



regulated by law". With the initial saying, "The People's Consultative Assembly consists of members of the People's Legislative Assembly plus delegates from regions and groups selected according to the rules stipulated by law".

The change of parliamentary structure in Indonesia into two (bicameral) rooms consisting of DPR and DPD is intended so that the legislative process can be carried out based on a double inspection system that allows for the relative representation of the interests of all people to be channeled using a larger social base. In this case the DPR refers to political representation while the DPD refers to territorial or regional representation.<sup>1</sup>

The DPD is formed in the parliamentary system in Indonesia to better accommodate the voice of the region by giving a place / space for several regional regions that function to place / position their respective representatives in a representative body at the national level so as to voice regional interests and fight for each region, thus the regional ties will be strengthened within the scope of the Unitary Republic of Indonesia (NKRI) and in order to increase the accommodation of the aspirations of the regional community along with the aggregation and interests of their respective regions to form a national policy formulation, with this matter relating to central and regional policy structures other than it is also to accelerate the pace of democracy to the progress of each region along with organized development.<sup>2</sup>

The presence of the DPD on the opinion of Ginanjar Kartasasmita is as a critical view of the existence of an delegates / regional representative as well as delegates / representatives of groups participating in the formation of the MPR in a representative system in the era before reform. The appointment mechanism from regional delegates and group delegates is able to reflect a system that is not democratic but is also able to obscure the system of representation formed in the order of the life of a modern democratic state. It means that the birth of the DPD institution as a mechanism part intended as an effort that each area or region must have a representative, in this case to fight for the interests of the whole in the national arena, including maintaining the integrity of the Republic of Indonesia as a whole. Besides that it also implies that for now there are institutions that represent interests across groups or communities with an understanding of the culture and characteristics of each region.<sup>3</sup>

The implementation of regional autonomy is one of the authorities of the DPD that gives consideration, besides these considerations, there are also weaknesses in the function of the DPD related to the struggle for regional interests as a bargaining institution that will probably not get follow-up from the DPR. Then regarding the incompatibility of the Draft Law with regional interests, DPD does not have veto power to cancel the draft, refers to a bicameral system of government. So that it was clear that the DPD did not have power over the constitutional system in Indonesia and

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<sup>1</sup>Ipana Nurdiani, "*Kewenangan Dewan Perwakilan Daerah dalam Pembentukan Undang-Undang Menurut Undang-Undang Dasar 1945*", Citizenship, Vol.1, No.1, (Juli 2011), hal. 10.

<sup>2</sup>Miki Pirmansyah, "*Eksistensi Dewan Perwakilan Daerah dalam Sistem Bikameral di Indonesia*", Cita Hukum, Vol.1, No.1, (Juni 2014), hal. 164.

<sup>3</sup>Ibid, hal. 165.

have an impact on the position of the DPD which gave a consideration to the DPR institution to be almost weak.<sup>4</sup>

This problem refers to the formulation of the 1945 Constitution with the phrase that the DPD "can submit" the Draft Law to the DPR and "discuss" the draft law it. Therefore, in making laws relating to their respective regions, DPD does not have the initiative and independent rights, if the word "can" and "join" shows that the phrase does not have an element of obligation so the DPD itself does not have power effectively in terms of making the draft law.

Issuance of Constitutional Court Decision Number 92 / PUU-X / 2012 by the Constitutional Court, now the DPD returns to its realm as a legislative body within the Indonesian parliamentary system. However, overall the above decision provides guidance that can be applied in the formulation of Law Number 17 of 2014 concerning MPR, DPR, and DPD (MD3). So that the authority of the DPD is contained in the law, so that the authority of the DPD contained in the law, still contains provisions of articles that reduce, assert, and erode the constitutional authority of DPD, so that it causes the DPD to be less effective regarding the implementation of functions and authorities as legislative institutions.

Based on the above background, it is interesting to study more closely the DPD legislative function with the Title : **Juridical Analysis of DPD Legislation Functions in the Constitutional System.**

## II. RESEARCH METHODS

This study uses normative law. According to Philipus M. Hadjon, more mention of the term "legal study" from the use of dutch language *de beoefening van de rechtswetenschap* or *het bedrijven van derechswetenschap* than legal research. So that the legislation approach with the object of research using various types of legal regulations is needed in normative legal research. This legal regulation is the focus of the object and the main theme in this research.<sup>5</sup> Like Philipus M. Hadjon, quoting Irving M. Copy, Carl Cohen states that when logic is used in the field of law, it must pay attention to three main differences regarding the nature of the laws, resources of laws and the types of laws.<sup>6</sup>

Furthermore, the legislation approach and the conceptual approach to formulating a research are used. As previously explained that research focuses more on various primary and secondary legal materials, including finding sources of legal

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<sup>4</sup>Jimly Asshiddiqie, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*, (Jakarta: Sekretariat Jendral dan Kepaniteraan MKRI, 2006), hal. 138.

<sup>5</sup> Johnny Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif*, (Malang: Bayumedia Publishing, 2010), hal. 302.

<sup>6</sup> Irving M. Copy Carl Cohen, dalam Philipus M. Hadjon, 2009, *Argumentasi Hukum*, (Yogyakarta: Gadjah Mada University Press), hal. 23.

materials such as legislation and bibliography with reference to the DPD as its focal point. Then the results of the research obtained are related to the main problems that are arranged systematically. By Philipus M. Hadjon believes that in every collection of legal material, be resolved using a special systematic literature study method concerning the laws which have been regulated in the basis of existing laws and regulations to become sources of research.<sup>7</sup>

According to Ronny Hanitjo Soemitro who argued that inventorying positive law is the initial form of the first step is a preliminary activity that is basic for various studies using positive law in another form.<sup>8</sup> Besides technical argument can not be released because of the use of evaluation techniques that an assessment should be based on the formulation of legal reasoning.<sup>9</sup> While searching for the relationship between the concept of law with legislation that is obtained referring to the task and kewenangan DPD is systematic. So it is expected to get conclusions about the problem according to the research.

### **III. RESEARCH RESULTS AND DISCUSSION**

#### **A. Representative Function**

A democratic government system implemented with a representative system, the existence of a people's representative institution is seen as a belief in the implementation of the democratic government system. Representative institutions are the executors of state power in terms of determining general policies that bind all people. In general, the main functions of representative institutions are :

- a. Regulation function (legislation);
- b. Monitoring (control) function;
- c. Function representation.

Legislative power is the main function of the people's representative institution that functions as a regulation (regelende function). The regulatory function is the authority to determine regulations that bind citizens as binding and restrictive

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<sup>7</sup> Philipus M. Hadjon, *Pengkajian Ilmu Hukum Dogmatik (Normatif)*, Majalah Yuridika, No.6 Tahun IX, (Surabaya: Fakultas Hukum Universitas Airlangga,1997), hal. 14.

<sup>8</sup>Ronny Hanitjo Soemitro, *Metodologi Penelitian Hukum*, (Jakarta: Ghalia Indonesia, 1983), hal. 10.

<sup>9</sup>Program Studi Magister Ilmu Hukum Program Pascasarjana Universitas Udayana, *Pedoman Penulisan Usulan Penelitian dan Tesis Program Studi Magister Ilmu Hukum*, (Bali: Universitas Udayana, 2008), hal. 14-15.

legal norms.<sup>10</sup> The regulatory function is realized in the form of formation in this case in the form of "laws". Regarding the legislative function, quoting his opinion Jimly Asshidiqie said that :

The authority to stipulate the regulation must first be given to representative institutions of the people or parliament or legislative institutions. There are three important things that must be regulated by the people's representatives through parliament, including : (i) regulations that can reduce citizens' rights and freedoms, (ii) arrangements that can burden the wealth of citizens, (iii) arrangements regarding expenditure by state administrators. The regulation of these three things can only be done with an agreement from the citizens themselves, that is, through the intermediary of their representatives in parliament as a representative institution of the people.<sup>11</sup>

Concretely, this regulatory function is realized in the legislative function. But in this case the law-making function is essentially a regulatory function. The regulatory function relates to the authority to determine regulations that bind citizens with binding and restrictive legal norms. Thus, the main authority can only be done as long as the community still agrees to comply with the legal norms in question, because the branch of power that is deemed entitled to regulate is basically a representative institution of the people. In the legislative system in Indonesia, the regulation was then referred to as the "law" of products from the House of Representatives with mutual agreement with the President.

The legislative function is the main function of the representative institution of the people, which in its role is the function of representation. A representative institution if without the representation function, it is meaningless though. So that in carrying out the representation function, it is known by the existence of three representative systems by various democratic countries, including the political representation system, territorial representation system (territorial or regional representation), functional representation system.<sup>12</sup>

## **B. The Duties, Authorities and Functions of the DPD**

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<sup>10</sup>Jimly Asshiddiqie, *Pokok-Pokok Hukum Tata Negara Indonesia Pasca Reformasi*, (Jakarta : PT.Bhuana Ilmu Populer, 2007), 161.

<sup>11</sup> Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara*, (Jakarta : PT.Rajawali Pers, 2013), 298-299.

<sup>12</sup>Ibid., hal. 305.

In this case, conceptually and theoretically that regarding the urgency of establishing DPD institutions is to form a mechanism for regulating control and balance, or what is commonly called check and balances in the realm of legislative institutions other than the domain between the legislative, executive and judicial branches. As for ensuring and accommodating regional representatives in each region that are adequate, so as to be able to fight for the rights of the aspirations of the community with regional interests within the scope of the legislature. In addition to being represented by an idea (representation in ideas) for the benefit of the region, there is a need for the presence of local citizens (representation in present). So it is clear that the existence of representative institutions that are able to accommodate elements along with regional representatives is really needed to accommodate or accommodate the aspirations of the community, including more efficient and fair regional interests related to establishing national political decisions and developing empowerment of local potentials for the better.<sup>13</sup>

In line with the Indonesian political consensus, the existence of the DPD is politically intended to unite the forces of various regions within the scope of the citizens of the Republic of Indonesia and strengthen the fabric of national unity throughout Indonesia, increase aggregation and accommodation of people's aspirations related to the interests of their respective regions for national policy formulation, accelerate the pace of democracy, regional progress and balanced development.<sup>14</sup>

The establishment of the DPD institution according to Ginanjar Kartasasmita is a critical benchmark for the existence as regional and group delegates occupying the MPR formation in the representative system before the reform era. The existence of regulatory mechanisms related to the appointment of regional and group delegates is not only reflecting an undemocratic system but the representation system is blurred, as previously built according to the democratic life order of the nation. So from here the DPD is part of an effort to pay attention to that in order to fight for the interests of the region as a whole, each region must have its representatives, in addition to maintaining the integrity of the Unitary Republic of Indonesia (NKRI). Loads and understanding of the local culture and its

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<sup>13</sup> Miki Pirmansyah, " *Eksistensi Dewan Perwakilan Daerah dalam Sistem Bikameral di Indonesia* ", Cita Hukum, Vol. 1, No.1, (June 2014), p. 178.

<sup>14</sup> A.M. fatwa," *Potret Konstitusi Pasca Amandemen UUD 1945*", (Jakarta: Kompas publishers, 2009), p. 314.



characteristics can work accordingly to the presence of representatives by regional representatives according to their functions.<sup>15</sup>

These regional representatives are said to "truly be above the interests of the group" if they deepen their understanding to be the content of their representative regions, so as to be able to represent the overall and the needs of their respective regions. Regional representatives must be free from ideological-based or political parties.

In the case of political parties that appear in the regions generally present interests in accordance with the policies of political parties at the central level, or can be said to still refer to centralism. If there are regional representatives who refer to the main group based on ideological or political parties, this can potentially overlap between regional interests and the interests of their political parties if one another is not in line / contradictory. This shows that the ideas that emerge in the legislative domain are abstract and operational.<sup>16</sup> This is similar to what was revealed by Jimly Asshiddiqie who argued about the importance of avoiding the double representation of representation or the dual representation of the parliamentary function by the two councils, so there is a need to differentiate the nature of representation.<sup>17</sup>

The formation of the DPD as a separate institution other than the House of Representatives in the parliamentary structure in Indonesia, has implications for changes in the structure of the Indonesian parliament which originally adopted a unicameral system (one room) to become bicameral (two rooms) consisting of DPR and DPD. This can be seen from the results of the third amendment to the 1945 Constitution in article 2 paragraph (1) which reads: "The People's Consultative Assembly consists of members of the People's Legislative Assembly and members of the Regional Representative Council who are elected through general elections and further regulated by law " As previously stated, "The People's Consultative Assembly consists of members of the People's Legislative Assembly plus delegates from regions and groups selected according to the rules stipulated by law".

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<sup>15</sup> Regional Representative Council of the Republic of Indonesia, *Konstitusi Republik Indonesia Menuju Perubahan ke-5*, (Jakarta: Regional Representative Council, 2009), p. 3.

<sup>16</sup> Satjibto Raharjo, "*Sisi-sisi Lain dari Hukum di Indonesia*", (Jakarta: Kompas book publisher, 2003), p. 138.

<sup>17</sup> Jimly Asshiddiqie, "*kontituti dan konstitusionalisme Indonesia*", (Jakarta: Sinar grafika, 2011), p. 152.

The DPR reflects political representation while the DPD reflects regional representation.<sup>18</sup> However, what happened after the DPD was formed and inaugurated in 2004, there is no significant authority that can balance the DPR in taking policy, this can be seen from the authority granted by the 1945 Constitution in Article 22D. In this article it is clear that the constitution severely limits the authority of the DPD, so that its authority is very limited and very weak, the authority of the DPD only revolves around proposals in the Draft Law (RUU) and even then only the issue of regional autonomy. Meanwhile the role of the DPR is very strong, this is different from the bicameral system in democratic countries that adheres to a presidential system as well as the two-room system by the United States Constitution which uses the power of the senate position rules and the House of Representatives (DPR).<sup>19</sup>

This shows that there is a great difference to the bicameral system adopted by Indonesia referring to the provisions in the 1945 Constitution after the amendment, stating that only the DPR has the power to make laws, but for the DPD only has the authority to submit the Bill to the DPR and the design is only limited in matters relating to regional autonomy and the relationship between the center and the regions. In addition to this power, the DPD has no other power. So that the existence of checks and balances in the legislative institution is very important because during the two eras before the reform of checks and balances in the legislative institution can be said to be absent.

### **C. Juridical Analysis of the Legislation Function of the Regional Representative Council Based on Law Number 27 of 2009 concerning the MPR, DPR, DPD and DPRD.**

The Regional Representative Council (DPD) is a new institution born from the results of the third amendment to the 1945 Constitution in 2001. The DPD was formed in a structured manner to reform the Indonesian parliamentary system which originally adopted the Unikameral system to become a Bamerameral consisting of the DPR and DPD.

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<sup>18</sup> Jimly Asshiddiqie, *“Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi”*, (Jakarta: Sinar Grafika, 2010), p. 119

<sup>19</sup> T.A, Legowo DKK., *“Lembaga Perwakilan Rakyat di Indonesia”*, (Jakarta: Indonesian Parliamentary Community Care Forum, 2005), p. 159.



Judging from the current Indonesian constitutional system now, the DPD is said to have an unclear position. It is not regulated comprehensively in relation to the arrangements contained in the 1945 Constitution concerning the DPD itself as set forth in article 22C and article 22D as well as the basis of Law Number 27 of 2009 concerning MD3. This resulted in the DPD institution in the implementation of regional autonomy not having power in addition to only giving consideration, proposals and opinions to the DPR, the DPR itself decided the considerations in the field of legislation and supervision.

This provision is strengthened by the regulation in Law No. 27 of 2009 concerning MD3 in Article 102 paragraph (1) letter (d) and (e) which places the legislative function that the authority of the DPD is equivalent to the legislative authority of members including commissions and joint commissions of the DPR, this is clarified by the provisions in Law Number 12 Year 2011 concerning the Establishment of Legislation in Article 43 paragraph (1) and (2) which has placed the DPD as a sub-ordinate institution under the DPR due to the constitutional authority of the DPD when submitting the Draft Law.

#### **D. Yuridical Analysis of DPD's Legislation Function in Constitutional Court Decision Number 92 / PUU-X / 2012**

Limitations of the DPD's legislative function as stipulated in Article 22D of the 1945 Constitution which in its implementation were reduced by Law Number 27 of 2009 concerning the MPR, DPR, DPD and DPRD and Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, encourages the DPD to conduct judicial review of its regulation in the law to the Constitutional Court, this is done in order to reinforce its functions, duties and authorities in a bicameral parliamentary system.

The conditions experienced by the DPD as an implication in construction of the DPD's legislative function arrangement in Law Number 27 of 2009 concerning MD3 and Law Number 12 of 2011 concerning P3 were revealed from the constitutional speech delivered by Irman Gusman as a chairman of the DPD, during the trial in the Constitutional Court on October 23, 2012 , in his speech Irman Gusman stated:<sup>20</sup>

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<sup>20</sup> Read Constitutional Court Decision Number 92/PUU-X/2012, 45-46.



4. The discussion of the law in the context of Article 22D is three parties (triparti), which are the House of Representatives (DPR), the Regional Representative Council (DPD) and the President. The Constitutional Court that: *First*, the discussion of the bill from the DPD must be enforced with the bill from the President and DPR; *Second*, to the bill from the President, the President is given the opportunity to provide an explanation, while the DPR and DPD provide views; *Third*, to the bill from the DPR, the DPR is given the opportunity to provide an explanation, while the President and DPD provide views; *Fourth*, the same thing is also treated through the bill from the DPD, that the DPD is given the opportunity to provide an explanation while the DPR and the President give a view; *Fifth*, the Problem Inventory List (DIM) is submitted by each state institution (DPR, DPD, Government).

With the issuance of Constitutional Court Decision Number 92/PUU-X/2012 can be said to bring opportunities for the DPD institution related to its authority of legislation. Referring to the provisions of Article 22D paragraph (1) and (2) of the 1945 Constitution, it is known that the position of the DPD in the authority of legislation is not a sub-ordinate of the DPR, the DPD is equivalent to the DPR and the President. Furthermore, the DPD was also given the authority to proposing and discussing certain bills from the beginning to the end of the stage, although it was not until the stage of granting approval for a law, this was because explicitly the 1945 Constitution had limited the provision. So that the limitative/limitation provisions are based on the constitution's instructions, efforts to improve in terms of authority in submitting, discussing and contributing to the National Legislation Program (Prolegnas) related to the task authority of the DPD itself as a people's representative institution that overshadows the aspirations of the community throughout the region can be run optimally.<sup>22</sup>

The decision of the Constitutional Court which has been described above shows a theoretical concept regarding the formation of the DPD to reforming the structure of the Indonesian parliament which initially adopted a three-room

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<sup>22</sup> Rahmat Imam Cahyadi, "Fungsi Legislasi Dewan Perwakilan Daerah Republik Indonesia dalam Pembentukan Undang-Undang Pasca Putusan Mahkamah Konstitusi Nomor 92/PUU-X/2012", Jurnal Fisip, Vol.3, No.2, (Oktober, 2016), page. 6.

(tricameral) to be two-room system (bicameral) covering the DPR and DPD. The DPR reflects a political representation, while the DPD reflects a principle of regional representation. Overall reaffirmed the fundamental changes regarding the people's representative institutions in the Indonesian constitutional system of the 1945 Constitution, as well as the people's representative institutions so that the parliament is drawn from the DPR as a political representative institution and the DPD as a territorial representative institution with its function (legislative function, oversight function and the same of budgeting function).<sup>23</sup>

As a follow-up to the Constitutional Court's decision, Act Number 17 of 2014 concerning the MPR, DPR, DPD and DPRD was replaced by Law No. 27 of 2009. And as a follow-up to the Constitutional Court Decision in terms of the relation to the functions and authorities of the DPD Parliament, so that it can be accommodated into the form of legislation.

#### **E. LEGISLATION FUNCTION OF THE REGIONAL REPRESENTATIVE COUNCIL (DPD) IN BICAMERAL SYSTEM IN INDONESIA POST-ENACTMENT OF LAW NUMBER 17 OF 2014 ABOUT MD3.**

The reformation era which was marked by an amendment to the 1945 Constitution, had a large impact on the Indonesian constitutional system. The impact is one of them in the form of substantive matters by happening changes, which is the formation of DPD institutions after the third amendment in 2001. As de facto, it is known that the DPD was formed on October 1<sup>st</sup>, 2004 when as many as 128 DPD members were first inaugurated and taken the oath as a whole.

There are several ideas behind the birth of the DPD, one of which is intended to increase regional representation in the political decision-making process in the administration of the country hopes to creating a strong national integrity within the form of the Republic of Indonesia. The presence of the DPD cannot be separated from the relationship between the Central and Regional which has always

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<sup>23</sup> Jimly Asshiddiqie, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*, (Jakarta: Sinar Grafika, 2012), page. 119.

experienced tension since Indonesia's independence. With the formation of the DPD, regional interests can be accommodated effectively.<sup>24</sup>

The position and authority of the DPD was initially set up by several laws and regulations, which is Law Number 12 of 2011 concerning the Establishment of Legislation (hereinafter referred to as the Law of P3) and Law Number 27 of 2009 concerning the MPR, DPR, DPD and DPRD (hereinafter referred to as Act of MD3). Referring to this two laws and regulations, the last mentioning that some of the constitutional authorities of the DPD were severely disadvantaged by the coming into effect of the MD3 Law, it was affirmed that the losses incurred were actual in effect due to the law being directly applicable.<sup>25</sup>

Thus, the DPD in responsible morally and politically will find it difficult for the voters along with their constituency which results in limited authority of this institution. Based on the above sentences, the DPD seeks to conduct material and formal tests on Law Number 27 of 2009 concerning Law Number 12 of 2011 concerning the Law on the Establishment of Legislation (P3 Law) against the 1945 Constitution to the Constitutional Court, this is intended to be able to restore the authority of the DPD in the realms of legislation in accordance with the 1945 Constitution. Then it was realized by the Constitutional Court that issued the Constitutional Court Decision Number 92/PUU-X/2012, in addition to granting the petition so that the constitutional authority of the DPD was related to its legislation.

After the issuance of the Constitutional Court, then Act Number 17 of 2014 concerning MD3 as substituted of Law Number 27 of 2009 as a follow-up to the decision of the Constitutional Court in relation to the authority of the DPD on the legislative functions and processes in Parliament. However, on the contrary the Constitutional Court Decision is not accommodated in the formulation of Law Number 17 of 2014 concerning MD3.

#### **IV. CONCLUSION**

1. In the Indonesian constitutional law system, in this case the bicameral system that is pure bicameralism between the upper house and lower house has the

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<sup>24</sup> Dahlan Thaib, *Ketatanegaraan Indonesia Perspektif Konstitusional*, (Jakarta: Total Media, 2009), page. 157.

<sup>25</sup> Constitutional Court Decision Number No.92/PUU-X/2012 tentang MPR, DPR, DPD dan DPRD, page. 7.









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