

The Transformation of the Legislative Institution of Indonesia

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ABSTRACT: *This article explores the changes occurred in the legislative institution of Indonesia after the 1997 reformation movement. Amendment of the Indonesian Constitution, UUD 1945, as called for by the reformation movement order the formation of the Regional Representative Council (DPD) consisted of the elected representatives from all provinces. The formation of DPD causes the legislative council in Indonesia to have two councils which are DPR (the People's Representative Council consisted of the elected representatives of political parties) and DPD. However, DPD has been provided limited roles by the constitution in the legislation process so it seem that DPD is subordinate to DPR. This makes the Indonesian cameral parliament system unclear whether it adopts unicameral or bicameral system. Moreover, the dominant roles of president contributes to this obscurity of cameral parliament system in Indonesia. This article contributes to the debates on parliament systems in developing countries.*

Keywords: *Cameral system, legislative institution, parliament, parliamentary system*

I. INTRODUCTION

According to Lijphart (1992:1), there are two different systems of government that promotes democracy. These are presidential system and parliamentary system. Both systems are based on the concept of the separation of power. Consequently, in both presidential system and parliamentary system there are various political institutions which carry out the legislative, executive and judicative functions. The political institutions function differently depends on which form of government system the country applies based on the constitution.

The Indonesian constitution, namely UUD 1945 (*Undang-Undang Dasar* 1945), adopts the division of power which is modified from Montesquieu's concept of the separation of power. According to Asshiddiqie (2000:2), the division of power used in UUD 1945 refers to vertical relationship of power in which *Majelis Permusyawaratan Rakyat* (MPR) or the People's Consultative Assembly, as the highest political institution and the manifestation of people's power, distributes the power to five high state institutions which includes (1) the Presidency Institution; (2) *Dewan Perwakilan Rakyat* (DPR) or the People's Representative Council; (3) *Mahkamah Agung* (MA) or the Supreme Court; *Badan Pemeriksa Keuangan* (BPK) or the State Audit Board; and *Dewan Pertimbangan Agung* (DPA) or the Supreme Advisory Council. However, fourth times amendments of UUD 1945 led to some changes in structure, function and status of the political institutions in the government arrangement of Indonesia. The modification led to the transformation of the legislative institution of Indonesia from the unicameral system in which DPR is the only legislative institution to the bicameral system in which DPR should share the legislative function with new regional representative council (DPD).

This essay argues that current system used by the legislature in the legislature process pursuant to the amended UUD 1945 is not clear whether it applies the unicameral or bicameral system because before the amendment of the constitution, the legislative institution had only one council; and it becomes two councils when the amended constitution requires formation of *Dewan Perwakilan Daerah* (DPD) or the Regional Representative Council. The new institution which is just formed has challenges relating to the limited function; and the dominant executive pursuant to the amended constitution.

II. UNICAMERAL SYSTEM OF DPR BEFORE AMENDING THE CONSTITUTION

Even though the government system of Indonesia is not the parliamentary system, it has the legislative institution which is one of state institutions representing Montesqui's concept of the triaspolitica. Before amending UUD 1945, DPR, as the legislative institution, has the decision-making procedure, which is based on the unicameral system. According to Ketterer (2001:5), differences between the unicameral system and bicameral system are on the law-making process and the intra elements of the systems. The regulation-making process in the unicameral system is more simply than that in the bicameral system because the draft regulation just goes by single procedure in the single house of legislation. It can be shown in the legislative process in DPR where the draft legislation is just examined and discussed once in legislative council by DPR and president. Moreover, the simple procedure of legislation in DPR does not require the double process which should pass the

similar instrument in the different houses. However, unicameral system in DPR has some weaknesses which relates to issues on representation and the vested interest of minority in the legislative institutions.

The DPR members are from the political parties which are elected by people and appointed from military by the president. This makes DPR more likely being the representative of the political parties and military rather than the public because the representative members serve more the political parties' interests than the public's interest. Moreover, the unicameral system in DPR does not know the opposition system. The dominancy of *GolonganKarya* in DPR does not encourage the other parties examine the regulation making process. The majority party is dominant in the regulation making process and does not allow or entertain the alternative thoughts of the opposition. This becomes dangerous when the DPR members appointed by the president from military join to the members of *GolonganKarya* Faction, as the majority party which support the president in every regulation-making process. The position of president in the regulation making process is very strong and the DPR members just pursue the president's agenda. The minority parties in DPR cannot criticize or purpose alternative thoughts in the regulation-making process because there is collusion between the majority party and the government. This leads to the authoritarian government during the regime of Soeharto. So, the unicameral system of DPR does not maintain the minority's interest in the legislative institution and tends to encourage authoritarian government.

Some people argue that to maintain the minority's interest and to preventing the authoritarian government it requires the direct election both the executive and the legislative institution members. However, the unilateral system was still blurred to accommodate the plurality in the legislative council especially in the regulation making process and to prevent the authoritarian government as argued by Todd (1999:3) that unicameral system just requires a few members rather than the bicameral system, so that in the unicameral system it is harder for the paid lobbyist to affect the regulation-making process.

III. FORMATION OF THE REGIONAL REPRESENTATIVE COUNCIL (DPD)

The fourth times amendments of UUD 1995 led the significant change in the governance system especially in the legislative system. The change in the parliament system is signaled by the formation of the Regional Representative Council (DPD) which causes the legislative council to have two councils which are DPR and DPD.

According to Congleton(2002:3), the chambers of parliament are elected directly or indirectly on the basis of different, even overlapping, electorates such as, House of the Lords and House of Commons in the British parliament who are selected on account of class while, in modern federal states, the members of one chamber of parliament are selected from sub-regional districts, and those of another chamber act for the constituent regional governments' interest. Although there are various bases which are used to form and to divide two chambers in the parliament, the important thing is that there are two powers institutionally playing key role in the legislative process. Moreover, the formation of DPD, as the representation of people in provinces, is very important to equal DPR, as the representation of political parties, by doing the check and balance functions and the representative function in the legislation process. Therefore, the formation of DPD is very essential for making the legislative institution more representative and more democratic in the legislative process.

The DPD members represent their own provinces. Each province in Indonesia has four persons who are directly elected by the local people to act for their province in DPD. It is clear that DPD represents the provinces' interests ensuring autonomy. However, representing the provinces' interests does not mean that DPD just focuses more on the autonomy issue which is raised by the provinces. DPD has broader field other than the autonomy issue because autonomy is broad and each province has different experience such as, how to manage their natural resources, how to improve their human resources, how to provide better public services in each province which has its own social, economical and political characteristics. The different experience on autonomy affects DPD, as the provinces' representation, to design the regulation which promotes the provinces' interests. Cox and McCubbins(2001:58) argue that a legislator might not be able to know what detailed policies they prefer but she or he knows which interests should be acted for. The DPD members have the fixed interests which they want to represent especially in the regulation-making process. Therefore, through DPD, the regulation-making process in the legislative institution does not hold only the political parties' interests but it also has room for the interests of the provinces.

IV. THE LIMITED FUNCTION OF DPD

The establishment of DPD gives precious contribution as it provides alternative options towards the regulation-making process. According to Lijphart (1984: 25), the minority representation in bicameral system can have an important effect in the parliament, as far as elected membership is concerned pursuant to a different election basis. Moreover, it has the real power to equal power to the lower house. However, the position of DPD in the legalisation of regulation is powerless.

The existence of DPD is constitutionally declared in UUD 1945 especially in articles 22C and 22D, but its functions are blurred in the constitution and not as clear as the DPR functions which are determined in article 20A of UUD 1945 in terms of legislation, budget and control functions. Moreover, the functions of DPD are ruled in the regulation which is an order lower than the constitution in the Indonesian law hierarchy. The order is the Regulation no. 22 of 2003 in which does not recognize the legislation function of the DPD. The article 41 of the Regulation no. 22 of 2003 orders that the DPD functions are limited to proposing, engaging in discussion of bill, giving consideration on certain legislation and controlling the implementation of specific regulation. Therefore, DPD does not have power to pass a bill into a regulation or law because it should get approval from DPR and the president. In the other words, without making consensus with DPR and the president, DPD does not have rights to make legal regulation even the regulation relating to autonomy and other work pursuant to UUD 1945.

DPD more refers to advisory institution rather than legislative institution. This institution looks at replacing DPA as advisory council which was abolished after the last amendment of UUD 1945. The difference between DPD and DPA is that DPA gives advice to the president whilst DPD provides advice to DPR.

Wiese (2003:3) divides three variations of bicameral system; (1) bicameralism with politically strong lawful upper house in federal systems; (2) matching bicameralism with two houses which are similar each other; (3) bicameralism with efficient and powerless upper house in unitary systems. However, she does not explain the source of the houses' strength. If representation issue is used as standard or criteria of legalism in the legislative institution, DPD is generally more representative than DPR because the DPD members are directly elected and really represent their voters whilst the DPR members are elected by voters through political parties. Therefore, the function of DPD is still blurred and limited in the regulation-making system of the legislative council whether it is unicameral system or bicameral system.

V. THE POWER CONCENTRATED ON THE EXECUTIVE

Elusiveness of the parliament system in Indonesia also leads from the dominant role of the executive in the regulation-making process. According to Linz (1990:123), the dominant role of the president is caused by the fact that the presidentialism is based on the rule of 'winner-take all' in which the president is the single winner and does not necessarily need the parliament's support even in passing a regulation.

However, the current Indonesian experience shows that political parties compete to in order for their candidates to win as the president because president position is very important not only as top of executive but also in regulation role. Although the president is directly elected by public not by the parliament, the president is still affected by political parties which supports him or her during the presidential election campaign. It is not a surprise that the political parties ask position in the cabinet so that the cabinet is similar to parliamentary cabinet which includes the political parties' representation supporting the executive. This shows that the executive in both presidential and parliamentary system still needs support of political parties which is in the parliament. The difference lays on the way to gain the executive power; in the presidential system the executive power is owned outside parliament whilst in parliamentary system the executive power is owned from inside of the parliament. Therefore, the dominant executive does not lead from the concept of 'winner-take all' but the constitution provide the dominant role to the executive.

UUD 1945 provides big role to the president in the regulation-making process. In the fourth amendment of UUD 1945, the president has rights to purpose bill (article 5.1) and to discuss and achieve an agreement on the bill with DPR (article 20.2) and to legalise the bill (article 20.4). The president also has rights to issue the government regulation (article 5.2) and to impose the government regulation in lieu of law (article 22.1). In addition, according to Asshiddiqie (2000:12), the president has the 'policies rules' by which he or she can issue the Decree of President. This shows the dominant role of the president in the regulation-making process where it seems to be performing the function of upper house which subordinates DPR by rejecting or passing the regulation approved by DPR. Therefore, the dominant role of the president in regulation-making process makes it unclear to define what system is used in legislative institution of Indonesia, that is, unicameral or bicameral system.

VI. CONCLUSION

The transformation of the legislative institution of Indonesia from unicameral system to bicameral system could be traced from the amendment of UUD 1945. The formation of DPD confirms that the legislative institution uses bicameral system. The members of DPD represent their province's interest and elected by people directly in the general election.

However, formation of DPD makes the regulation-making system in the legislative institution unclear in terms of whether it applies unicameral or bicameral system because of the limited function of DPD which tends to be an advisory council of DPR on matters of autonomy and certain fields of regulation rather than being

a part of legislative council. Moreover, the dominant role of the president in the regulation-making process affects it difficult to define the legislation system.

Therefore, it can be concluded that the legislative system in Indonesia after the fourth amendment of UUD 1945 is still elusive whether it is unicameral system or bicameral system. Institutionally the legislative institution uses bicameral system but functionally it is still unicameral.

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ATTACHMENT

Article 22C of the fourth amendment of UUD 1945

- (1) The members of the DPD shall be elected from each province through a general election.
- (2) The total number of DPD members from each province shall be the same and the total number of members in the DPD shall not be more than 1/3 of the total number of members in the DPR.
- (3) The DPD shall convene at least once a year.
- (4) The organization and authority of the DPD are to be regulated by law.

Article 22D of the fourth amendment of UUD 1945

- (1) The DPD may submit to the DPR bills dealing with regional autonomy, relations between the center and the regions, the establishment and growth as well as the merger of regions, the management of natural and other economic resources, and matters related to the financial balance between the center and the regions.
- (2) The DPD is to participate in debates on bills dealing with regional autonomy; relations between the center and the regions; the establishment, growth and merger of regions; the management of natural and other economic resources, and matters related to the financial balance between the center and the regions; and, moreover, give its recommendations to the DPR on bills dealing with the state budget as well as on bills dealing with taxation, education, and religion.
- (3) The DPD may supervise the implementation of laws regarding: regional autonomy, the establishment and growth as well as the merger of regions, the management of natural and other economic resources, the implementation of the state budget, taxation, education, and religion and may in addition submit the results of this supervision to the DPR as input for follow-up considerations.
- (4) Members of the DPD can be removed from office, according to conditions and procedures to be regulated by law.