

ANALYSIS OF THE BINDING FORCE OF TRANSFERS OF SHARES OF FOREIGN COMPANIES UPON CONTROL OF ASSETS IN ARBITRATION DISPUTE DOMICILED IN INDONESIA

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ABSTRACT

Constitutionally, the Regional Representative Council (DPD) is the main state institution with a legislative function, but its legislative authority is very weak compared to the House of Representatives (DPRD). The formulation of the problem is how DPD in the Indonesian state system and how the authority of DPD legislation is ideal as a representative institution. This writing is normative juridical, with a philosophical, statutory, and conceptual approach. The existence of DPD in the Indonesian State System is a state institution that is the main and has a position parallel to other constitutional institutions, such as the President, Supreme Court, Constitutional Court, People's Consultative Assembly (MPR), DPR, and The Audit Board. At the same time, the ideal legislative authority for the DPD is the authority of legislation that is intact and strong, starting from submitting a Draft Law, discussing and participating in approving or disapproving a material Draft law into the Law. DPD as a State Institution must be given the same legislative authority as the DPR in the bicameral representative institution system. Therefore, changes must be made to the provisions of Article 20 paragraph (2) of the 1945 Constitution so that the constitutional rights of local communities and state institutions representing the region can be appropriately accommodated.

Keywords: Regional Representative Council, Existence, Legislative Authority.

INTRODUCTION

The opening of the Constitution of the Republic of Indonesia in 1945 (UUD 1945) mandates that the State of the Republic of Indonesia is a state of people-based rule led by wisdom in consultative/representative. It is necessary to realize people's consultative institutions, representative institutions, and regional institutions. Therefore, through the third amendment of the 1945 Constitution has been born a new state institution called the Regional Representative Council (DPD), which is the embodiment of regional representation generated through the 2004 Election (Legowo, 2005). The institution was born as a critical reflection on the existence of regional envoys and group envoys that filled the formation of the People's Consultative Assembly (MPR) in the representation system in the era before the reformation.

With the House of Representatives of the Republic of Indonesia (DPR RI), DPD RI is expected to be one of the chambers of the two-chamber parliamentary system (bicameral) in the new format of Indonesian political representatives, which both have legislative functions.

Suppose the House of Representatives is a parliament that represents the population carried by political parties, while the DPD is a parliament that represents the territory or region. In this case, the province without representing a community or community in the region (among others based on ideology or political parties), but figures that can represent all elements in the region (Pirmansyah, 2014).

The legislative authority of the DPD is regulated in Article 22D of the 1945 Constitution, which in essence is able to submit and participate in discussing draft laws related to the region and authority in the field of supervision. But the main problem of the DPD so far is its fragile authority as a regional representation institution, especially in the area of legislation, so it cannot carry out its function as a representative institution to the fullest. This has implications for the functional relationship in the field of unbalanced legislation between the DPR and the DPD, where the DPD is weaker than the DPR (Kaharudin, 2017).

Constitutionally, the existence of DPD is powerful, coupled with the difficulty of being a member of the DPD, so Stephen Sherlock gives an exciting assessment that DPD RI is an unusual example in the practice of people's representative institutions with a bicameral system because it is a combination of institutions with minimal authority and high legitimacy (represents the odd combination of limited powers and high legitimacy). This combination, Sherlock adds, is an unusual example in the practice of any bicameral system in the world (Stephen, 2005). Such conditions encourage the DPD to apply for a material test to the Constitutional Court (MK) related to the norms in Law No. 27 of 2009 concerning MPR, DPR, DPD, and DPRD (MD3 Law) and Law No. 12 of 2011 on the Establishment of Laws and Regulations (UU P3) related to the legislative function of DPD.

In decision No. 92/PUU-X/2012, the Constitutional Court granted some of the requests of the DPD as the applicant to cancel some provisions in both laws that are considered to reduce the authority of the DPD in the legislative process. The ruling recorded a new history for the DPR, the President, and the DPD in the legislative process. However, the MK Ruling does not give complete legislative authority to the DPD. The authority of DPD legislation only reaches the extent of participating in discussing the draft law (RUU) but must not participate in breaking and establishing the bill into Law (UU). So that the MD3 Law still contains provisions of articles that reduce, negate, and even erode constitutional authority as affirmed by the Constitutional Court.

Based on the background of the above problems, the juridical problems that will be answered are how the existence of the DPD in the Indonesian state system, second: how the authority of the ideal DPD legislation as a representative institution.

This paper can be a reference in the Constitutional Law regarding the practice of people's representative institutions with a bicameral system because it is a combination of institutions with minimal authority and high legitimacy, which is not uncommon in the practice of bicameral techniques in order to implement checks and balances in the democratic paradigm.

METHOD OF RESEARCH

This paper is a normative legal study, which examines legal materials, primary, secondary, and tertiary, with philosophical, statutory, and conceptual approaches.

DISCUSSION

Discussion Incorporated in Bermuda: The existence of DPD in the Indonesian state system

The position of the DPD is contained in the third amendment of the 1945 Constitution, which is contained in articles 22C, 22D, and 22E of the 1945 Constitution. Then it is further regulated on the fourth amendment of the 1945 Constitution, which is part of the MPR. It is contained in Article 2 paragraph (1) of the 1945 Constitution. It said that the People's Consultative Assembly consists of the House of Representatives and members of the Regional Representative Council. The latter are elected through elections and further regulated by Law (The Constitution of 1945 article 22 paragraph 1 changes to four).

The Regional Representative Council was born as part of the 1998 reform demands with the aim of eliminating the centralistic state administration that lasted from the Old Order era to the New Order has significantly led to the accumulation of regional disillusionment with the central government, which is also a strong indication of the failure of the central government in managing the region as the basis for the establishment of the Indonesian nation.

Institutional DPD comes after the third amendment of the 1945 Constitution in 2001. However, if traced its history, the spirit of regional representation at the national level has existed since the youth oath was proclaimed on October 28, 1928. Young people from various regions gathered in Jakarta to inflame the spirit to unite the areas in Indonesia. This is reflected in the decisions made in meetings of youths from the different regions of Indonesia who then gave birth to the youth oath (Widodo, 2015).

In addition, the spirit of establishing regional representative institutions can also be traced in replacing the applicable constitution in Indonesia. Starting from the 1945 Constitution passed on August 18, 1945, the Constitution of United Indonesia (RIS), until return to the 1945 Constitution, everything regulates need for Regional Representatives, although with different names and designations, such as the Regional Envoy when the 1945 Constitution before the amendment and the Senate when using the RIS Constitution (Caramani, 2008). This shows that since the beginning of independence, The Founding Fathers have paid special attention to regional representatives at the national level (Hatta, 1980).

Based on the description above, it is clear that the spirit and existence of regional representative institutions is not really a new thing. The spirit of regional representation is a form of awareness to accommodate regional interests at the national level. Regional representatives on the national scene are also bridges that can connect aspirations, interests, and issues that arise in the region with the central government at the national level.

Since the beginning of the idea of representative democracy, the idea of creating a representative democratic platform that is tasked with producing important decisions in state affairs for the welfare of the citizens represented. In general, there are generally known to be 2 (two) kinds of representative institutions or parliaments (Ball & Peters, 2000), namely a two-chamber parliament (bicameral parliament) and a one-chamber parliament (unicameral parliament) (Pamungkas et al., 2000). Indonesia is among the countries that use representative institutions that are evolutionary from unicameral to bicameral. However, it has not adhered to a pure bicameral system (strong bicameralism) (Haryadi, 2002). The position of the

representative institution as a whole should be placed in its position as a fairly strong and independent institution, having a strategic position for the course of a better state system with the principles of checks and balances (Isra & Mochtar, 2007). Thus, in terms of the primacy of its position and function, the DPD is one of the state institutions that are basic (main) and have an equal position with other constitutional institutions, such as the President, Supreme Court, Constitutional Court, MPR, DPR, and The Audit Board (Asshiddiqie, 2006).

The Authority of the Ideal DPD Legislation as a Representative Institution: Authority of DPD Legislation according to the Laws and Regulations

As outlined above, the DPD is specifically regulated in Article 22D the 1945 Constitution of the 1945 Constitution, which includes the legislative function, budget function, and supervisory function. In the legislative function, the DPD is authorized to submit and participate in discussing bills related to regional autonomy, central and regional relations, the formation and expansion and incorporation of regions, the management of natural resources and other economic resources, as well as those related to the financial balance between the center and the region. In addition, the DPD is also authorized to consider the House of Representatives on the State Revenue and Expenditure Budget (APBN) bill and bills related to taxes, education, and religion. The involvement of the DPD to give consideration is intended. The DPD can express its views and opinions on the bill because the views and opinions must be related to the interests of the regions (Purnomowati, 2005).

The authority of the field of supervision given to the DPD is related to the implementation of the Law concerning the type of Law that is participated in being discussed and given consideration by the DPD. It is intended as a continuity of the DPD's authority to oversee the implementation of various laws related to regional interests. In addition to that authority (Corruption Eradication Commission, 2005). DPD is also given the authority to give consideration to the appointment of members of the Audit Board. The background of this authority is because the Audit Board oversees the use of the budget as the implementation of the State Budget Law, which the DPD participates in giving consideration.

As a follow-up to the provisions of Article 22 D of the 1945 Constitution, Law No. 17 of 2014 on the Composition of MPR, DPR, DPD and DPRD positions as amended by Law No. 42 of 2014 concerning Amendments to Law No. 17 of 2014 concerning the Composition of MPR, DPR, DPD and DPRD (MD3 Law).

The MD3 Law mentioned that DPD is a regional representative institution domiciled as a state institution. In comparison, the authority of the DPD is: (1) submit a draft law to the DPR; (2) Participate in discussing the draft law together with the DPR; (3) Drafting and presenting an inventory list of draft law issues originating from the DPR or the President; (4) Drafting a national legislation program, which is all related to regional autonomy, central and regional relations, the formation and expansion and incorporation of regions, the management of natural resources and other economic resources, and related to the central and regional financial balance; (5) Considering the DPR on bills on state budgets and bills related to taxes, education, and religion; (6) Can perform surveillance; (7) Conveying the results of supervision to the DPR as a consideration to be followed up, on the implementation of laws on regional autonomy, the

establishment, expansion, and incorporation of regions, central and regional relations, management of natural resources, and other economic resources, implementation of the state budget, taxes, education, and religion.

While the authority of the DPD, according to Law No. 12 of 2011 concerning the Establishment of Laws and Regulations (UU P3), is among others related to the Preparation of Prolegnas, Submission of Draft Law, and authority in Discussing Draft Law. The details are as follows:

1. The authority of DPD RI in the Preparation of Prolegnas, which in essence is that the preparation of the National Legislation Program is implemented by the DPR, DPD, and the government;
2. The authority of the DPD RI in submitting a draft law, which in essence is that the Draft Law can come from the DPR, DPD, or the President, in the same position;
3. The authority of DPD RI in discussing the Draft Law is essential that the discussion of the Draft Law is carried out tripartite between the DPR, DPD, and the government.

The Ideal Legislative Authority

The 1945 Constitution stipulates that three state institutions have authority in the formation of laws, namely the President, the House of Representatives, and the Regional Representative Council. Therefore, it is clear that the representative system embraced is not a bicameral system but a typical Indonesian system that is multilateral. However, suppose you only see it from two representative institutions, namely the DPR and DPD. In that case, it can be understood that the 1945 Constitution, after the amendment adheres to a usual bicameral system consisting of the chamber of the House of Representatives (DPR) and the section of the Regional Representative Council (Mahfud, 2009).

DPR represents the people of Indonesia in general with the orientation of national interests, and DPD represents the people in the regional context with regional interest orientation (Rozaki, 2006). However, this two-chamber system does not have the same authority. Seeing the function and authority of the DPD is very limited, then this representative system does not adhere to a pure bicameral system (strong bicameral) (Sartori, 1997). The position of the representative institution as a whole is placed in its position as a fairly strong and independent institution, having a strategic position for the course of a better state system with the principle of checks and balances (Muhellis, 2021).

In contrast to the President and DPR, the DPD pretty much-encountered obstacles in exercising their constitutional authority. There is the dominance of the legislative process, starting from the planning stage, the discussion stage, to the decision-making stage of the Draft Law (RUU) into Law (UU) (Fatwa, 2009). It makes the DPD, as an institution formed and mandated by the constitution, unable to maximize its legislative functions.

The two chambers of representative institutions are not equipped with equally strong authority. The authority of the DPR in the 1945 Constitution is stronger than that of the DPD. Actually, in carrying out their functions and authorities, the two institutions can run independently but can also convene together to discuss issues that are considered essential (Zada, 2015).

The establishment of this two-room system is intended to ensure a double check in the

process of lawmaking, budgeting, and supervision. However, it has not yet been realized. In the 1945 Constitution, the principle of double-checking was recognized primarily related to regional interests and the implementation of regional autonomy through the authority of the DPD to propose bills, participate in discussions, and supervise the performance of specific laws related to the region the implementation of local government.

In accordance with the provisions of Article 22D of the 1945 Constitution, DPD has a legislative, budget, and supervisory functions related to regional autonomy, central and regional relations, the formation and expansion and incorporation of regions, the management of natural resources, and other economic resources, and related to the balance of central and regional finance.

DPD carries out the function of legislation in the form of drafting prolegs, submitting bills to the House of Representatives, participating in discussing the bill, compiling and presenting an inventory list of bill issues originating from the DPR or the President, and giving consideration to the House of Representatives on bills related to the state budget, taxes, education, and religion. Before the decision of Constitutional Court No. 92 / PUU-X / 2012, the discussion of the Draft Law was officially entirely carried out in the forum of the House of Representatives, the President and DPD can participate in the debate, but the decision is only the DPR. The DPD does not have the authority to approve or disapprove of a material law (Asshidique, 2006).

This kind of authority is very weak and certainly cannot be expected to fight for the people's aspirations because it cannot participate in final decision-making. Although authorized to submit and discuss the draft law, it is also very limited to bills related to regional autonomy, central and regional relations, the formation and expansion and incorporation of regions, the management of natural resources and other economic resources, as well as those related to central and regional financial balance. And when it decides whether the bill becomes Law or not, then the DPD must withdraw from the trial. This is very unfavorable for a state institution that has a mission to fight for regional interests.

Therefore, for the DPD to carry out its function optimally as a state institution that is adjudicating to represent and fight for regional interests, it must be given stronger and broader legislative authority and the next chamber of DPR. The authority of the legislation in question is the authority to submit a bill, the authority to discuss the bill, and the authority to approve or disapprove of a material bill into Law.

Based on the legal consideration of the constitutional court decision No. 79/PUU-XII/2014, that the DPD cannot be given the authority to participate in the decision to approve or disapprove a material draft law into Law. It is hindered by the provisions of Article 20 paragraph (2) of the 1945 Constitution that every draft law is discussed by the House of Representatives and the President for mutual approval.

That in order for the DPD as a state institution that has the same position as other state institutions that have legislative authority, and to create a principle of checks and balances that are balanced between state institutions that both have legislative authority, then the only solution is to make changes to the provisions of Article 20 paragraph (2) of the 1945 Constitution, which states that "Every draft law is discussed by the House of Representatives and the President to obtain the Agree together". It is also intended that the constitutional rights of local communities

and state institutions representing the region can be appropriately accommodated.

CONCLUSION

Two state institutions are representatives of the people who both have legislative functions, namely the DPR and DPD, but both do not have the same power. The existence of DPD in the Indonesian State System is a state institution that is basic (main) and has an equal position with other constitutional institutions, such as the President, Supreme Court, Constitutional Court, MPR, DPR, and The Audit Board. While the ideal legislative authority for the Regional Representative Council as a representative institution is the authority of legislation that is intact and strong, ranging from submitting a bill, discussing the bill, and participating in approving a material draft law into Law and other authority related to legislation.

Based on the findings of the study results, it can be suggested that the existence of DPD as a State Institution should be utilized as optimally as possible to fight for regional aspirations and interests by providing the same legislative power and authority between the DPR and DPD in the bicameral representative institution system. And to give the authority of the ideal legislation as a representative institution, changes must be made to the provisions of Article 20 paragraph (2) of the 1945 Constitution so that the constitutional rights of local communities and state institutions representing the region can be accommodated properly.

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