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## Exercising the Role and Authority of Indonesia's Senate: Implications of Constitutional Court Decision 92/PUU-X/2012

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### Abstract

The Regional Representative Council (Dewan Perwakilan Daerah/DPD) in Indonesia is a legislative body that reflects the country's bicameral system, which includes two chambers. However, the DPD's authority is notably weaker than that of the House of Representatives (Dewan Perwakilan Rakyat/DPR), leading to what is often described as "soft bicameralism" in Indonesia. This study explores the role and authority of the DPD following the Constitutional Court Decision Number 92/PUU-X/2012, which addressed the DPD's function within the legislative process. The research adopts a normative approach, focusing on legal norms from the 1945 Constitution and related legislation, alongside a statutory and historical analysis. This includes examining relevant laws, such as Law Number 17 of 2014 and the DPR's 2014 Rules of Procedure, which incorporate the Constitutional Court's decision. This decision essentially introduced a tripartite legislative model involving the DPR, DPD, and the President, providing the DPD a role in Level I discussions. In Level II discussions, the DPD presents its opinions during plenary sessions before a bill's approval between the DPR and the President. However, the DPD remains excluded from the final ratification. Strengthening the DPD's legislative authority requires a fifth constitutional amendment to enhance its role or a willingness by the DPR to share legislative responsibilities, thereby establishing a stronger checks and balances system.

### Keywords

Representative Institution, Bicameral, Legislation.

## 1. Introduction

Indonesia is a state of law based on the sovereignty of the people regulated by the provisions of Article 1 paragraphs (2) and (3) of the 1945 Constitution. As a state of law, all actions in the administration of government in Indonesia must be by the law. The definition of law usually refers to written law, which can be in the form of legislation or other legal products, as well as unwritten law. This unwritten law includes general principles of good governance, norms of custom, customs, norms of politeness, and other elements of law that are not explicitly regulated in written legal texts. Without a legal basis in legislation, the actions taken will not have legitimacy. Thus, legislation has a very central and strategic role in the administration of government (Rubin, 1989; Setiadi, 2022).

In Article 1 paragraph (2) of the 1945 Constitution (*Undang-Undang Dasar/UUD*) third amendment it is stated that sovereignty is in the hands of the people and is implemented according to the 1945 Constitution. One of the sovereignties that are in the hands of the people is to elect the Regional Representative Council (*Dewan Perwakilan Daerah/DPD*). The DPD was first elected in the 2004 election, after being formed in 2001 in the third amendment to the 1945 Constitution. The position of the DPD is regulated in CHAPTER VII A of the 1945 Constitution, in which Chapter it is regulated regarding the functions and duties of DPD members. The DPD was born as a result of the 1998 reformation to eliminate centralistic state administrators which failed the central government in granting regional rights as the basis for the birth of this country (Tukan & ALW, 2018). Thus the formation of the DPD aims to strengthen ties between regions within the framework of the unitary state of the Republic of Indonesia, fight for regional rights in the formulation of national policies between regions and the state, and encourage the acceleration of democracy, progress and development in a balanced manner (Taswin, 2022).

The birth of the May 21, 1998 Reformation which brought about changes in the government from Soeharto, continued with the amendment of the 1945 Constitution carried out by the members of the council at that time and continued with reforms in representative institutions, namely the formation of a legislative institution in the form of the Regional Representative Council (Sibuea et al., 2020). Added to this was the flow of regional autonomy which was a reaction to the centralization of government at the center at that time. Since the New Order government, the composition of the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat/MPR*) consisted of members of the DPR, Regional Representatives, and Group Representatives. But it was felt that the Regional Representatives did not function effectively to fight for regional interests, because the appointment process was not carried out democratically, only by the provincial Regional People's Representative Assembly (*Dewan Perwakilan Rakyat Daerah/DPRD*). The DPRD itself was controlled by the political party that won the election in that province. Meanwhile, several regions that have economic resources due to a contradiction in the Indonesian political system have made regions reform regional representation. Since then, the idea of creating a bicameral system has emerged, namely a two-chamber system with various representatives and one of them is the Regional Representative Council.

Indonesia according to Bagir Manan, who took the United States as an example, also has the DPD as a regional representative and the DPR as a representative of the people, just like the Senate (State Representative) and the DPR as representatives of all American people. However, in reality, the authority of both is different, although the DPD and the House of Representatives (*Dewan Perwakilan Rakyat/DPR*) are directly elected by the people, both should have the same authority in the field of legislation (Bakir & Mardisontori, 2023; Dameanti et al., 2024).

not only submitting draft laws related to the region but also those of a public nature, which then participate in discussions and decision-making, and have the right to reject draft laws that are considered detrimental to the region. The reason for the existence of the DPD is to increase the dynamics of democracy and accelerate regional development and progress (Sinukaban, 2020; Husnah & Adam, 2022). Even the existence of the DPD is to involve regions in every formulation of national policies for the interests of the State and regions. With the authority of the DPD being under the DPR, the DPD will not be able to do much with its limited authority (Putra & Mahendra, 2022). As is known, the birth of a new legislative institution, namely the DPD, which is regulated in the 1945 Constitution in carrying out its functions both as a legislative institution and as a supervisory institution is far below the DPR.

The existence of the supervisory function carried out by the DPD can be seen from its regulations, namely: the 1945 Constitution of the Republic of Indonesia, Law No. 17 of 2014 concerning the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat/MPR*), the House of Representatives (*Dewan Perwakilan Rakyat/DPR*), the Regional Representative Council (*Dewan Perwakilan Daerah/DPD*), and the Regional People's Representative Assembly (*Dewan Perwakilan Rakyat Daerah/DPD*) (MD3) and DPD Regulation No. 1 of 2014 concerning Rules of Procedure. The results of DPD supervision will later be submitted to the DPR as a consideration for follow-up. The incomparability of the regulation of the Regional Representative Council supervisory function with the House of Representatives is due to the imperfect Amendment factor and the political agreement factor (Bektaş, 2018). The spirit of the birth of the representative institution of the Regional Representative Council is a manifestation of the implementation of the bicameral system (two-chamber representation) in Indonesia. However, as the second chamber, the Regional Representative Council is very limited in carrying out its role (Gunawan et al., 2023).

The DPD has very weak authority compared to the DPR, so this causes the Indonesian representative system to be said to implement soft bicameralism/weak bicameralism (Marzuki, 2022). This is an issue that must be followed up carefully because the purpose of bicameralism is to create checks and balances between the two representative institutions, as well as to accommodate certain interests that are usually not sufficiently represented by the first chamber. Changing the Constitution is the only option for proportional authority (Widiyono, 2022). This can be owned by the DPD so that with a good format, Indonesia will move towards a strong bicameral/strong bicameral as the ideals that Indonesia wants to implement in the future (Tewernussa, 2017). Based on the description, the author is interested in discussing how the implementation of the DPD's authority is after the Constitutional Court's decision Number 92/PUU-X/2012 and how to ideally strengthen the DPD's legislative authority in the Indonesian representative system.

## **2. Methods**

This type of research is normative legal research, namely legal research conducted by examining library materials or secondary data sources only (Soerjono & Mamudji, 1995). Normative legal research includes research on legal norms, both the 1945 Constitution and the regulations below it. The approach used in this research is the statute approach, the historical approach (Umam et al., 2023). The statutory approach is carried out by examining laws and regulations related to the legal issues being studied. The historical approach is carried out by examining the development of legal products based on the sequence of periodization or historical facts that underlie it. The library materials used consist of 3 (three) legal materials, i.e. primary legal materials consist of basic norms or rules, basic provisions or

regulations, and statutory regulations, secondary legal materials are legal materials that provide further explanation of primary legal materials in the form of literature, journal articles, and also relevant research results; and tertiary legal materials are legal materials that provide guidance or explanations for primary and secondary legal materials.

### 3. Results and Discussion

#### ***3.1 Implementation of DPD Authority After Constitutional Court Decision Number 92/PUU-X/2012***

The implementation of the Constitutional Court Decision in Indonesia's legal practice is pivotal, not only as a reflection of the Court's authority but also as a measure of how the legislative and executive branches respect it as a constitutional mandate. Smooth implementation of such decisions indicates whether these branches consider the Court's rulings obligatory. Although there is no specific enforcement mechanism for Constitutional Court decisions, the Court monitors how its rulings are applied, such as with Constitutional Court Decision Number 92/PUU-X/2012. This decision concerned Law Number 27 of 2009 on the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, and the Regional House of Representatives (MD3 Law) and Law Number 12 of 2011 on the Formation of Legislation (P3 Law). Through this ruling, the Court effectively restored the Regional Representative Council's legislative authority as mandated by the 1945 Constitution of the Republic of Indonesia (UUD 1945).

The Constitutional Court partially accepted the DPD's petition, annulling specific provisions of the two laws that diminished the DPD's legislative role. Before this decision, the MD3 and P3 Laws had limited the DPD's influence, reducing its legislative role and subordinating it under the House of Representatives (Widijowati, 2022). This ruling was met with approval by the DPD, which had long been seen as a subordinate body in the legislative process. The imbalance in legislative power, according to Sartori (1997), creates "asymmetric bicameralism," where one chamber dominates over the other. With Constitutional Court Decision Number 92/PUU-X/2012, there was renewed hope for the DPD's role in central-level legislative discussions. The decision nullified parts of the MD3 Law that conflicted with the 1945 Constitution, making the DPD's bills equal to those proposed by the President. Every bill from the DPD now bypasses the Legislative Body and is treated as any other bill from the President or DPR. This equal treatment affirmed the DPD's position in legislation alongside the DPR and the President. Additionally, the Court ruled that certain provisions of the P3 Law would remain valid if they recognized the DPD's rights as a coequal legislative body.

The ruling also interpreted that the DPD has the right to submit a List of Problems (*Daftar Inventarisasi Masalah/DIM*) on bills proposed by the President or DPR in areas related to regional autonomy, central-regional relations, formation and expansion of regions, natural resource management, and fiscal balance. Therefore, the DPD's legislative involvement begins from the introduction and continues through deliberation and the mini-opinion stage. The Court's decision clarified the DPD's authority in legislative discussions and extended to related articles in the P3 Law, bringing these laws in line with the constitutional intent. However, the decision's non-self-executing nature, as explained by Siahaan, means that additional legal groundwork is required for its enforcement (Sulastrri & Efendi, 2023). Unlike decisions that are self-executing, the Constitutional Court Decision Number 92/PUU-X/2012 needs supporting laws to become fully operational. This

requirement has led to an ongoing debate about how best to incorporate the Court's mandate into existing legislative procedures.

The Constitutional Court Decision Number 92/PUU-X/2012 established five key principles for the DPD's involvement in legislation: (1) the DPD's equality with the DPR and the President in proposing bills related to regional issues; (2) the DPD's right to discuss, but not approve, these bills; (3) the DPD's role in drafting the National Legislation Program (*Program Legislasi Nasional/Prolegnas*); and (4) the requirement that the DPR and the President seek the DPD's input on budget bills. These principles solidify a three-way legislative process among the DPR, DPD, and President from initial deliberation to the first discussion stage. While the DPR and President remain responsible for final approval in the Level II Discussion, the DPD may provide input but does not participate in the formal ratification of laws. However, *Prolegnas* ensures the DPD's participation by granting it the right to initiate bills and contribute to legislative discussions alongside the DPR and President. The DPD also collaborates with the Legislative Body (Baleg) and the Minister of Law and Human Rights on *Prolegnas* proposals (Setiadi, 2022).

Implementation challenges arise, however, in revising laws and procedural rules. For instance, the DPR suggested procedural changes instead of revising the MD3 Law to incorporate the Constitutional Court's decision. Revising the MD3 Law would be time-consuming, while updating procedural rules could expedite the DPD's inclusion in legislative discussions (Marzuki, 2022). Thus, the DPR has accommodated the DPD in bill discussions, ensuring its voice aligns with the Court's decision without undertaking lengthy legal amendments. The DPR's and DPD's handling of Constitutional Court Decision Number 92/PUU-X/2012 has brought significant changes to the legislative process. By adopting a tripartite legislative model, the DPR, DPD, and President share authority in early legislative stages, but final ratification remains a DPR and President matter. Such an arrangement upholds the DPD's role while adhering to constitutional distinctions in legislative powers.

There is, however, no consensus on the effectiveness of the implementation process. For instance, Member of Commission III, Azis Samsuddin, emphasized that the DPR has always respected Constitutional Court rulings. He argued that the DPR involves the DPD in legislative discussions and complies with the Constitutional Court's mandates, disputing any suggestion of non-compliance (Sulistiyowati et al., 2023). Nevertheless, opinions remain divided on whether these procedural modifications meet the Court's intent. The practical changes following the Constitutional Court's decision include the DPD's participation in working meetings (*Rapat Kerja/Raker*) with the DPR. During these sessions, the DPD can propose bills, discuss *Prolegnas*, and jointly decide on legislative priorities. Though the DPD can influence legislation at all stages, it lacks the authority to approve or enact bills. Bill discussions in Indonesia proceed in two levels: commission meetings or joint commission meetings for Level I and plenary meetings for Level II, culminating in the final DPR and Presidential decision.

Evidence of this tripartite model's effectiveness can be seen in the DPR's inclusion of the DPD in discussing laws related to regional autonomy, fiscal balance, and other matters central to regional interests. For example, the DPD was included up to Level I in the discussion of Law Number 1 of 2014 on Marine Affairs. However, the DPD had no formal role in the final approval of this law. The Constitutional Court's Decision Number 92/PUU-X/2012 has thus paved the way for a more inclusive legislative process that respects the DPD's constitutional role without undermining the DPR and President's ultimate authority. Amendments to the MD3 Law and DPR Rules of Procedure in 2014 have codified these changes, structuring legislative processes around a collaborative, tripartite model. This

arrangement allows the DPD to propose and discuss bills comprehensively but restricts it from engaging in final ratifications.

In conclusion, the Constitutional Court Decision Number 92/PUU-X/2012 represents a substantial shift in Indonesian legislative dynamics by affirming the DPD's constitutional role while maintaining the DPR and President's final legislative authority. Through legal adjustments, procedural updates, and ongoing collaboration, Indonesia's legislative bodies are gradually shaping a balanced bicameral system that respects both the regional and national legislative voices, adhering to the vision outlined in the 1945 Constitution.

### ***3.2 Ideal Strengthening of DPD's Legislative Authority in the Indonesian Representative System***

The legislative process is fundamental in the development of regulations and is inherently linked to the regulations' form, structure, and hierarchical order (Scott, 2004; Umam et al., 2023; Wahyuni, 2024). It extends beyond mere government structure and involves specific procedures that uphold the formation, interpretation, and enforcement of legislation (Soehino, 1984). This process reflects the legislative responsibilities of the Indonesian People's Consultative Assembly, comprising the House of Representatives and the Regional Representative Council. While the House of Representatives has more extensive legislative authority, the Regional Representative Council serves as an additional yet comparatively weaker legislative chamber under the Indonesian Constitution of 1945. Consequently, Indonesia's parliamentary structure is often characterized as a form of "weak bicameralism," where the DPR represents political parties and the DPD represents regional interests (Komarudin et al., 2023). The formation of the DPD after Indonesia's third constitutional amendment introduced bicameralism into the parliamentary system, providing a unique representation of territorial interests within the legislative framework.

The idea of further amending the 1945 Constitution emerged due to perceived deficiencies in the post-fourth amendment version. Syamsuddin Haris, a prominent researcher from the Indonesian Institute of Sciences (*Lembaga Ilmu Pengetahuan Indonesia/LIPI*), pointed out that these deficiencies stemmed from short-term interests dominating the amendment process, resulting in inconsistencies, incoherent substance, and unsystematic changes (Toding, 2017). These issues prompted discussions of a Fifth Amendment, which began to gain traction in early 2008. On January 25, 2008, the government and the DPR agreed to establish a national commission to pursue a comprehensive fifth amendment of the 1945 Constitution. Since then, the DPD has been actively promoting the amendment, aiming to build consensus on the necessity of refining Indonesia's constitutional and legislative structure. This socialization process seeks to encourage support across society and foster a unified vision for strengthening Indonesia's parliamentary system.

The primary rationale behind the Fifth Amendment proposal centers on several key factors, particularly the limited effectiveness of the DPD's role (Soetjipto et al., 2010). The need for an effective system of checks and balances between state institutions remains a pressing issue, as does the confusion surrounding the authority and position of the MPR, DPR, and DPD. Additionally, issues like the format of regional governments, consistency within the 1945 Constitution, and the proper structure of a unitary state to achieve national prosperity have all emerged as critical areas for constitutional reform. The DPR's dominance over the DPD has raised concerns about legislative inequality, as the DPD, designed to represent regional interests, lacks sufficient legislative authority to balance the DPR's influence. Without a genuine legislative function, the DPD struggles to fulfill its mandate within the Indonesian bicameral system, which lacks a true sense of purpose or organic development within the society it represents.

Two major arguments support the establishment of an effective bicameral system (Riker, 1992). First, such a system would allow regional concerns to be presented at the national level in a meaningful way. Currently, the DPR alone cannot adequately represent regional interests. This shortfall has been evidenced by the numerous laws that fail to address regional concerns effectively, leading to requests for judicial reviews before the Constitutional Court. For example, Law No. 32 of 2004 on Regional Government was challenged in the Constitutional Court due to its failure to reflect regional realities (Loulembah, 2006). Second, an effective bicameral system would introduce a balancing political force within parliament, fostering healthier legislative debate and consideration. Even if the DPD's legislative authority differs from that of the DPR, its existence as a distinct chamber could promote thorough legislative scrutiny and deliberation, resulting in more balanced and representative legislation.

To pursue an effective bicameral model, the DPD has proposed the concept of effective bicameralism. Under this model, all legislation would be debated separately and in stages by both the DPR and DPD. Bills could be introduced by either chamber, and both would discuss and deliberate on them individually. Any disagreements would be addressed through negotiation within a joint committee before being finalized. This process would ensure that decisions receive comprehensive consideration from both legislative bodies, while the executive branch, including the President, could exercise veto power as part of the checks and balances mechanism. If the President rejects a bill, the DPR and DPD may override this veto with a two-thirds majority from each chamber, thereby asserting legislative independence. This procedural framework would provide a consistent implementation of the presidential system, emphasizing legislative independence while balancing power across the branches.

A significant challenge to the DPD's legislative role has been its limited authority. Between October 2004 and October 2014, the DPD submitted 57 bills, 237 statements and opinions, 74 recommendations, and 138 oversight reports to the DPR (Wori et al., 2023). Despite this substantial contribution, few of these initiatives were advanced or became law. The only notable exception was the Marine Bill, a DPD initiative that was ultimately enacted into law following a tripartite discussion involving the DPR, the government, and the DPD (Secretariat General of DPD RI, Profile of the Regional Representative Council of the Republic of Indonesia Session Year 2014-2015). In a significant move to clarify its legislative role, the DPD sought a judicial review of Law No. 27/2009 and the Law on Legislative Procedure (P3) in 2012, with the aim of obtaining a clearer constitutional interpretation of its legislative authority. The Constitutional Court's ruling on March 27, 2013, marked an essential step toward strengthening the DPD's role within the legislative framework.

However, despite these advancements, the DPD's legislative powers remain limited in comparison to the DPR. Scholars such as Falaakh (2024) classify Indonesia's current bicameral structure as a form of asymmetric bicameralism, where one chamber (the DPR) holds considerably more power than the other (the DPD). Sartori (1997) also refers to this arrangement as "weak bicameralism," reflecting the DPD's lack of authority to influence legislation substantively. To address these imbalances, further constitutional amendments have been proposed. One approach involves placing amendments on the public agenda during elections, allowing citizens to express their support directly through their chosen representatives (Arum, 2023). Additionally, academic and public discourse has focused on enhancing the DPD's role and authority, particularly concerning its legislative influence.

To achieve these changes, the Fifth Amendment could incorporate modifications aimed at strengthening the DPD's authority. Ideally, Law No. 13 of

2019 on the People's Consultative Assembly, DPR, DPD, and Regional House of Representatives (MD3 Law) and the most recent Legislative Procedure Law should be updated to reflect the DPD's authority as an equal legislative body alongside the DPR and the President. This would enable the DPD to fulfill its role more effectively within the framework envisioned by the third constitutional amendment. In constitutional terms, the DPD's authority is constrained by two primary limitations. First, its legislative authority is restricted to regional issues, limiting its impact on broader legislative matters. Second, the DPD lacks the authority to approve bills, a power reserved for the DPR and the President. The Constitutional Court's Decision No. 92/PUU-X/2012 restored the DPD's limited legislative role as outlined in the 1945 Constitution. However, this decision only partially addressed the DPD's desire for greater legislative involvement. Ideally, the DPD should have the right to participate fully in the approval process of all bills, not only those related to regional autonomy, resource management, or central-regional financial balances. By doing so, the DPD would become a more effective partner in the legislative process, enhancing the balance of power between the chambers.

Expanding the DPD's legislative authority would strengthen its role as a regional representative body and provide a much-needed counterbalance to the DPR. This enhancement of the DPD's powers could foster a more equitable and balanced bicameral system, better reflecting Indonesia's diverse regional interests. Rather than undermining the DPD's authority or eliminating it, the Indonesian government should recognize the DPD's value and extend its legislative powers. This approach aligns with the concept of effective bicameralism, where the DPD and DPR could engage in independent discussions and negotiations on all legislation, only consulting the President at the final stage of ratification. By attributing constitutional authority to the DPD and creating a framework for its legislative involvement, Indonesia could establish a balanced and integrated bicameral system that serves the people's diverse interests more effectively. Thus, for Indonesia to achieve an ideal bicameral structure, the DPD's legislative authority must be further enhanced, either through a fifth constitutional amendment or by updating key legislative statutes, such as the MD3 Law and the Legislative Procedure Law. These reforms are essential for realizing the DPD's foundational aspirations and ensuring a legislative system that genuinely embodies checks and balances, where each chamber can exercise equal legislative influence in service of the people's needs.

#### 4. Conclusion

Based on the problem background and previous discussion, it can be concluded that Constitutional Court Decision Number 92/PUU-X/2012 has been implemented by lawmakers, specifically the President and the House of Representatives (*Dewan Perwakilan Rakyat/DPR*), through the amendment of Law Number 27 of 2009 concerning MD3 to Law Number 17 of 2014. Alongside the ratification of Law Number 17 of 2014, the DPR also amended DPR Regulation Number 1 of 2009 on Rules of Procedure to DPR Regulation Number 1 of 2014. Before these amendments, the DPR involved the Regional Representative Council (*Dewan Perwakilan Daerah/DPD*) in discussions on bills related to regional autonomy, central-regional relations, regional formation and expansion, and financial balance. An example is the discussion of Law Number 1 of 2014 on Marine Affairs, where the DPR engaged the DPD up to Level I, but not in final bill ratification. The MD3 Law and DPR Rules of Procedure amendments reflect five key elements from the Constitutional Court's decision, positioning the DPR, DPD, and President as equal participants in legislative processes from Level I. However, in Level II, the DPD only provides opinions before DPR and presidential approval,

lacking full participation in ratification. To strengthen the DPD's legislative authority, the author suggests further amendments to establish genuine checks and balances, requiring a fifth amendment to the Constitution or adjustments to the new MD3 Law, empowering the DPD equally in lawmaking with the DPR and President. This would align with the initial goals of the DPD and the bicameral system. The author recommends that the DPD actively implement the Constitutional Court's decision to fulfill its role in central-level legislation and restore its credibility and function. Strengthening the DPD's authority would enhance its role as a regional voice and balance to the DPR, rather than weakening or eliminating it within Indonesia's political system.

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