THE REGIONAL REPRESENTATIVE COUNCIL IN INDONESIA: A VIEW OF UNRESOLVED PROBLEMS

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Abstract

The Regional Representative Council in Indonesia was established as part of constitutional reform, and it is expected to be able to address current issues with regional aspirations absorption. The Regional Representative Council is still lacking in its presence as a State Institution after nearly 18 years of existence. This is due to the fact that Indonesia uses a Soft Bicameral System in the Legislative Chamber. The People's Representative Council wields more power in the Legislative process than the Regional Representative Council. This is evident from the Constitution's and other regulations' limited authority. It is critical to strengthen the Regional Representative Council's authority as a State Institution with equal standing to the People's Representative Council. Indeed, there is a double check on the draft law between the two Legislative Chambers under the Bicameral Concept. The goal is to achieve good legal formation. Furthermore, given the community's current social situation, it is necessary to monitor indigenous peoples' protection. The Regional Representative Council must be the first line of defense in the region, overseeing all aspects of life, including indigenous peoples.

Key Words: State Institutions, Bicameral System, Regional Representative Council, Authorities

INTRODUCTION

The Regional Representative Council was established by an amendment to the 1945 Constitution of the Republic of Indonesia. The Regional Representatives Council is expected to bring renewal to the Indonesian nation as part of the constitutional reform. The Regional Representative Council was established with several goals in mind, including strengthening regional ties and national unity throughout the region, increasing accommodation of regional aspirations and interests in the formulation of national policies, and encouraging the peaceful
and balanced acceleration of democracy, development, and regional progress. With Indonesia's vast territory and diverse tribes and cultures (including indigenous peoples), an institution that can accommodate regional aspirations and strengthen the relationship between the center and the regions is essential. This is significant because legal policy must adapt to various aspects of local community life. In the Indonesian constitutional system, efforts to promote equitable development are also expected.

Indonesia wanted to use a soft bicameral system when forming the Regional Representative Council, rather than a strong bicameral system like the United States. The bicameral system can be used not only in countries with a federal government, but also in island countries. This is to support regional aspirations that differ from island to island and are unique to each local community. According to Mahfud MD, every country has the right to write its own constitution and is not bound by the constitutions of other countries; therefore, it is incorrect to believe that the bicameral system only exists in federal or parliamentary states, and that there is no pure and general theory about it.

Although the Regional Representative Council has been in existence for nearly 18 years, it is still believed that it has had little impact as a state institution. Despite the fact that The Regional Representative Council submitted a large number of draft laws, they were only added to the national legislation program's waiting list (Prolegnas). The impression is created that the bill proposed by the Regional Representative Council is identical to the bill submitted by the public outside the institution, such as non-governamental organizations, which are occasionally of high quality. The Regional Representative Council, on the other hand, is a separate state institution from the People's Representative Council. Regional aspirations outlined in the draft regional bill will have to go through a lengthy process before being ratified. In Indonesia, this is a problem in the dynamics of law formation. Whereas the Regional Representative Council is a state institution that should encourage the development of effective and accountable laws that are based on the needs and interests of the regional community.

Various problems have not been properly resolved because the authority of the Regional Representative Council as the second chamber is not of the same caliber as the authority of the People’s Representative Council as the first chamber. This is an implication of the Constitution's attribution, which views the Regional Representative Council as a co-
legislator whose authority is limited to assisting the People’s Representative Council in
lawmaking. The Regional Representative Council appears to be merely a support system for
the state. Even the Constitutional Court Decision Number 92/PUU-X/2012 only confirms the
Regional Representative Council authority in a normative sense based on the Constitution.
The Constitutional Court did emphasize, however, that the Regional Representative Council
and the People’s Representative Council were equal as state institutions in its decision.

The Regional Representative Council must be strengthened in order to create checks
and balances in the realm of national legislation, as desired at the time of its formation. As a
result, when the Act is completed, it will not only be a political representative, but also a
representation of the people of Indonesia. Furthermore, as a regional representative, the
Regional Representative Council must fully protect regional aspirations. Indigenous peoples’
issues have yet to be resolved. Policies that ignore the realities of indigenous peoples' lives
also make it difficult to absorb their aspirations. In carrying out its supervisory function, it is
hoped that the Regional Representative Council will be present as an institution guarding
regional aspirations.

STATE INSTITUTIONS

The state is created by the will of people who seek order and safety for themselves
and their communities. According to Hans Kelsen, the state is a legal order. Meanwhile,
Cicero, an ancient Roman philosopher, coined the phrase "Ubi Societas Ibi Ius" which
translates to "Where there is society, there is law." There will be legal order with the law. The
establishment of regulations that determine how a community or state should act and be
accountable for their actions results in orderly law. The state is an organization that consists
of a grouping of functions. According to Logeman, the state is an authority organization that
serves a purpose (positions). The incumbent has the authority and responsibility to attach
themselves to the position, and the incumbent is the position's representative.

Montesquieu divides the state into three branches of power that are organized into a
governmental structure and stand on their own, namely Legislative Power, Executive Powers,
and Judicial Power. The possibility of arbitrary actions from the authorities will be eliminated
if state power is explicitly divided into three categories. Montesquieu's thought is known as
the Trias Politica, and Immanuel Kant was the one who gave it that name. It must be
understood that no country in the world purely implements the separation of powers as Mostesquieu contends. Even the superpower United States, which scholars refer to as the only country that follows this theory. In fact, every country has a system of state-to-state mutual control.

The branches of state power are further subdivided into state organs/institutions. Max Weber introduced institutions as a formal organizational system for the first time in 1947. He contends that institutions are the best type of formal organization. Institutional is defined as a type of organization with a hierarchy, specific roles, and a high level of competence (trained officials) to fill those roles. The main characteristics are division of work, specialization, impersonal orientation, hierarchical power, rules, and efficiency. The goal is to work as efficiently as possible. The term state institution is distinct from the terms private organs or institutions, community institutions, or non-governmental organizations. As a result, any institution that is not a community institution qualifies as a state institution. State institutions are also known as state bodies or state organs in Indonesia.

According to Hans Kelsen, state organs/institutions are individuals who perform specific functions. Individuals who lack the necessary qualifications to perform certain functions cannot be referred to as state organs or institutions. A judge, for example, is a state organ because he performs his duties professionally and is paid from state funds. The individual acts as an organ/institution, not on himself personally. Another example is that members of parliament are legislative organs, but the people who run them can be businesspeople, doctors, lawyers, and so on. In this case, that members may have a job other than performing the organ's function. Hans Kelsen also divides state organs/institutions into single and mixed organs/institutions. The division is based on the authority that each state institution possesses. A part organ is a state institution that collaborates with other state institutions to carry out activities within its authority. Each state institution has its own authority, but they all act in the same way. State institutions play a critical role in achieving state objectives by carrying out their functions and activities.

According to Jimly Asshiddiqie, the institutions in the 1945 Constitution of the Republic of Indonesia can be distinguished in two ways: in terms of hierarchy and in terms of their functions. Hierarchical criteria derived from normative sources that determine authority
while the quality of its function is the main or supporting in the power system. Furthermore, state institutions can be divided according to the source of their authority, which includes:

a. State institutions whose authority is directly granted by the constitution, such as the President and Vice President, People's Consultative Assembly, People's Representative Council, Regional Representative Council, Regional People's Representative Council, Supreme Court, Constitutional Court, and so on; and

b. State institutions whose authority is not derived directly from the constitution, such as the National Human Rights Commission, the Corruption Eradication Commission, the Financial Transaction Reports and Analysis Center, the Police Commission, the Prosecutor's Commission, and others.

INDONESIA’S TWO CHAMBER LEGISLATIVE SYSTEM

Indonesia's legislature is divided into two chambers, each with its own set of authority granted by the constitution. The two institutions are the People’s Representative Council and the Regional Representative Council. In the legislative process, the legislature represents the community. According to Miriam Budiardjo, representation refers to the ability or obligation of a person or group to speak or act on behalf of a larger group. Furthermore, Hoogewerf presented the diversification theory, which included three characteristics of representative institutions:

a. Political Representative; Political parties nominate members of the people's representative body through general elections.

b. Functional Representative; Its members are chosen based on their roles, occupations, and positions/expertise. and

c. Regional Representatives; This representation is usually used in a country that is organized as a federal or unitary area with a large territory and members who are elected through general elections.

The People's Representative Council and the Regional Representative Council are legislative bodies whose members are elected by the people in general elections. The People's Representative Council represents the people as a whole through political representatives, whereas the Regional Representative Council represents the people in their respective regions through regional representatives. Since the Regional Representative Council was established
through amendments to the 1945 Constitution of the Republic of Indonesia, there has been a significant gap between the quality of its authority and that of the People's Representative Council. The People's Representative Council has authority over every step of the law-making process, as well as the authority to oversee its implementation. The Regional Representative Council has limited authority to submit regional bills and participate in their discussion, but the People's Representative Council is the one who ratifies the draft laws. This gives the impression that Indonesia only has one legislative body, despite the fact that the country uses a soft bicameral system. The addition of authority to the Regional Representative Council becomes a pressing matter that must be addressed right away.

Several countries around the world, including Thailand, Barbados, Ireland, and Austria, use the soft bicameral concept. Indonesia's Regional Representative Council is similar to Barbados' and Ireland's regional representative institutions. In both countries, the regional representative institutions do not have legislative authority. In Thailand and Namibia, commissions bring together two legislative chambers to discuss draft laws. Meanwhile, they have been given the authority to object to a bill in Austria.

According to Kaelan, the Regional Representative Council as a regional representative is a concept to realize regional representation. Cultural, historical, economic, and political ties are hoped to be reflected in the legislative process and the system of representation. The goal is to avoid a monopoly in the creation of legislation so that the checks and balances mechanism can be implemented to prevent one of the state institutions from acting arbitrarily. The mechanism of checks and balances in structuring representative institutions in Indonesia is currently not functioning as expected because the formation of laws and regulations has not yet fully involved the Regional Representative Council as the second chamber. In the formation of legal products, the bicameral system should require a double check. At the moment, reality is very different from what was expected. Furthermore, membership in the People's Representative Council and the Regional Representative Council does not appear to reflect separate aspirations. Despite the fact that the People's Representative Council is made up of political party members and the Regional Representative Council is made up of regional members, there is no significant difference between the two in reality.
The Regional Representative Council, as an institution that represents regional aspirations, is primarily a representative of the local community, rather than a component of the People's Representative Council that represents political parties. Indigenous peoples provide a sense of belonging in each region and contribute to Indonesia's diversity. Each region's pluralism of customary law must be overcome by the state. This legal pluralism is part of the state's wealth, and it does not preclude the state from being the strongest proponent. As a result, the Regional Representative Council is tasked with integrating existing customary laws and minimizing conflicts. In fact, this is an inextricable part of the Indonesian state administrations.

Due to the limited powers granted to the Regional Representative Council by the Constitution, this institution has seemed only as an auxiliary or advisory body of the People's Representative Council. The Regional Representative Council's authority is limited to submitting bills and participating in discussions about specific issues. The same can be said for supervision, which only applies to specific laws. Meanwhile, the People's Representative Council is the only institution with the authority to enact laws. This gives experts and the general public the impression that Indonesia only uses the Unicameral concept in its legislative chamber.

STRENGTHENING THE AUTHORITY OF THE REGIONAL REPRESENTATIVE COUNCIL IN INDONESIA

Indonesia can model its authority after that of other countries' regional representative institutions. Due to the unique characteristics of each region in Indonesia that is not owned by another country, Indonesia can also establish a new authority. The authority given must be based on the local community's aspirations and needs. Several things can be used as prospects for the Regional Representative Council's authority without losing its essence as a second chamber, including:

a. The Regional Representative Council being given Legislative Preview authority. The essence of the soft bicameral concept that is being developed will not be lost if this authority is granted. In the future, the Regional Representative Council will only be able to submit regional bills, participate in discussions about them, and conduct a bill review before it is promulgated. It is important to note that it is hoped that the Legislative
Preview authority granted will not be limited to regional bills, but will apply to all draft laws under consideration. This is in order to encourage the creation of good laws that do not contradict the Constitution.

b. The Regional Representative Council has been given authority to submit a Judicial Preview to the Constitutional Court. When realized in this case, there are two advantages:
   a) Strengthening the Regional Representative Council's authority, which can balance the People's Representative Council's authority in quality matters; and
   b) Increase the Constitutional Court's authority so that it can address the issue of a legal vacuum as a result of a law being revoked as a result of the constitutional review of the Act against the 1945 Constitution of the Republic of Indonesia.

c. Supervise to ensure that indigenous peoples' rights are respected in all aspects. Regional aspirations are expected to be accommodated by broadening the meaning of the Regional Representative Council's supervisory function. In the lives of indigenous peoples, the Regional Representative Council must be present. It is necessary to harmonize customary law and national law in order to protect indigenous peoples' rights as a whole. Furthermore, the supervision of customary lands or customary forests is still in its infancy. This is no longer merely a regional issue, it has now become a national one, and the Regional Representative Council must take the lead in addressing it.

An effort can be made to strengthen the national legal system based on the various prospects of authority mentioned above. This can be accomplished in a variety of ways, including:

a. Amendments to the 1945 Constitution of the Republic of Indonesia; The main problem with the Regional Representative Council's weak position is the authority granted by the Constitution. This is the most effective method, but it is also the most difficult to implement because constitutional norms cannot be changed quickly.

b. Revise the Law on the People's Consultative Assembly, the People's Representative Council, the Regional Representatives Council, and the Regional People's Representative Council; This can be accomplished if the Regional Representative Council, as the policymaker, formulates the Regional Representative Council's strengthening in the Act. Although it will be difficult because the People's Representative Council, as a political representative, only wants to strengthen the institution, it will be difficult. This is
evidenced by the Constitutional Court's constitutional review of the law on the People's Consultative Assembly, the People's Representative Council, the Regional Representatives Council, and the Regional People's Representative Council. Do not allow the revision of the Act to weaken rather than strengthen the Regional Representative Council's authority.

c. Adding new authority to the Constitutional Court in the form of Judicial Preview; Later on, the Regional Representative Council will be given the authority to apply a constitutional review to the Constitutional Court. It will be a difficult task to realize it because it will have to revise some of the Constitution's provisions and legislation.

d. The Regional Representative Council can supervise the existence of indigenous peoples directly based on the interpretation of the supervisory authority that is owned, as well as as a regional representation. Its position will be strengthened if it is incorporated into the Constitution and legislation.

CONCLUSION

The Regional Representative Council is an important part of Indonesia's current state administration system. Every existing state institution has an equal status and uses a system of checks and balances to carry out its responsibilities. The Regional Representative Council is expected to be able to absorb and synchronize regional aspirations into the Law. In fact, it continues to fail to perform as expected. Until now, the Regional Representative Council has been grappling with the issue of its lack of authority. The formation of the Regional Representative Council has only been used as a supplement to the concept of two legislative chambers, which was implemented because it is not balanced with the constitutionally granted authority.

Problems with the Regional Representative Council's authority in particular, such as the Regional Representative Council's unclear position in the formation of laws because their role is limited to submitting regional bills and participating in their discussion. There should be a double check between the two legislative chambers in every lawmaking process. The Regional Representative Council can conduct a double check through the Legislative Preview process or as an institution with special authority to apply for a Judicial Preview to the Constitutional Court. Furthermore, the Regional Representative Council must be present
among indigenous peoples in order to hear their concerns. This is due to the fact that Indonesia is made up of different cultures, ethnicities, religions, and cultures in each region. As a result, an institution must be established that pays close attention to every detail of the problem and incorporates regional aspirations. One of the goals of its formation was to encourage the acceleration of development in each region, the Regional Representative Council became a state institution that was deemed suitable to carry out this task. So that every aspiration received can be returned to the community in the form of physical development as well as a law that will benefit the community.

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