD which in the general election is elected using a multi-representative district system and departs through independent or individual channels (article 168 paragraph (3) of Law No. 7 of 2017 and article 22 E paragraph (4) of the 1945 Constitution of the Republic of Indonesia).

The amendment to the 1945 Constitution of the Republic of Indonesia has changed the orientation of the House of Representatives to a superior institution that cannot be controlled by the DPD and made the DPD an inferior institution under the House of Representatives which has a very limited role in the legislative process, so that the balance of the parliamentary chamber is a mere utopia due to the fact of the disparity in authority that has been enshrined in laws and regulations (Sartori, 1997). The imbalance in the chamber will have an impact on the policy process which is mostly loved by the insinuating interests of political party factions in the DPR. There are only a few solutions to resolve the disparity in the concept and authority of the chamber in Indonesia, as stated by K.C Wheare, namely making formal amendments, through conventions or interpretations of existing laws and regulations, through the authority of the Constitutional Court through judicial activism.

4. CONCLUSION

Based on the description above, it can be concluded that the parliamentary system in Indonesia, namely legislative power or familiarly called parliament, has a central function and role in a country. Legislative power essentially has three functions, namely, the function of legislation, supervisory and representation. The current state of Indonesia which claims bicameralism is in accordance with the 1945 Constitution of the Republic of Indonesia (article 2 paragraph 1), but in the study of legal hermeneutics and theoretical studies of facts do not describe the above concept, bringing bicameralism is equality between the institutions not far apart, while in Indonesia who claims bicameralism in its implementation is not so, because the authority of the House of Representatives is very much greater than the authority of the DPD. The function and important role of parliament is absolute and non-negotiable, because an ideal parliament will be able to carry out the people's mandate well. This spirit is then manifested in the form of a room sharing institution. However, the bicameral model applied in Indonesia has not shown symmetry. The Regional Representative Council (DPD) as the second chamber seems to be incapable of carrying out the ideal concept of a parliament that functions effectively in terms of legislation, representation, control, and budgeting. Therefore, it is necessary to design a model and parliamentary system that is more ideal for the Indonesian context. The proposed model is an effective bicameral, which is a two-chamber system that aims to expand community participation so that it can better represent all Indonesian people. To realize this, appropriate constitutional measures are needed, including constitutional amendments to strengthen the position of the DPD. Articles related to efforts to create an effective bicameral must be amended. In addition, there is a need for better legislation to regulate the patterns, relationships, arrangements, and positions in this bicameral model. Although the function does not have to be the same, the two rooms must have a proportional balance.

REFERENCES

- Asshiddiqie, J. (2006). *Pengantar Ilmu Hukum Tata Negara Jilid II Persembahan Persembahan Mahkamah Konstitusi RI*. Sekretariat Jendral dan Kepaniteraan Mahkamah Konstitusi RI, 39.
- Asshiddiqie, J. (2006). *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*. Sekretariat Jendral dan Kepaniteraan Mahkamah Konstitusi RI, 140-142.
- Asshiddiqie, J. (2010). *Perkembangan & Konsolidasi Lembaga Negara Pasca Reformasi* (kedua). Sinar Grafika, 146.
- Baron de Montesquieu. (1748). *L'Esprit des Lois*. Vol 4.
- Indrayana, D. (2008). *Negara Antara Ada dan Tiada Reformasi Hukum Ketatanegaraan*. PT Kompas Media Nusantara, 19.
- John Adams. (1735-1826). *pidatonya yang berjudul "Defense of the Constitution of the United States*.
- Mahmuzar. (2019). *Parlemen Bikameral di Negara kesatuan : Studi Konstitusional Kehadiran DPD di NKRI* (Cetakan 1). Nusa Media, 327.
- Marshall, G. (1971). *Constitutional Theory*. Oxford University Press, chapter 5.
- Miriam Budiardjo. (2008). *Dasar-Dasar Ilmu Politik* (Edisi Revi). PT Gramedia Pustaka Utama, 323.
- Mochtar, Z. A. (2022). *Politik Hukum Pembentukan Undang-Undang* (Pertama). Buku Mojok.
- MPR RI. (2017). Checks and Balances Dalam Sistem Ketatanegaraan Indonesia. *Badan Pengkajian MPR RI*, 1, 93.
- Ni`matul Huda. (2010). *Hukum Tata Negara* (Ed 1). Raja Grafindo Persada.
- Saldi Isra. Zainal Arifin Mochtar. (2018). *Parlemen Dua Kamar Analisis Perbandingan Menuju Sistem Bikameral Efektif*. Genta Publishing.
- Saldi Isra. (2010). *Pergeseran Fungsi Legislasi Menguatnya Model Legislasi Parlemen Dalam Sistem Presidensial Indonesia* (Ed 1, Cet.). Rajawali Pers.
- Sartori, G. (1997). *Comparative Constitutional Engineering*. New York University Press.
- Subardjo. (2008). *DPD Menurut UUD Negara Republik Indonesia Tahun 1945 dan Penerapan Sistem Bikameral Dalam Lembaga Perwakilan Indonesia, Disertasi Pada Program Doktor (S3) Ilmu Hukum, Fakultas Hukum Universitas Islam Indonesia*.
- Subekti, valina singka. (2008). *Hol_Fathan_Komisi Hukum Nasional RI - Keterwakilan politik dan tipe parlemen*.