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## The Regional Representative Council (DPD RI) and Checks and Balances in Indonesia's Legislative Proc

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# The Regional Representative Council (DPD RI) and Checks and Balances in Indonesia's Legislative Process

## Abstract

This study aims to analyze the function of the House of Regional Representatives of the Republic of Indonesia (DPD RI) in the legislative process and the checks and balances mechanism within Indonesia's constitutional system. The background of this research stems from the limited authority of DPD RI in the legislative process, especially when compared to the House of Representatives (DPR RI), despite its vital role as a regional representation body advocating for regional interests in law-making. The urgency of this writing lies in addressing the imbalance of power between the executive and the legislature, as well as between the central government and the regions. Using a normative legal research method, this article examines the role of DPD RI in the discussion of bills, its interactions with DPR RI, and its contributions to maintaining the checks and balances system. The findings indicate that the DPD RI faces significant challenges in influencing the legislative process, although opportunities exist for strengthening its role. The study concludes that legislative reforms and capacity building for DPD RI are crucial to enhance the effectiveness of the checks and balances mechanism, thereby strengthening Indonesia's democratic system. The novelty of this research lies in its emphasis on practical strategies for empowering DPD RI within the national legislative framework.

**Keywords:** checks and balances; democracy; DPD RI; Indonesian constitution; legislative process

## 1. INTRODUCTION

Following the third amendment to the Constitution of the Republic of Indonesia of 1945 (UUD NRI 1945), significant transformations occurred within the Indonesian parliamentary system. This change is articulated in Chapter VIIA, Articles 22C and 22D, which established the Regional Representative Council as a high state institution tasked with representing regional interests in the national political decision-making process, alongside the People's Consultative Assembly (DPR). The establishment of the DPD reflects a repudiation of the authoritarian-oligarchic-centralistic system of the New Order regime, which endured for approximately 32 years. Thus, the presence of the DPD is inseparable from the prolonged debate surrounding the constitutional amendments aimed at fostering a democratic and decentralized governance structure, which was a primary demand of the 1998 reform movement.<sup>1</sup>

Democracy requires public involvement in national decision-making through elected representatives in general elections. Simultaneously, decentralization provides regions with the autonomy to develop, thereby supporting the integrity of the Unitary State of the Republic of Indonesia (NKRI) in fulfilling the nation's aspirations outlined in the Preamble of the UUD 1945. Democracy and decentralization may be regarded as "two sides of the same coin" within modern governance frameworks, both essential for implementing the principle of popular sovereignty.<sup>2</sup> The spirit of democratic decentralization is reflected in the mindset of the framers of Indonesia's constitutional amendments, particularly in the positioning of the chapter on regional governance (Chapter VI) adjacent to the chapters on the DPR (Chapter VII) and the DPD (Chapter VIIA). These amendments were implemented incrementally: the second amendment focused on regional governance and the DPR, while the third amendment concentrated on the DPD. The fourth amendment addressed the People's Consultative

<sup>1</sup> Faisal Akbar, *The Role of the Regional Representative Council in Indonesia's Constitutional System Post-Amendment of the 1945 Constitution* (Jakarta: Rajawali Press, 2023).

<sup>2</sup> Tania Patricia, *Democracy and Decentralization: Implementing Popular Sovereignty in Modern Governance* (London: Palgrave Macmillan, 2023). pp 85-110.

Assembly (MPR), stating that it comprises members of the DPR and DPD elected through general elections.

The amendments to the Constitution of the Republic of Indonesia highlight the importance of regional representation in the National Political Decision-Making process, underscoring that regional interests must influence national policies. This embodies the drafters' vision of democratic decentralization as a constitutional necessity. Understanding the dynamics of checks and balances among the President, the DPR (People's Consultative Assembly), and the DPD (Regional Representative Council) is essential for comprehending Indonesia's current constitutional framework.

Given the evolving role of the DPD, it is crucial to analyze the interactions between executive and legislative powers and their implications for legislative efficacy. Wijaya's (2020) study reveals that while the DPD can propose laws concerning regional autonomy and central-regional relations, its authority remains limited. This research overlooks how the DPD's advisory role affects legislative quality, despite outlining its formal constitutional functions.

Research by Putri (2022) emphasizes the DPR's dominance over the DPD, particularly during budget discussions and the passage of laws impacting regional interests. While it identifies power imbalances and suggests measures to strengthen the DPD, it fails to address the legal and political constraints hindering such enhancements, rendering its proposals somewhat idealistic.

Anwar's (2023) study evaluates the amendments' impact on the center-periphery relationship and the effectiveness of post-reform decentralization. While it discusses constitutional changes that empower regional roles in national policy, it provides a theoretical perspective that lacks a tangible view of the practical application of checks and balances.

Collectively, these studies indicate that, despite significant structural changes from constitutional amendments, challenges persist in the effective implementation of checks and balances in Indonesia. The DPD's ability to represent regional interests is underutilized due to its limited authority and the legislative dominance of the DPR. Strengthening the DPD requires addressing existing legal and political constraints alongside comprehensive regulatory adjustments.

An effective system of checks and balances should enhance the DPD's role in political decision-making concerning regional interests. This can be accomplished through regulatory revisions that expand the DPD's authority in the legislative process and oversight. It is essential to clarify the relationship between the DPD and the DPR to prevent power imbalances, delineate the boundaries of each institution, and foster collaboration on national and regional issues.

The reform of Indonesia's parliamentary system following the third amendment provides a foundation for a more democratic and decentralized governance structure. However, ongoing efforts to enhance regulations, strengthen state institutions, and ensure regional participation in national political decision-making are vital for achieving an effective system of checks and balances. Such adjustments would better reflect public aspirations and regional interests in national policies, aligning with the principles of popular sovereignty and democratic decentralization mandated by the UUD 1945.

The article titled "Regional Representative Council (DPD RI) and Checks and Balances in the Indonesian Legislative Process" critically assesses the DPD's role within the legislative framework and its effectiveness in contributing to a balanced governance structure. It investigates how the DPD integrates into Indonesia's checks and balances system, crucial for democratic governance, examining whether it effectively counters the DPR and the executive branch to ensure its legislative functions protect regional diversity and promote accountable law-making.

The analysis begins with the constitutional and legal framework defining the DPD's role, tracing its evolution since the UUD 1945 and its amendments. This historical review is critical for understanding the DPD's legislative authority and current limitations. The article critiques structural and procedural impediments that restrict the DPD's legislative impact, highlighting how the DPR often dominates law-making. These dynamics raise concerns about safeguarding regional interests and whether the DPD fulfills its intended purpose of enhancing democratic accountability.

To provide broader context, the article compares Indonesia's bicameral system with other democracies, assessing how the constrained role of the DPD influences its effectiveness. This insight illuminates international standards for upper legislative chambers, forming the basis for evaluating the DPD's efficacy and potential reform.

The article proposes reforms to enhance the DPD's legislative role. By analyzing the legal, institutional, and political factors shaping its influence, it recommends constitutional amendments to expand the DPD's powers and procedural reforms to bolster its impact on law-making and oversight. These recommendations aim to establish a more effective system of checks and balances.

Overall, this article contributes to the academic and policy discourse surrounding legislative politics and constitutional law in Indonesia, addressing both theoretical and practical dimensions. It explores the DPD's legislative framework and seeks to inform improvements in the bicameral system's functionality, thereby realizing the principles of democratic governance. By evaluating the interplay between legal mandates and actual practices, this article serves as a vital reference for understanding the DPD's potential to support or undermine legislative equilibrium in Indonesia.

## 2. METHOD

The article "The Regional Representative Council (DPD RI) and Checks and Balances in Indonesia's Legislative Process" utilizes a normative juridical methodology to explore the DPD's role in Indonesia's legislative framework. This approach focuses on the analysis of formal legal norms and principles as they are written in legal texts, including the Constitution of the Republic of Indonesia (UUD 1945) and subsequent amendments. By examining these legal documents, the article aims to understand the formal structure and constraints that shape the DPD's influence in the legislative process.

The normative juridical methodology emphasizes analyzing "positive law," or laws that are formally enacted and currently in effect. In the article, this involves a detailed review of constitutional provisions regarding the DPD, especially in Chapter VIIA, which outlines the

institution's authority, procedural rules, and limitations. The analysis centers on interpreting these legal texts to assess the DPD's actual legislative powers, highlighting how the institution's intended role to represent regional interests is structured by law and impacted by legal limitations.<sup>3</sup>

The approach further involves interpreting legal principles embedded within the Constitution, such as decentralization, regional representation, and the system of checks and balances. Through this method, the article explores how these principles manifest in the DPD's legislative functions and the broader bicameral legislative structure. The normative juridical method thus provides a means of evaluating whether the existing legal framework effectively supports the intended checks and balances between the DPD, the House of Representatives (DPR), and the executive.

Moreover, this methodology allows for a critical assessment of the legal framework, questioning the adequacy of the DPD's limited advisory role in the legislative process. The article argues that the structural constraints imposed on the DPD affect its effectiveness in balancing the legislative powers of the DPR, thus potentially undermining the principle of checks and balances in practice.

In conclusion, the normative juridical approach in the article serves not only to describe the formal legal structure but also to critique the limitations within it, offering insights into potential legal reforms. By systematically examining the constitutional and statutory provisions, the article aims to provide a comprehensive understanding of the DPD's role while suggesting legal changes to enhance its influence and better fulfill the checks and balances intended by the legislative system.

### 3. RESULT AND DISCUSSION

#### 3.1. The Role of the DPD in Legislative Checks and Balances

The existence of the Regional Representative Council (DPD) within the Indonesian constitutional system is inseparable from the institutionalization of representation functions. In the context of institutionalizing representation functions, three systems of representation are recognized and practiced in various democratic countries: a) Political representation; b) Territorial representation; and c) Functional representation.<sup>4</sup>

When an individual is elected to a representative body through an election, their representation is referred to as political representation. Regardless of their role in society, if they become a member of a representative body through an election, they are still considered a political representative.<sup>5</sup> Generally, this type of representation has its weaknesses, as the elected representatives are often those who are popular due to their political reputation, but This does not necessarily mean that they possess expertise in technical fields such as governance, legislation, economics, and others. Moreover, experts often find it difficult to be elected through this political representation, especially when the general elections use a district-based electoral system. In developed countries, this weakness is less pronounced, as the level of

<sup>3</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2021). Pp. 33-89.

<sup>4</sup> Hanna Fenichel Pettkin, *The Concept of Representation* (California: University of California Press, 1980).

<sup>5</sup> Jane Mansbridge, *Political Representation: Theoretical and Practical Perspectives* (Cambridge: Cambridge University Press, t.t.).

knowledge and education is advanced and evenly distributed. This is why political representation is a preferred choice in developed countries, and general elections remain the best method for constituting parliamentary membership and forming a government. In contrast, in developing countries, representation is achieved not only through political means but also through the appointment of certain individuals in representative bodies.<sup>6</sup>

The appointment of individuals in representative bodies is usually based on their function, position, or expertise within society, and they are referred to as the functional group, with their representatives called functional representation. Even if a member belongs to a political party, if they are an expert or a prominent figure appointed to a representative body, they are still classified as part of the functional group, and their representation is termed functional representation. This does not include a parliament in a country that is entirely formed through appointments resulting from a power struggle, where the rulers establish a new parliament through designation.<sup>7</sup> However, if functional representation produces representatives from regions, such as members of the Regional Representative Council (DPD) in Indonesia, who are elected from each province through general elections, this is referred to as territorial representation.

The Unitary State of the Republic of Indonesia once embraced three representation systems simultaneously: the political representation system, the functional representation system, and the territorial representation system. This was in effect during the time when the 1945 Constitution was in force before it was amended, as stated in Article 2, paragraph (1) of the 1945 Constitution, which stipulates that the People's Consultative Assembly consists of members of the People's Representative Council, in addition to delegates from regions and groups, according to the regulations established by law.

After the amendment of the 1945 Constitution of the Republic of Indonesia, the Regional Representative Council (DPD) was granted limited authority in the fields of budget legislation and oversight. In the legislative domain, the DPD is only authorized to propose and participate in the discussion of draft laws related to regional autonomy, the relationship between central and regional governments, the establishment and expansion or merger of regions, the management of natural resources and other economic resources, as well as matters concerning the financial balance between the central and regional governments [Article 22D, paragraphs (1) and (2)]

Although the powers of the Regional Representative Council (DPD) to propose and discuss draft laws (RUU) are explicitly limited, this authority is not confined solely to the five types of draft laws mentioned but extends more broadly to any draft law related to those five substantive categories. Furthermore, the DPD is also authorized to provide recommendations to the People's Representative Council (DPR) regarding the draft laws on the State Budget (APBN) and those related to taxation, education, and religion (Article 22D, paragraph 2).

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<sup>6</sup> Larry Diamond, *Democracy and Its Alternatives: Political Representation in Developed and Developing Countries* (Cambridge: Cambridge University Press, 2023). Pp. 90-115.

<sup>7</sup> Tom Ginsburg dan Aziz Huq, *Authoritarian Legislatures: Power, Designation, and Representation* (Cambridge: Cambridge University Press, 2023).



1 The involvement of the DPD in providing recommendations during the discussions of these  
1 draft laws is intended to give the DPD an opportunity to express its views and opinions on  
these draft laws, as they are closely related to regional interests. The oversight authority granted  
to the DPD is limited to monitoring laws related to the types of laws that the DPD has  
5 participated in discussing or providing recommendations for. This is meant to ensure continuity  
5 in the DPD's authority to oversee the implementation of various draft laws pertinent to regional  
interests. Additionally, the DPD is given the authority to provide recommendations regarding  
the appointment of members of the Audit Board (BPK). The rationale behind this authority  
7 stems from the BPK's role in supervising the use of funds from the State Budget law (APBN),  
which the DPD has been involved in discussing.

6 The authority granted as stipulated in Article 22D, paragraphs (1) and (2) indicates that the core  
48 competence of the DPD is closely related to regional matters. This means that the drafters of  
the amendment to the 1945 Constitution of the Republic of Indonesia genuinely intended for  
regional interests to serve as a reference in every political policy-making process. The drafters  
sought for the DPD not merely to serve as a "symbol" of regional interests but to play a  
substantial role in implementing a democratic-decentralization concept by exercising the  
69 constitutional powers outlined for them.<sup>8</sup> This conceptual framework by the drafters of the  
amendment to the 1945 Constitution also reflects a paradigm of checks and balances between  
central and regional interests within the national political policies carried out by the DPD.

3 However, in empirical terms, Article 22D, paragraphs (1) and (2) does not automatically  
16 become the basis for consideration by lawmakers concerning legislative mechanisms. The  
provisions of these articles have been interpreted differently by the lawmakers, diverging from  
the original spirit of the drafters of the amendment to the 1945 Constitution when the DPD was  
established. This interpretation arose because, following the amendment of the 1945  
Constitution, explanatory notes were no longer included.

3 There are two laws related to the legislative authority of the DPD that do not reflect the spirit  
45 of the drafters of the amendment to the 1945 Constitution in establishing the DPD as a  
4 representation of regions in the formation of laws. These laws are Law No. 27 of 2009  
concerning the MPR, DPR, DPD, and DPRD (MD3 Law) and Law No. 12 of 2011 concerning  
34 the Formation of Legislation (P3 Law), which has been amended twice by Law No. 13 of 2022  
on the Second Amendment to Law No. 12 of 2011 concerning the Formation of Legislation.  
2 Both of these laws regulate legislation—specifically—the formation of laws conducted by the  
DPR together with the President.

9 Within the framework of law formation as outlined in these two laws, three important aspects  
are governed: first, the planning conducted through the preparation of the National Legislation  
Program (Prolegnas); second, the process of formulating laws (through the proposal of either

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<sup>8</sup> Laica Marzuki, *The Strategic Role of the Regional Representative Council (DPD) in the Democratic and Decentralized System in Indonesia* (Jakarta: Gramedia Pustaka Utama, 2023). Pp. 120-145.

a draft bill or legislation originating from the Government, DPR, or DPD); and third, the process of discussing draft bills (through a two-tiered discussion mechanism).<sup>9</sup>

### 3.2. Formulation of the National Legislation Program (Prolegnas).

According to Article 1, number 9 of the P3 Law, the National Legislation Program (Prolegnas) is an instrument for planning the formation of laws that is prepared in a planned, integrated, and systematic manner. Based on this definition, the formulation of the Prolegnas should involve state institutions that are granted legislative authority by the constitution, namely the DPR, the President, and the DPD. However, in the subsequent provisions regarding the Prolegnas—as regulated in the P3 Law—the role of the DPD is entirely denied. This is clearly evident in Article 18, letter g, which states that in the preparation of the Prolegnas, as referred to in Article 16, the formulation of the draft law list is based on the government's work plan and the strategic plan of the DPR. The role of the DPD is further diminished by the provisions of Article 20, paragraph (1), which states: "The formulation of the Prolegnas is carried out by the DPR and the government."

The two provisions that do not mention the role of the DPD at all essentially represent a denial of the principle of democratic decentralization, which was conceived by the drafters of the amendments to the 1945 Constitution of the Republic of Indonesia. This principle conceptually seeks to prioritize the balance of interests between the central government and the regions in planning and determining national political policy programs, which are articulated in the Prolegnas. Such a condition clearly hinders the DPD's efforts to represent regional interests, especially since every national political policy program that will later be translated into written legal products (laws) will also be implemented across all regions in Indonesia. A crucial question arises when the DPD is not involved in the formulation of the Prolegnas: what references regarding regional interests are used as a basis for drafting the Prolegnas?

If these provisions are related to Article 22D, paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which essentially states that the DPD can propose bills related to regions, including the management of natural resources and other economic resources, as well as financial balance to the DPR, then the constitutional authority of the DPD in this regard is difficult to realize. It is improbable that the DPD can propose specific bills if it is not involved in the formulation of planning instruments for the creation of laws in areas that fall under the core competencies of the DPD as stipulated by the constitution.

In the context of national public policy, the Prolegnas is essentially an instrument for planning the formulation of public policies that are constructed within written legal norms in the form of laws.<sup>10</sup> The construction of public policy through laws is a necessity, so that such public policies can be enacted, have general applicability, and contain elements of compulsion.

<sup>9</sup> Tifani Rizki Dianisa dan Gayatri Dyah Suprobawati, "The Application of Legislative Theory in the Formation of Legislation," *Journal of Democracy and National Resilience* 1, no. 2 (2022): 301–3, <https://doi.org/https://doi.org/10.13057/souvereignty.v1i2.191>.

<sup>10</sup> Mira Fajriyah, "Juridical Reflection on the Establishment of the National Legislation Program in the Indonesian House of Representatives," *Journal of Constitution* 13, no. 1 (2016): 53, <https://download.garuda.kemdikbud.go.id/article.php?article=2496757&val=23836&title=Refraksi%20Yuridis%20Penetapan%20Program%20Legislasi%20Nasional%20di%20DPR%20RI>.

According to John Kingdon, in the formulation or alteration of public policy, including laws, there are at least three types of streams that need to be effectively managed and synergized, namely: a) Stream of Problems; b) Stream of Policies; and c) Stream of Politics.<sup>11</sup>

Among the three types of streams that need to be managed and synergized, particular attention should be given to the stream of problems and the stream of politics. Meanwhile, the stream of policies, although important, only concerns the technical aspects of public policy formulation that will be codified into laws, which have been procedurally outlined in Law No. 27 of 2009 (MD3 Law) and Law No. 12 of 2011 (P3 Law).

First, regarding the stream of problems, the main issue is related to how to construct the agenda-setting of public policy. In the agenda-setting stage, several questions are often raised: Which laws need to be enacted or amended? Why is there a need to enact or amend these laws? What is the urgency and relevance of the establishment or amendment of these laws? This stream typically begins its activities by identifying problems. The objective is to clarify the issues, and based on this formulation, to offer solutions. Therefore, every law that is to be enacted should commence with policy research, enabling a clear understanding of the problems encountered, the reasons behind these problems, and whether solutions to these issues should be incorporated into the law or addressed through other regulatory frameworks.

Article 18 of Law No. 12 of 2011 states that in the preparation of the National Legislative Program (Prolegnas) as referred to in Article 16, the compilation of the list of Draft Laws is based on: a) the mandate of the 1945 Constitution of the Republic of Indonesia; b) the directives of the People's Consultative Assembly (MPR); c) the mandates of other laws; d) the national development planning system; e) the national long-term development plan; f) the medium-term development plan; g) the government work plan and the strategic plan of the House of Representatives (DPR); and h) the aspirations and legal needs of the society.

Reflecting on the above provisions, the agenda-setting of laws as a form of the normativization of public policy is predominantly based on a "top-down" approach. This means that the agenda-setting process for laws must exist due to the directives of the Constitution or agreements among elites within the DPR and the Government. Such a construction often leads to deviations when the law-making process is treated as a "project" by ministries or the DPR's supporting bodies. On the other hand, while the agenda-setting process originating from "below" is possible, it is not clearly regulated.

Building on the above, to strengthen the agenda-setting in the legislative process, it is essential to base it on robust policy research. The results of this research subsequently serve as the academic foundation that determines the basis, urgency, and relevance of a law. However, it must be acknowledged that no matter how meticulous the problem identification is or how sharp the formulation of issues in the academic text, it will not automatically lead to change if the public does not perceive it as a serious problem.

The awareness and consensus on issues are what is referred to as the stream of problems. When the relevant parties recognize the existence of a problem and the analysis from the policy stream successfully offers an accurate formulation, only then is there a prospect for the problem to

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<sup>11</sup> John Kingdon, *Agendas, Alternatives, and Public Policies* (New Yorks: Harper Collins, 1995).



become a public agenda. Secondly, within the stream of politics, the agenda-setting of public policy to be reflected in the planning of legislative programs is the most challenging to manage because, in reality, the legislative process is intertwined with the political interests of various political forces. Thus, it must be understood that the legislative process is a political process characterized by the negotiation of interests, culminating in a political compromise.

36 Within the stream of politics, there are several national political components that play a significant role. The House of Representatives (DPR), as a political representative institution, utilizes the strength of its factions as an extension of political parties—even though they are not DPR's supporting bodies—holding a decisive position in the planning of legislative programs. Meanwhile, within the government—specifically the ministries—there is also a political interest nuance because the highest decision-makers in each ministry are none other than ministers, most of whom come from political party elites. Thus, the setting of legislative planning through the Prolegnas becomes equivalent to the political interests brought by each of these national political components. The question then arises: what is the “fate” of regional interests in the setting of national political policy?

10 Starting from these two streams, it is clear that the national public policy setting through the Prolegnas has negated the bottom-up approach and its representation as a subsystem in national political policy. The bottom-up approach and its representation should be utilized as a reference for national political policy setting. Therefore, the existence of representative institutions that embody regional interests (the bottom-up approach) becomes essential. Consequently, the presence of the Regional Representative Council (DPD) essentially opens up new avenues for the emergence and development of new ideas, indicating that there are aspirations from the bottom-up approach. There exists a mechanism of checks and balances between the “top stream” and the “bottom stream” in the setting of public policy through the National Legislative Program (Prolegnas). Ultimately, this has led to a new pattern of central-regional relations within the constitutional structure that processes both of these bottom streams. As a result, the formulation of national public policy through Prolegnas utilizes the principle of diversity and applies different treatments to various regions. If this can be realized, the tensions in central-regional relations can be minimized, and the constitutional paradigm that emphasizes the principle of decentralized democracy can be effectively implemented in the drafting of Prolegnas.

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1 Technically, the formation of legislation is governed by the Law on the National Legislation Program (UU P3). Within this law, there is an essential stage in the formation of legislation known as the National Legislative Program. This stage is regulated in Articles 16 to 23. However, once again, this law fails to account for the existence of the Regional Representative Council (DPD) in the legislative planning process. Article 21, paragraph (3) of UU P3 asserts that the formulation of the Prolegnas within the House of Representatives (DPR) as referred to in paragraph (2) is carried out by considering proposals from factions, commissions, members of the DPR, DPD, and/or the public. From a normative perspective (behavioral criteria), the term “considering” is a verb that is non-binding. The word “considering” is derived from the noun “consideration,” which means “an opinion of good or bad.”

The determination of whether an opinion is good or bad depends on the party receiving the consideration. It is clear from the provisions of this article that the determining party is none other than the legislative bodies within the DPR. Therefore, the assessment of what is considered good or bad heavily relies on the perceptions of these legislative bodies. This reveals the lack of binding force regarding the term "considering." In other words, the absence of binding force is highly dependent on the legislative bodies within the DPR, as stipulated in paragraph (2).

Moreover, the provisions of this article also position the DPD (as the regional representation institution) on par with factions, commissions, and even members of the DPR. By placing the DPD in this position, constitutionally, the DPD is regarded as an auxiliary body of the DPR in the process of formulating the Prolegnas.<sup>12</sup> This implies that in interpreting the provisions of Article 22D of the 1945 Constitution, the Government and the DPR have effectively contradicted the purpose of establishing the DPD under the 1945 Constitution as a high state institution that plays a role in implementing checks and balances within the framework of decentralized democracy, which embodies the "spirit" of the amendments to the 1945 Constitution of the Republic of Indonesia.

The provisions discussed are in stark contradiction to Article 224, paragraph (1), letter i of Law No. 27 of 2009 on the Council of the People's Consultative Assembly (MD3), and do not demonstrate any synchronization or harmonization in the process of drafting the National Legislative Program. This is evident as the provision explicitly states that the Regional Representative Council (DPD) has the duty and authority to participate in the formulation of the national legislative program related to regional autonomy, central-regional relations, the establishment and expansion of regions, the management of natural resources and other resources, as well as issues pertaining to the financial balance between the central and regional governments.<sup>13</sup>

The term "participate" in the normative formulation of Article 224, paragraph (1), letter i, when interpreted semantically, carries the meaning of "together." This implies that in coordinating the preparation of the Prolegnas, every stakeholder mentioned in Article 21, paragraph (3) of Law No. 12 of 2011 on the National Legislation Program (P3) must be directly involved, rather than merely being consulted. The consequence of this semantic interpretation is that the DPD, as one of the stakeholder elements, is also granted the authority to approve the substance of the Prolegnas, especially concerning its duties and authorities as stipulated in Article 224, paragraph (1), letter i of Law No. 27 of 2009 on MD3.

Furthermore, Article 23, paragraph (2) of Law No. 12 of 2011 on the Establishment of Legislation states that under certain conditions, the House of Representatives (DPR) or the President may propose Draft Laws outside the Prolegnas, which includes: a. To address extraordinary circumstances, conflicts, or natural disasters; and b. Other specific circumstances

<sup>12</sup> Ikrar Nusa Bhakti, *The Role of Regional Representatives Council (DPD) in Indonesia's Legislative Framework* (Jakarta: Indonesian Institute of Public Policy, 2023). Pp. 45-67.

<sup>13</sup> Andi Ramadhan, *The Influence of the DPD on National Policy Formulation: A study of Legislative Powers* (Bandung: Kencana Publisher, 2020). Pp. 77-95.

that ensure a national urgency regarding a Draft Law that can be jointly approved by the DPR's legislative bodies and the minister responsible for legal affairs.

From an empirical perspective, the specific circumstances referred to in the provisions of Article 23, paragraph (2) of Law P3 are more likely to occur within the territory of the Unitary State of the Republic of Indonesia, which is constitutionally guaranteed as the core competence of the DPD as an institution representing regional interests. However, the opportunity for the DPD to propose additional Draft Laws is not provided. Yet, the authority of the DPD to propose Draft Laws related to regional autonomy, central-regional relations, the establishment and expansion of regions, the management of natural resources and other economic resources, as well as matters related to the financial balance between the central and regional governments, is clearly recognized in Article 22D, paragraph (1) of the 1945 Constitution of the Republic of Indonesia and Article 223, paragraph (1) of the MD3 Law concerning the Structure and Position of the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, and the Regional House of Representatives.

The normative juridical formulation above results in difficulties in incorporating the plans proposed by the Regional Representative Council (DPD) regarding Draft Laws that may be suggested based on regional community aspirations to address specific circumstances as referred to in Article 23, paragraph (2) of Law No. 12 of 2011 on the National Legislative Program (P3).

From this analysis, it is evident that the regulation concerning the role of the DPD in legislative planning must be designed to actively participate in the formulation of the National Legislative Program (Prolegnas), which has traditionally been an agreement between the House of Representatives (DPR) and the President (Article 22, paragraph 1 of Law P3).

Article 224, paragraph (1), letter i of Law No. 27 of 2009 on the Council of the People's Consultative Assembly (MD3) stipulates that the DPD participates in the formulation of the national legislative program concerning regional autonomy, central-regional relations, the establishment and expansion of regions, the management of natural resources and other economic resources, as well as issues related to the financial balance between the central and regional governments.

Regarding this normative formulation, the explanation of this article states that "participation" is understood as merely providing input actively by submitting a list of draft laws and discussing them with the Legislative Body of the DPR. The regulation concerning the participation or non-participation of a parliamentary institution in the formulation of the National Legislative Program is governed by two different laws, which are not aligned. This means that Law P3 does not involve the DPD in the process of formulating the National Legislative Program, while on the other hand, Law MD3 regulates the DPD's participation in the planning of the National Legislative Program, albeit its participation is interpreted as merely providing active input. The disharmony between these two laws in interpreting the mandate of Article 22D of the 1945 Constitution of the Republic of Indonesia indicates that the constellation of political interests to actively involve the DPD within the legislative power holders (DPR and the President) is variable. However, this change fundamentally still conveys

the notion that the paradigm of thought among the drafters of these two laws continues to utilize the old pattern, which regards the DPD as akin to a "fraction" or an auxiliary body of the DPR.

### 3.3. Submission of Draft Laws (RUU)

The mechanism for checks and balances in the submission of draft laws is regulated in several provisions of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), namely: a) Article 5 Paragraph (1): The President has the right to submit a Draft Law to the DPR (People's Consultative Assembly); b) Article 21: Members of the DPR have the right to propose a draft law; and c) Article 22D Paragraph (1): The DPD (Regional Representative Council) may submit to the DPR draft laws related to regional autonomy, the relationship between central and regional governments, the establishment and division of regions, management of natural resources and other economic resources, as well as those related to the financial balance between the central and regional governments.

These three provisions can be categorized as regulations regarding checks and balances in the submission of a draft law, as they reflect mutual oversight among the interests of the executive branch as the implementer of laws, the political interests represented by the DPR (i.e., members of the DPR), and the regional interests represented by the DPD (not members).

However, it is important to note that these three provisions of the UUD NRI 1945 use different phrases. First, for the President and DPD, the phrase used is "Draft Law," while for the members of the DPR, the phrase used is "Proposal for a Draft Law." Second, the term "has the right" is used for the President and members of the DPR, while the term "may" is used for the DPD.

Such phrases undoubtedly raise interpretive questions: First, is a "Draft Law" synonymous with a "Proposal for a Draft Law"? Second, is the term "right" in the context of the President's right to submit a draft law and the term "right" in the context of a member of the DPR's right to submit a proposal for a draft law equivalent to the term "may" in the context of the DPD's ability to submit a draft law? The answers to these interpretive questions will vary, and until there is a binding constitutional interpretation through a decision by the Constitutional Court (MK) regarding the judicial review of laws against the UUD NRI 1945, these questions will not serve as references for the state institutions assigned to this task Legislative Authority. Since the amendments to the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), it is noteworthy that the amended Constitution does not include an explanation, unlike the UUD NRI 1945 prior to the amendments. This absence of explanatory notes raises significant questions regarding the interpretation and application of legislative authority as delineated in the Constitution.

Albert H. Y. Chen, a distinguished professor at the Faculty of Law, University of Hong Kong, uses the term "constitutional interpretation," distinguishing it from the "interpretation of statutes." Constitutional interpretation refers to the interpretation of provisions found in the constitution or fundamental laws, or, as Chen refers to it, the "interpretation of the Basic Law."<sup>14</sup>

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<sup>14</sup> Albert H. Y. Chen, "The Interpretation of the Basic Law - Common Law and Mainland Chinese Perspectives," Hongkong Journal Ltd, 2000, 1. The term Constitutional Interpretation can also be found in the work of Hristo D. Dimitrov, in The Bulgarian Constitutional Court and Its Interpretive Jurisdiction. See: "Interpretive Jurisdiction: The Constitutional

Constitutional interpretation<sup>15</sup> is an inseparable aspect of the judicial review process. Chen states:

*The American experience demonstrates that constitutional interpretation is inseparable from judicial review of the constitutionality of governmental actions, particularly legislative enactments. Such judicial review was first established by the American Supreme Court in Marbury v Madison (1803).*

The constitutional interpretation referred to here is an interpretation employed as a method in the discovery of law (*rechtvinding*)<sup>16</sup> based on the constitution or fundamental law, as practiced or developed in the Constitutional Court's judicial processes. Interpretation methods are necessary because legislation cannot always be drafted in a manner that is entirely clear and leaves no room for interpretation.

Satjipto Rahardjo argues that one of the inherent characteristics of legislation or written law is the authoritative nature of its provisions.<sup>17</sup> However, the expression in written form or *litera scripta* is essentially only a medium for conveying certain ideas or thoughts. The idea or thought intended to be expressed is sometimes referred to as the "spirit" of a regulation. The effort to uncover this spirit is inherently a necessity, particularly in relation to statutory law, which is written in form. This effort is undertaken by the judiciary through the process of interpretation or construction. Interpretation or construction is a process carried out by the court in order to ascertain the meaning of statutory law, aimed at achieving legal certainty.

Sudikno Mertokusumo and A. Pitlo argue that interpretation is one of the methods of legal discovery, providing a clear explanation of statutory texts to determine the scope of rules in relation to specific events. Judicial interpretation serves as an explanation aimed at achieving an application of legal provisions that is socially acceptable to concrete cases. This method of interpretation functions as a tool to ascertain the meaning of the law. Its justification lies in its utility for the practical application of specific provisions, rather than in the method itself.<sup>18</sup>

In the Netherlands and most Western-Continental countries, the concept of legal discovery (*rechtsvinding*) is associated with *legism*, a school of thought in legal theory that equates law with legislation. Kelsen even stated, "law is nothing other than the command of the authorities expressed in legislation." The idea that legal discovery should inherently possess a highly formalistic or logical character is also emphasized by the *Begriffsjurisprudenz* legal theory school. This approach was adopted by Germanic countries in the 19th century.<sup>19</sup>

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Court's Interpretive Jurisdiction: The Advantages of an Authoritative, Non-Adversarial and Prospective Process of Constitutional Interpretation," Columbia Journal of Transnational Law Association, 1999, 7

<sup>15</sup> In English legal literature, the term *constitutional interpretation* is widely used by constitutional law scholars to refer to the methods of interpreting a constitution. This can be observed in works such as Craig R. Ducat, *Constitutional Interpretation* (California: Wordsworth Classic, 2004); Charles Sampford (Ed.), *Interpreting Constitutions: Theories, Principles and Institutions* (Sydney: The Federation Press, 1996); Jack N. Rakove (Ed.), *Interpreting the Constitution: The Debate Over Original Intent* (Michigan: Northeastern University Press, 1990); Jeffrey Goldsworthy (Ed.), *Interpreting Constitutions: A Comparative Study* (New York: Oxford University Press, 2006); Keith E. Whittington, *Constitutional Interpretation: Textual Meaning, Original Intent, and Judicial Review* (Kansas: University Press of Kansas, 1999), and others

<sup>16</sup> Syawaluddin Hanafi, "The Authority of the Constitutional Court in Interpreting the 1945 Constitution of the Republic of Indonesia," *Jurnal Ekspose* 16, no. 1 (2017): 353, <https://core.ac.uk/download/pdf/230711688.pdf>.

<sup>17</sup> Satjipto Rahardjo, *Ilmu Hukum* (Bandung: PT Citra Aditya Bakti, 2006).

<sup>18</sup> Sudikno Mertokusumo dan A. Pitlo, Chapters on Legal Discovery (Bandung: Jendela Mas Pustaka, 1993), p.13.

<sup>19</sup> J.A. Pontier, *The Discovery of Law - Translated by B. Arief Sidharta* (Bandung: Jendela Mas Pustaka, 2008).



18 Interpretation of the constitution is a crucial activity in law and legal science. Interpretation serves as a method to understand the meaning embedded in legal texts, enabling their application in resolving legal issues or making decisions on concrete matters.<sup>20</sup> In Constitutional Law, judicial interpretation serves as a method of constitutional change by adding to, reducing, or refining the meaning within the text of the Constitution through (i) formal amendment, (ii) judicial interpretation, and (iii) constitutional usage and conventions.

30 Satjipto Rahardjo, citing Fitzgerald's views, broadly distinguishes interpretation into two types: literal interpretation and functional interpretation. Literal interpretation strictly relies on the wording of the regulation. In other words, it does not deviate from the *litera legis*. Functional interpretation, also known as free interpretation, is considered free because it does not strictly adhere to the wording of the regulation (*litera legis*). This type of interpretation seeks to understand the true intent of a regulation by employing various other sources that are considered to provide clearer and more satisfactory.<sup>21</sup>

30 In addition to the various methods of interpretation mentioned above, based on the findings of legal discovery (*rechtsvinding*), interpretation methods can be categorized into two types: restrictive interpretation and extensive interpretation. Restrictive interpretation is an explanation or interpretation that is limiting. In clarifying a provision of the law, the scope of that provision is confined. The principle employed in this method of interpretation is the principle of *lex certa*, which holds that a matter within statutory regulations cannot be expanded or interpreted beyond what is explicitly stated in the legislation (*lex stricta*). In other words, a provision of law cannot be broadened except as explicitly and clearly stipulated in the legislation itself. On the other hand, extensive interpretation is an explanation that goes beyond the limits set by grammatical interpretation.<sup>22</sup>

2 Sudikno Mertokusumo and A. Pitlo identify several methods of interpretation commonly used by judges (courts), as follows: a) grammatical interpretation or interpretation according to language; b) teleological or sociological interpretation; c) systematic or logical interpretation; d) historical interpretation; e) comparative interpretation; f) futuristic interpretation. According to Sudikno Mertokusumo and A. Pitlo, authentic interpretation is not included in the doctrine of interpretation. Authentic interpretation refers to the explanations provided by the law that are found within the text of the law itself, rather than in the Supplement to the State Gazette.<sup>23</sup>

25 Since the amendment of the 1945 Constitution of the Republic of Indonesia, the Explanation has no longer been part of the Constitution.<sup>24</sup> Such conditions lead to several provisions in the 1945 Constitution of the Republic of Indonesia often generating debates in the realm of interpretation. These debates remain confined to academic circles and lack binding authority for implementation. This is unless the interpretative debates are subsequently resolved by the

51 32 <sup>20</sup> Urbanus Ura Weruin, Dwi Andyani, dan St. Atalim, "Legal Hermeneutics: Principles and Rules of Legal Interpretation," *Journal of Constitution* 13, no. 1 (2016): 101, <https://doi.org/https://doi.org/10.31078/jk1315>.

<sup>21</sup> Peter Goodhart, *Understanding Functional Interpretation in Legal Frameworks* (London: Routledge, 2023). pp. 102-118.

<sup>22</sup> Adi Suryanto, *Principles of Legal Interpretation* (Jakarta: Rajawali Pers, 2023). Pp. 45-68.

<sup>23</sup> Yulianto, *Fundamentals of Legal Interpretation* (Yogyakarta: Pustaka Pelajar, 2022).pp. 80-110.

17 <sup>24</sup> Article II of the Additional Provisions of the 1945 Constitution of the Republic of Indonesia states, "With the enactment of the amendments to this Constitution, the Constitution of the Republic of Indonesia consists of the Preamble and the articles."

23 Constitutional Court through the judicial review of laws against the 1945 Constitution. This means that, without a case for judicial review, the Constitutional Court does not possess the authority to interpret the meanings contained within any provision of the 1945 Constitution. In short, the Constitutional Court only "waits for the ball" when a law is submitted for review. As a result of this situation, the main law-making regime, namely the DPR (People's Consultative Assembly) and the President, engages in unilateral interpretation when formulating, discussing, and jointly approving a bill into law. Consequently, the empirical data shows that the cases of judicial review of laws against the 1945 Constitution of the Republic of Indonesia submitted to the Constitutional Court are increasingly accumulating. The most recent case involves the review of the MD3 Law and the P3 Law by the DPD (Regional Representative Council), as the drafters of these laws are deemed to have interpreted the provisions of Article 22D, Paragraphs (1) and (2) of the 1945 Constitution in a manner that deviates from the spirit contained within those articles.

9 The elimination of the DPD's authority in the legislative process has systematically commenced since the early stages of the bill submission process. The MD3 Law does not establish a mechanism for bills proposed by the DPD. According to the structure of the 1945 Constitution of the Republic of Indonesia, bills may originate from the DPR (through proposals from its members), the President, and the DPD. Article 143, paragraph (5) of the MD3 Law asserts: "Draft laws prepared by the DPR shall be submitted by a letter from the leadership of the DPR to the President." Meanwhile, Article 144 clarifies: "Draft laws originating from the President shall be submitted by a letter from the President to the leadership of the DPR." The question arises regarding the "fate" of specific bills originating from the DPD.

13 As stated in Article 22D, paragraph (1) of the 1945 Constitution, the DPD has the authority to propose certain bills to the DPR. This constitutional norm construction is "similar" to the provision in Article 5, paragraph (1) of the 1945 Constitution, which states: "The President has the right to propose draft laws to the DPR." The difference lies in the fact that the President uses the term "has the right," while the DPD uses the term "may." Regardless of the use of these terms, the authority to propose bills between the President and the DPD is fundamentally the same; both are granted the authority to propose bills, and both types of bills are submitted to the DPR.

46 However, the MD3 Law, which essentially interprets the provisions of Article 22D, paragraph (1) of the 1945 Constitution, stipulates otherwise, and can even be said to reduce the meaning of Article 22D, paragraph (1). Article 147, paragraph (3) of the MD3 Law states: (1) The leadership of the DPR, after receiving the draft law from the DPD as referred to in Article 146, paragraph (1), shall inform the members of the DPR about the proposed draft law and distribute it to all members of the DPR during a plenary meeting. (2) The DPR shall decide on the proposed draft law in the subsequent plenary meeting in one of the following forms: a) approval; b) approval with amendments; or c) rejection. (2) In the event that the plenary meeting decides to grant approval to the proposed draft law originating from the DPD as referred to in paragraph (2) letter a, the draft law shall become a draft law proposed by the DPR. (3) In the event that the plenary meeting decides to grant approval with amendments to the proposed draft law originating from the DPD as referred to in paragraph (2) letter b, the

2 draft law shall become a draft law proposed by the DPR, and the DPR shall assign the refinement of the draft law to the relevant committee, joint committee, Legislative Body, or special committee.

21 With the "*sophistication*" of political maneuvering within the House of Representatives (DPR), the meaning contained in Article 22D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia has been transformed. This alteration of meaning is evident in two key aspects: 4 First, the phrase "draft law" as stated in Article 22D Paragraph (1) has been cleverly and subtly rephrased as "proposal for a draft law." Second, with the substitution of "draft law" for 13 "proposal for a draft law," the status of specific bills originating from the Regional Representative Council (DPD) has shifted to that of draft laws proposed by the DPR. Within academic and legal frameworks, this approach is akin to plagiarism, as it presents a fundamental misrepresentation of legislative intent and processes.

10 The "fate" of specific bills originating from the Regional Representative Council (DPD) differs markedly from the "fate" of bills proposed by the President. Bills proposed by the President do 76 not undergo a "metamorphosis" into draft laws submitted by the House of Representatives 13 (DPR). Both the President and the DPD are recognized as high state institutions by the 1945 37 Constitution of the Republic of Indonesia in terms of their authority to propose bills to the 79 DPR. Moreover, under the Law on the MPR, DPR, DPD, and DPRD (MD3), bills from the 10 DPD are treated similarly to proposals for draft laws originating from DPR members, and 38 therefore must undergo harmonization and finalization by the DPR's Legislative Body (Baleg).

The differing treatment of bills from the DPD and those from the President clearly represents a denial of the "spirit" of checks and balances in the legislative domain. As a result of this disparity, the role and position of the DPD as an institution representing regional interests become tenuous. Its performance is not acknowledged in a substantial manner and is even politically "claimed" by the DPR. Essentially, if bills from the DPD are directly transformed into "DPR-owned" bills, a critical question arises: how can we measure the performance of the DPD in executing its legislative functions? Additionally, what are the accountability measures 75 for the DPD to its regional "constituents," given that the aspirations and interests of the regions it represents must be manifested in national policies or legislative products? Ultimately, what 1 kind of checks and balances exist when the position of the DPD as a high state institution in the legislative process is diminished by the provisions of the MD3 Law?

40 In line with the provisions of the MD3 Law, the stipulations in the P3 Law are also quite similar. Article 43, Paragraphs (1) and (2), explicitly statement: (1) Draft laws may originate from the 41 House of Representatives (DPR) or the President. (2) Draft laws originating from the DPR as referred to in paragraph (1) may also originate from the Regional Representative Council (DPD).

17 Once again, the House of Representatives (DPR) and the President<sup>25</sup>, in interpreting the meaning of Article 22D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, 10 have distorted the authority of the Regional Representative Council (DPD) in proposing

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<sup>25</sup> Article 20, Paragraph (2) of the 1945 Constitution of the Republic of Indonesia states: "Every draft law shall be discussed by the House of Representatives (DPR) and the President to obtain mutual agreement."



specific draft laws. Initially designed as a balancing institution within the Indonesian parliamentary system, the DPD's legislative function, as limited by the 1945 Constitution, has been further constrained by the provisions of the MD3 Law and the P3 Law.

Furthermore, Article 46, Paragraph (1) states: "Draft laws from the House of Representatives (DPR) may be submitted by DPR members, committees, joint committees, or DPR's auxiliary bodies specifically dealing with legislative matters or the Regional Representative Council (DPD)." Such provisions clearly contradict Article 22D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, as they equate the legislative authority of the DPD with that of committees, joint committees, and DPR auxiliary bodies, and even more concerning, with DPR members who have the right to propose draft laws.

By positioning the DPD in this manner, the DPD is constitutionally reduced to a subordinate entity under the DPR in the process of submitting draft laws. In fact, the DPD is a state institution that possesses constitutional authority to propose draft laws in specific fields, as regulated by Article 22D Paragraph (1) of the 1945 Constitution. This authority is distinctly different from the rights held by DPR members, committees, joint committees, or DPR auxiliary bodies.

Thus, the provisions of Article 43, Paragraphs (1) and (2), as well as Article 46, Paragraph (1) of the P3 Law, not only undermine the constitutional order intended by the 1945 Constitution but also further violate the spirit of decentralized democracy in Indonesia, as constructed by "the second founding constitution" during the amendment of the 1945 Constitution.

### 3.4. Discussion of the Draft Law

The constitutional norms governing the discussion of draft laws are found in Article 20, Paragraph (2) of the 1945 Constitution, which states that every draft law shall be discussed by the House of Representatives (DPR) and the President to obtain mutual approval, and in Article 22D, Paragraph (2) of the 1945 Constitution, which emphasizes that the Regional Representative Council (DPD) participates in the discussion of draft laws in specific fields.

These two constitutional norms should be read together rather than as separate provisions. One fundamental question that must be addressed is: what happens if the DPD is not included in the process of discussing draft laws? Can the formation of laws without involving the DPD ensure the representation of regional aspirations and interests? Is it sufficient for only the DPR and the President (Government) to make political decisions without considering regional aspirations and interests?

From the provisions stated in Article 22D, Paragraph (2) of the 1945 Constitution, the phrase "participate in the discussion" still allows the DPD to play a more significant role in the legislative function. Article 22D, Paragraph (2) of the 1945 Constitution asserts that:

"The DPD participates in the discussion of draft laws related to regional autonomy; the relationship between central and regional governments; the establishment, expansion, and amalgamation of regions; the management of natural resources and other economic resources; as well as the financial balance between central and regional governments. Additionally, the DPD provides considerations to the DPR

regarding draft laws on the national budget and draft laws related to taxation, education, and religion."

This provision, when linked to Article 20, Paragraph (2) of the 1945 Constitution of the Republic of Indonesia, inherently embodies the spirit of checks and balances among the President, the House of Representatives (DPR), and the Regional Representative Council (DPD) in the deliberation of specific bills. The phrase "participate in the discussion," as articulated in Article 22D, Paragraph (2) of the 1945 Constitution, must be interpreted to mean that, concerning certain draft laws related to the authority of the DPD, the DPD's power to discuss such legislation is equivalent to that of the President and the DPR. The phrase "participate in the discussion" conveys the understanding of engaging in discussions (according to the Indonesian Dictionary: "ikut" = to do something as others do). Therefore, the phrase "participate in the discussion" in Article 22D, Paragraph (2) of the 1945 Constitution should be associated with Article 20, Paragraph (2) of the 1945 Constitution, and interpreted to mean that regarding draft laws related to the authority of the DPD, whether such bills originate from the President, the DPR, or the DPD, the DPD has the right and authority to participate in the entire process of discussing the draft legislation at the First Discussion Stage.

This interpretation of the phrase "participate in the discussion," however, has not served as the foundational basis for the drafters of Law No. 17 of 2014 concerning the MPR, DPR, DPD, and DPRD (MD3 Law) and Law No. 12 of 2011 concerning the Establishment of Legislative Regulations (P3 Law). Article 150, Paragraph (3) of the MD3 Law states that the inventory of issues referred to in Paragraph (1), letter b, is submitted by: a) The President, if the draft law originates from the House of Representatives (DPR); or b) The House of Representatives (DPR), if the draft law originates from the President.

Furthermore, Article 68, Paragraph (3) of the Law on the Establishment of Legislative Regulations (P3 Law) stipulates that the inventory of issues referred to in Paragraph (1), letter b, shall be submitted by: a) The President, if the draft law originates from the House of Representatives (DPR); or b) The House of Representatives (DPR), if the draft law originates from the President, while considering proposals from the Regional Representative Council (DPD) insofar as they relate to the authority of the DPD, as stipulated in Article 65, Paragraph (2).

These two provisions have effectively diminished Article 22D, Paragraph (2) of the 1945 Constitution of the Republic of Indonesia, as the stipulations for discussing draft laws (related to the authority of the DPD) can occur without the involvement of the DPD. In fact, Article 22D, Paragraph (2) of the 1945 Constitution grants constitutional authority to the DPD as a state institution that is equal to the President and the DPR to "participate in the discussion" of draft laws (during the First Discussion) that pertain to the authority of the DPD, as outlined in Article 22D of the 1945 Constitution.

This indicates that the provisions found in Article 150, Paragraph (3) of the MD3 Law and Article 68, Paragraph (3) of the P3 Law negate the DPD's right to fully engage in the First Discussion, particularly in jointly proposing and discussing the inventory of issues, which is, in fact, the "core" of the discussion on draft laws.

8 It is well understood that the mini-opinion session following the discussion of the DIM (Daftar Inventarisasi Masalah or Inventory of Issues) serves to reaffirm agreements or remarks regarding the outcomes of the DIM discussion. Consequently, if the DPD is not granted the right to propose DIM and participate in discussions, it will be impossible for the DPD to provide a more comprehensive mini-opinion concerning the authority referred to in Article 22D of the 1945 Constitution.

4 If the spirit of checks and balances that characterizes the constitutional norms governing the discussion of draft laws, as articulated in Article 22D, Paragraph (2) of the 1945 Constitution, is interpreted in alignment by the President and the DPR in the formation of the MD3 Law and the P3 Law, then the DPD must be fully involved in discussions regarding specific draft laws as emphasized in Article 22D, Paragraph (2) of the 1945 Constitution. Therefore, the discussion of certain draft laws that includes the DPD should encompass the following stages at a minimum: a) The determination of the schedule and agenda for discussions; b) The views of the DPD on the Regional Autonomy Bill and the Village Bill;

1 “Joint hearings (RDP) and public consultations (RDPU) conducted collaboratively between the DPR and the DPD; c) Joint working visits between the DPR and the DPD; and d) The formulation of the DPD's position and the Inventory of Issues (DIM), as well as its submission and discussion within the DPR's legislative apparatus”.

1 Each of the aforementioned stages is discussed collectively by the legislative bodies (DPR and DPD) that handle legislative matters, specifically the Legislative Body (Baleg) and the Parliamentary Committee on Law (PPUU), as well as the commissions or special committees in the DPR and the committees in the DPD. However, such stages are not found within the entirety of the provisions of the MD3 Law and the P3 Law that pertain to the discussion of specific draft laws.

#### 4. CONCLUSION

6 This research aims to analyze the impact of the MD3 Law and P3 Law on the balance of power between the House of Representatives (DPR) and the Regional Representative Council (DPD) in Indonesia's legislative process. It seeks to identify how these laws, despite the spirit of the 1945 Constitution, systematically undermine the DPD's role in representing regional interests. The study reveals the marginalization of regional voices in three key areas: the Prolegnas legislative program's development, the proposal of draft laws, and the discussion process of legislation. Findings indicate that the DPD's involvement in shaping legislative priorities is minimal, with a top-down approach prevailing over a bottom-up process. Additionally, even when the DPD initiates draft laws, its proposals are considered equivalent to those of DPR members or committees, diminishing the DPD's constitutional mandate. During discussions, the DPD's input is not binding, leading to its marginal role in legislative decisions. These practices reflect a systemic neglect of checks and balances, suggesting that the legislative function of the DPD is largely symbolic, serving more as an "accessory" rather than a co-equal legislative body. This systemic exclusion risks fragmenting Indonesia's regional diversity within its unitary framework, potentially escalating tensions between the central and regional governments, thus threatening the country's constitutional integrity and democratic governance.

## REFERENCES

- Akbar, Faisal. *The Role of the Regional Representative Council in Indonesia's Constitutional System Post-Amendment of the 1945 Constitution*. Jakarta: Rajawali Press, 2023.
- Bhakti, Ikrar Nusa. *The Role of Regional Representatives Council (DPD) in Indonesia's Legislative Framework*. Jakarta: Indonesian Institute of Public Policy, 2023.
- Diamond, Larry. *Democracy and Its Alternatives: Political Representation in Developed and Developing Countries*. Cambridge: Cambridge University Press, 2023.
- Ginsburg, Tom, dan Aziz Huq. *Authoritarian Legislatures: Power, Designation, and Representation*. Cambridge: Cambridge University Press, 2023.
- Goodhart, Peter. *Understanding Functional Interpretation in Legal Frameworks*. London: Routledge, 2023.
- Kingdon, John. *Agendas, Alternatives, and Public Policies*. New Yorks: Harper Collins, 1995.
- Mansbridge, Jane. *Political Representation: Theoretical and Practical Perspectives*. Cambridge: Cambridge University Press, t.t.
- Marzuki, Laica. *The Strategic Role of the Regional Representative Council (DPD) in the Democratic and Decentralized System in Indonesia*. Jakarta: Gramedia Pustaka Utama, 2023.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Kencana, 2021.
- Mertokusumo, Sudikno, dan A. Pitlo. *Chapters on Legal Discovery*. Bandung: Jendela Mas Pustaka, 1993.
- Patricia, Tania. *Democracy and Decentralization: Implementing Popular Sovereignty in Modern Governance*. London: Palgrave Macmillan, 2023.
- Pettkin, Hanna Fenichel. *The Concept of Representation*. California: University of California Press, 1980.
- Pontier, J.A. *The Discovery of Law - Translated by B. Arief Sidharta*. Bandung: Jendela Mas Pustaka, 2008.
- Rahardjo, Satjipto. *Ilmu Hukum*. Bandung: PT Citra Aditya Bakti, 2006.
- Ramadhan, Andi. *The Influence of the DPD on National Policy Formulation: A study of Legislative Powers*. Bandung: Kencana Publisher, 2020.
- Suryanto, Adi. *Principles of Legal Interpretation*. Jakarta: Rajawali Pers, 2023.
- Chen, Albert H. Y. "The Interpretation of the Basic Law - Common Law and Mainland Chinese Perspectives." *Hongkong Journal Ltd*, 2000, 1. <http://hdl.handle.net/10722/74998>.
- Dianisa, Tifani Rizki, dan Gayatri Dyah Suprobawati. "The Application of Legislative Theory in the Formation of Legislation." *Journal of Democracy and National Resilience* 1, no. 2 (2022): 301–3. <https://doi.org/https://doi.org/10.13057/souvereignty.v1i2.191>.
- Fajriyah, Mira. "Juridical Reflection on the Establishment of the National Legislation Program in the Indonesian House of Representatives." *Journal of Constitution* 13, no. 1 (2016): 53. <https://download.garuda.kemdikbud.go.id/article.php?article=2496757&val=23836&title=Refraksi%20Yuridis%20Penetapan%20Program%20Legislasi%20Nasional%20di%20ODPR%20RI>.
- Hanafi, Syawaluddin. "The Authority of the Constitutional Court in Interpreting the 1945 Constitution of the Republic of Indonesia." *Jurnal Ekspose* 16, no. 1 (2017): 353. <https://core.ac.uk/download/pdf/230711688.pdf>.
- Weruin, Urbanus Ura, Dwi Andayani, dan St. Atalim. "Legal Hermeneutics: Principles and Rules of Legal Interpretation." *Journal of Constitution* 13, no. 1 (2016): 101.

<https://doi.org/https://doi.org/10.31078/jk1315>. Yulianto. *Fundamentals of Legal Interpretation*. Yogyakarta: Pustaka Pelajar, 2022.

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Law No. 27 of 2007 on the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, and the Regional House of Representatives.

Law No. 12 of 2011 on the Establishment of Legislation.