Strengthening the control function of the regional representative council in legislation of the UUD 1945 amendment

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ABSTRACT: The UUD 1945 amendment has brought a lot of changes in the Republic of Indonesia's constitutional system. One of them was the establishment of the Regional Representative Council (DPD) as the second chamber of parliament besides the House of Representatives. However, the existence of the DPD in the Republic of Indonesia's constitutional system has not been able to create adequate checks and balances as well as been deemed as half-hearted. The authority and duties given to the DPD by the constitution have not been able to give the DPD control of the legislation. Thus, reviews need to be conducted to give adequate control of the DPD, particularly in the legislation.

Keywords: the control function, legislation, regional representative council

1 INTRODUCTION

The UUD 1945 amendment has presented new institutions, namely the Regional Representatives Council (DPD), which is regulated in article 22C and 22D third amendment of UUD 1945. The presence of DPD in Republic Indonesia's constitutional system is one of the results from the paradigm shift in administering the governance of a centralized to a decentralized government by means of giving the acknowledgment to the regional government to get involved in the determination of public policy. As stated by Manan (2003), the ideas of the establishment of DPD are the proposals to change the representative system to bicameral system and the idea to enhance the involvement in regions on the run of politics and state governance.

The presence of DPD in the Indonesian parliamentary structure of the legislation cannot be separated from the bicameral parliament fundamental ideas. It aims at creating a mechanism which checks between chambers in the parliament by using privileges, among them is the right to veto on the legal product from the other chambers by Jimly Asshiddiqie known as the double check mechanism (Jimly, 2007). For example, the double check on every legislative product to ensure its quality. The presence of DPD as the second chamber in the parliament also ensures the process of legislation in the parliament is not only concentrated in one representative house. Thus, the process of legislation can be done more carefully. The existence of the second chamber is a need in the legislation, as stated by Giovanni Sartori that the concentration of all legislative authority on one institution is not only dangerous but also not wise: two eyes are better than one and the carefulness needs a process of control and limited decision making (Sartori, 1997). The review in this study is aimed at studying how to strengthen the DPD control function in legislation by using conceptual, normative, and comparative approaches.

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2 HALF-HEARTED BICAMERAL NO CHECKS AND BALANCES

The existing fact stated that the developed paradigm on the regional representative in the form of DPD is still half-hearted. Thus, it does not give adequate control of the DPD in legislation. This can be seen from the determination of article 22D paragraphs (1), (2), and (3) the third amendment of UUD 1945. Very limited duties and authority were given to the DPD in the legislation. Their duties and authority are limited to (1) proposing certain legislation designs; (2) participating in discussion of certain legislation designs with the House of Representatives (DPR) and President; (3) giving considerations to DPR on certain legislation designs; and (4) supervising on the implementation of certain legislation as well as to report the results to DPR as a consideration for further follow-up.

As stated previously, the very limited authority of DPD on the legislation has implied the nonexistence of a double-checking system. Although institutionally the Indonesian parliament after the amendment of UUD 1945 consisted of two chambers, the nonexistence of a mechanism of checking on each other between both chambers then has several advantages of a bicameral system stated by some experts will not be realized.

The relationship pattern of DPR and DPD in the legislation in the aforementioned half-heartedly bicameral cannot fulfill the political justification and efficiency as stated by Tsebelis and Jeannette (1977). The justification for the bicameral system can be seen from the political and efficiency aspects. from the political aspect, bicameral system: (a) can prevent the majority tyranny, since the existence of a veto right given institutionally; (b) can prevent minority Tyranny, since both chambers require support from a broad constituency to support the legislation; (c) can decrease corruption and inhibit a corrupt legislation process, since the possibility of collusion implementation in the bicameral system is more difficult compared to the unicameral system; (d) can decrease costs of decision making, due to the existence of the conference committee mechanism.

The relationship pattern of DPR and DPD in the legislation as determined in the amendment of UUD 1945 and other legislation from political aspects has not been able to prevent the possibility of majority tyranny incidence. This happens because DPD does not have a veto right to file an objection or the delay given institutionally in the determination of a legislation agreement. In terms of efficiency, it still cannot assure to generate a better and more stable legislation. It has not been able to create the possibility of quality control and cannot decrease the possibility of corruption and collusion of the DPR and government. It also cannot reduce the costs of decision making due to the nonexistence of conference mechanisms.

The bicameral system in Indonesian parliament after the amendment of UUD 1945 does not create checks and balances. As stated by Tsebelis and Jeannette (1977), about the cases when the highest assembly only has a consultative authority and lower authority in the final decision making. Thus, such bicameral does not create the checks and balances system.

In fact, conceptually, the parliament system after the amendment of UUD 1945 cannot be stated as implementing a bicameral parliament even in the weak category. This is because of the results of the compromise between bicameralism and unicameralism, thus creating a half-hearted bicameral (Gaffar, 2003).

3 BETWEEN WEAK BICAMERALISM AND MEDIUM-STRENGTH BICAMERALISM

When seen from the aspects of very limited and unequal duties and authorities compared to DPR in the legislation then the parliamentary system is followed after the amendment of UUD 1945. Referring to the parliamentary system theory as stated by Lijphart (1984), it can be categorized into a weak bicameralism with asymmetric authorities. However, when viewed in terms of the selection method, it cannot be categorized as weak, because even though the membership structure of the two chambers is incongruent, the selection method used to select members is the same, namely through general elections. In fact, the selection method of elections that is used to elect DPD members that use the most representative district systems with individual participants is seen as more democratic

than those used to elect DPR members that use an open proportional system with participants from political parties. Thus, the legitimacy of the DPD is not weaker or even more powerful than the legitimacy of the DPR. Therefore, as seen from the selection method aspect and the structure of the membership it can be categorized as medium-strength bicameralism. Such a pattern can be said as deviated from the general pattern of bicameralism.

In the strong bicameralism parliament, the legislation usually begins from any chamber and needs a consideration by both assemblies in the forum which are not yet confirmed. Meanwhile, in the weak bicameralism, one chamber has a higher status than another (Purnomowati, 2005). The existence of the DPD as the second chamber in the Indonesian parliament after the UUD 1945 amendment can be categorized as weak, it is because the discussion process of the legislation can only be done in the DPR as the first chamber which has the stronger position, while the DPD as the second chamber only has a right to propose to participate in the discussion (not independent discussion) and gives a consideration on certain legislations designs without having a veto right. According to Purnomowati (2005), the position of DPD as such is rated as “too weak”.

Compared to other nations which also have a weak bicameral parliament, the bicameral parliament structures of DPR and DPD can be seen from the comparison of formal authorities owned by both and can be stated as “too weak.” As in Algeria, the People’s National Assembly as the first chamber, the members are elected publicly, directly, and in secret. Meanwhile, as the Council of Nation as the second chamber, the number of the members is 1/2 of the number of the People’s National Assembly. They were elected by the People’s Communal Assemblies. 2/3 of the members were elected by the People’s Wilaya Assembly, and 1/3 of the members were assigned by the president (Article 101 Constitution of the People’s Democratic Republic of Algeria).

Although the Council of the Nation does not have the authority to propose legislations designs, it has the same right as the People’s National Assembly to give an agreement on the legislation’s designs. Council of the Nation as the second chamber has more function as the control unit on the proposed legislation design and has been approved by both the People’s National Assembly and government. There is no legislation design which can be legitimate to be constitutions without the Council National approval. When a deadlock occurs in the achievement of agreement with People’s Nation Assembly and Council of the Nation, then the government proposes a joint committee to be formed into both chambers with the same number of members to do a joint discussion to combine opinions so that mutual agreement can be obtained (Article 119 and 120 Constitution of the People’s Democratic Republic of Algeria).

In addition, France as a unitary nation with a weak bicameral system has the National Assembly as the first chamber with the members elected directly, while Senate as the second chamber, its members were elected indirectly to represent each republican region unit (Article 24 Constitution of France Republic). The Senate as a second chamber, in general, is a subordinate of the National Assembly but has a somewhat larger role in influencing organic law and financial bills even though the decision remains at the National Assembly as the first chamber. Similar to the National Assembly, the Senate as the second room also has the authority to accept the initial proposal of legislation designs from the Government, unless the Government’s initiative legislation design on Finance and Social Security must be submitted first to the National Assembly. However, the legislation design on a regional organization and about institutions representing the French nation abroad must first be submitted to the Senate. Both the National Assembly and Senate both have the authority to discuss the legislation design from the Government submitted to him. As a control and balance, the same authority is given to the National Assembly and Senate to give consideration to the legislation design that has been approved by one of the chambers. The dissent between the National Assembly and Senate is resolved by a joint committee formed by the prime minister, if the joint committee cannot achieve an agreement, then the authority is given more to the National Assembly for decision making (Article 39 – 47 Constitution of France Republic).

From this comparison, it is significantly apparent that the DPD as the second chamber in the bicameral parliament system in Indonesia tends to have characteristics of being conservative, very weak, and very dependent on the DPR’s political interests. DPD does not have an adequate role in implementing the checks and balances function of the legislation. Conceptually, the mechanism of

checks and balances does not only apply to legislative and executive units but also occurs and is institutionalized between chambers and representative councils in the legislative body.

Fundamentally, the bicameral parliament concept is constructed to encourage the existence of checks and balances with the legislative body. Therefore, in the bicameral parliament, there needs to be a competition between both chambers to trigger the condition of mutual control which enables the balance in the parliament. This is also according to the consideration of both chambers in the parliament in which in general represent different constituents.

The improvement on the control function of DPD in the legislation should not be directed to strong bicameralism or even perfect bicameralism, but it is enough in the medium bicameralism by giving adequate authorities to implement the control function. The use of the wordings strong and perfect bicameralism can cause difficulties, so that the federal state with a parliamentary system of government also in practice uses weak bicameralism by giving an authority to the second chamber that is not as strong as the first chamber and limiting the authority on the second chamber to only have a veto power over certain legislation designs. However, there are also unitary states which implement a strong bicameralism such as Columbia and Algeria.

The use of the wordings strong or even perfect bicameralism for Indonesian parliament has been proposed and submitted to the DPD as the material for the Fifth Amendment of UUD 1945 (Kelompok DPD di MPR RI, 2011). In the discussion of the UUD 1945 amendments in MPR (People's Consultative Assembly) particularly on the second and third amendments, the proposal has long been debatable (Sekjend Kepaniteraan & Mahkamah Konstitusi, 2008). Although the proposal of the usage of strong bicameralism was also supported by some constitutional law experts, in which in the end MPR stipulates the use of a "half-hearted" bicameral system that is too soft. There appear to be concerns from some of the MPR factions if the Indonesian parliament are made a strong bicameral system, feared that the structure of the state organization will develop towards Federalism (Sekjen MPR RI, 2001). Actually, these concerns do not need to occur because research results by Lijphart (1999) revealed that 13 out of 36 nations with unitary forms use a bicameralism system.

It is also in line with Fatmawati (2010) research which shows that from 22 nations which use a bicameralism system, 10 of them are unitary nations and 12 of them are federal nations. However, 2 out of 10 nations use a strong bicameralism, 7 nations use Medium-Strength Bicameralism or Weak Bicameralism. In addition, 2 out of 22 nations in which both chambers do not have the authorities of the legislation, 2 nations with both chambers do not have equal authorities as the first chamber (perfect bicameralism), 7 nations with both chambers have authorities in the legislation almost equal to the first chamber (strong bicameralism), and 11 nations with both chambers do not have equal authorities to the first chamber (weak bicameralism).

To strengthen the control function of in the legislation, according to the researcher, the DPD needs to be given some authority to participate in giving the joint agreement with the DPR and the president on the discussion results of legislation design. The DPD also needs to be given the authority to participate in the joint discussions with the DPR and president even without the right on decision making. This will enable DPD to give an argument and also escort the delivered consideration. This is also meant to open an opportunity and also encourage the control on each other between DPR and the president of responding to the DPD's consideration.

4 CONCLUSIONS

In the process of legislation, the DPD indeed should not necessarily be given an equal authority on the House of Representatives (DPR) or President. However, the DPD needs to be given the authority that makes it possible to do checks and balances in order for DPD participation to get a better quality of the legislation. Even though the authority is quantitatively limited, when the process of the participation is qualified, it will be more meaningful compared to a broad scope but the participation is counterfeit.

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