



## **THE AUTHORITY OF LEGISLATIVE INSTITUTION (A COMPARATIVE STUDY BETWEEN REGIONAL REPRESENTATIVES COUNCIL OF RI AND US SENATE)**

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### **Abstrak**

DPD RI secara institusi serupa dengan Senate di Amerika Serikat. Senate juga merupakan wujud keterwakilan daerah dalam lembaga legislatif yang anggotanya terdiri atas perwakilan atas tiap negara bagian dan dipilih melalui pemilihan umum. Sehingga keanggotaan Senate ataupun DPD RI berdasarkan pada persamaan keterwakilan tanpa memperhitungkan besarnya jumlah penduduk dari masing-masing negara bagian atau daerah. Penelitian ini menggunakan pendekatan yuridis normatif, yaitu suatu pendekatan yang mengacu pada hukum dan peraturan perundang-undangan yang berlaku. Berdasarkan temuan yang telah diperoleh dalam penelitian ini bahwasanya Dewan Perwakilan Daerah Republik Indonesia dan Senate Amerika Serikat masing-masing mempunyai kewenangan yang tersendiri seperti diatur dalam undang-undang ataupun konstitusi dari

tiap institusi tersebut. Namun secara umum persamaan dan perbedaan antara kedua lembaga tersebut dapat dilihat dari kewenangan legislasi dan pemilihan pejabat publik.

**Kata Kunci:** *Kewenangan, Dewan Perwakilan Daerah dan Senate*

## **Abstract**

DPD RI is institutionally similar to US Senate. Senate is also a form of regional representation on a legislative institution which its members consist of state representatives and elected in the general election. So, the membership of Senate or DPD RI is based on representation similarity without considering the number of people in a country. This research uses a normative juridical approach, an approach which refers to the law and applicable law. Research findings show that DPD RI and US Senate have a special authority which is regulated in the constitution of each institution. Similarities and differences between the two institutions can be seen from the legislative authority and election of public officials.

**Keywords:** *Authority, Regional Representative Council and Senate*

## **INTRODUCTION**

The amendment to the 1945 constitution has broad implications for the constitutional system of the Republic of Indonesia, especially for state institutions. Some state institutions which own additional authority have reduced it. There are also state institutions that have been completely removed, and some new others are added. There is a change in the representative institutions by reducing the power of the MPR and changing its position from the highest state institution to a state institution, while for the DPR, it has wide authority because it was given the right by the President to interfere in decision making by asking for approval and consideration. In addition to the two representative institutions, through the amendment of the 1945 constitution, a new state institution was added, the Regional Representative Council (DPD), as a representative institution at the central level representing the regions (Asshiddiqie, 2010: 89).

The background for the formation of DPD through amendments to the 1945 constitution is to replace the role of MPR members from the Regional Representatives that previously became one of the elements in the appointed MPR members. Apart from that, DPD was also held in order to realize the idea of establishing a representative institution with a two-chamber system (bicameral)(Yuriska, 2010: 53).

Based on the constitution, there are three main tasks and functions of DPD which are contained in Article 22D of the 1945 constitution, namely the function of legislation, consideration, and supervision. DPD has the right to submit draft of law and got involved by the DPR in the discussion of laws related to regional autonomy, central and regional relations, formation and expansion, as well as the merger of regions, management of natural and other economic resources, implementation of the revenue budget state expenditures, taxes, education and religion and can supervise the implementation of the law to convey the results to the DPR.

The prevailing constitution in the United States is the United States Constitution which was legalized in 1787, ratified in 1788, and was effective in 1789. The Constitution divides the federal government into three branches, namely the executive, judicative and legislative powers. Congress has all legislative powers consisting of the Senate and the House of Representatives. This power is undergone with bicameral system. The House of Representatives contains members that are elected every even year by the people of all the states. Meanwhile, the Senate has one hundred members; each state has two representatives or so-called Senators (Prakoso, 2016:8). The Senate in the United States has a stronger function than the House of Representatives. This is because the Senate is generally a legislature which can sometimes also be judicial agency, for example taking part in government in various ways according to the constitutions of different states. These are the nominations of public officials who are generally considered as judicial power to justify federal officials in

special political crimes cases, sometimes also in rulings in special civil cases.

DPD RI is institutionally similar to the Senate in the United States. Senate is also a form of regional representation in a legislative agency whose members consists of representatives from each state and is elected through general elections. Each state is represented by two senators based on the New Jersey Plan proposed by William Patterson at the Philadelphia Convention 1787. Thus, Senate membership is based on the principle of equal representation regardless of the number of population of each state.

As the same country, it adheres to a republican form of government and a presidential system of government. Indonesia has a legislative body which is almost the same, namely, the People's Representative Body. However, the form of the state of Indonesia is Unity while the form of the United States of America is Federal. So it is necessary to conduct research as comparison especially those related to the same House of Representatives as an institution as a form of representation in each region or state.

## **DISCUSSION**

### **A. Authority of the Representative Council of the Republic of Indonesia**

Regional Representative Council, which in this case is a new state institution in the constitutionality of the Republic of Indonesia, is given the same portion as other institutions. As in legislation, for example, DPD has the duty and authority in terms of proposing certain bill related to regional autonomy and participating in discussions with the DPR, giving consideration to the DPR on certain bill (Oday, 2013:17).

More than that, the 1945 constitution states explicitly that the DPR has a legislative function, a budget function, and a supervisory function. Meanwhile, DPD does not have these functions completely. In the field of legislation, for example, DPD can only submit the bill as an initiative and participate in discussing it. However, DPD cannot participate in

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enacting laws as the DPR and President Institutions do. However, the division can be explained in terms of the role or authority of DPD as follows:

### **1. *DPD's authority to propose the Bills***

Article 22D paragraph (1) "*DPD can submit the bill to the DPR related to regional autonomy, central and regional relations, the formation and expansion and merger of regions, management of natural resources and other economic resources, as well as those related to central and regional financial balancing.*" (UUD RI 1945 article 22D)

Basically, DPD does not have the power to form laws. DPD can only submit laws to the DPR. Thus, DPD does not have the right to take the independent initiative in making laws. DPD does not have the constitutional power to compete, because it does not actually have the authority up to the decision-making level, including in the legislative process. Even if DPD can submit a bill, its power is not absolute because systematically this provision is related to article 20 paragraph (1): "The DPR has power to form laws" and article 20 paragraph (2): "Every bill is discussed by the DPR and the President for approval."

Based on this provision, it is clear that the decisions on legislation are only made by the DPR and the President. DPD can participate in the discussion, but not to make decisions. DPD participates in the discussion of the bills related to DPD's authority, DPD can only convey opinions, but cannot submit a List of Problems Inventory in writing and does not participate in decision making.(Isra, 2010: 100)

### **2. *The Authority of DPD in the Discussion and Consideration of the Bill***

Article 22D paragraph (2) of the 1945 constitution states that "*DPD participates in discussing bills related to regional autonomy, central and regional relations, formation, expansion and merger of regions, management of natural resources and other economic resources, as well as financial considerations from the center and the regions as well as providing consideration to the House of Representatives on the*

*APBN and Bill related to taxes, education and religion*".(UUD RI 1945 article 22 B)

The phrase DPD participates in discussing the bill, such as giving a role to DPD, even though this is not the case. This provision strengthens the establishment of DPD not to have the right to initiative and to be independent in shaping laws even in areas related to regional problems. The phrase DPD participates in discussing legally means that only the DPR has the power to form laws.(Harsan, 2017: 13)

If there is bill related to regional autonomy, central and regional relations; the formation, expansion and merger of regions, management of natural resources and other economic resources as well as those related to the balance between central and regional finances. The DPR will take the initiative to invite DPD at the beginning of the first level talks according to the DPR's guidelines. The opinions and responses of DPD are used as input for further discussion between the DPR and the government. Similar to the role of DPD in proposing bills, this role of DPD also does not have an important role. The opinions of DPD obtained by the DPR during the discussion on paper are the same as the views obtained by the factions in the DPR. Part of Article 22 D paragraph (2) weakens DPD, which only gives consideration to the DPR regarding drafts, APBN, and bills related to taxes, education, and religion. It is stated clearly in the APBN that taxes, education, and religion must be discussed with DPD because they are related not only to state politics but also to regional interests (Harsan, 2017: 13).

### **3. DPD's Authority as Supervisor**

The role of DPD as a supervisor is regulated in the constitution of Article 22D paragraph (3): "DPD can supervise the implementation of laws on regional autonomy, formation, expansion and merger of regions, central and regional relations, management of natural resources and economic resources. The implementation of the state revenue and expenditure budget, education and religion as well as

The Authority of Legislative Institution ..... (Muhammad Nabil Mabdaunni'am) submitting the results of their supervision to the DPR as a material for consideration to be followed up"(UUD RI 1945 article 22 D).

In conducting supervisory duties, DPD holds joint meetings with local governments, DPRD's, and elements of society in their constituencies. Even though it has the authority as a supervisor, DPD's role as a supervisory function is very small because DPD does not have the right to follow up on its supervision. DPD can supervise the implementation of laws, which subsequently the results of its supervision, cannot be followed up by DPD itself, because DPD submits the results of its supervision to the DPR as a material for consideration to be followed up. Thus, it is the DPR that determines whether or not the results of the supervision are used.

#### ***4. The Authority of DPD in Providing Considerations for Prospective Members of the BPK***

DPD in giving considerations to candidates for members of BPK is regulated in the constitution of Article 23F section (1) which states "*BPK members are elected by the DPR with the consideration of DPD and inaugurated by the President*" (UUD RI 1945 article 23 F).

In accordance with the constitution, it is the DPR the elects BPK members by taking into account DPD's considerations. The DPR leadership notifies the BPK member election plan to DPD leader along with the documents required for the BPK member candidate as DPD material to give consideration to the BPK member candidate, no later than 1 (one) month before the DPR apparatus processes the implementation of the BPK member election. DPD considerations are submitted in writing to the DPR leadership no later than 3 days before the election, which is then immediately submitted to the DPR's apparatus to be used as material for consideration. If DPD's considerations are not conveyed, the election of BPK members will still be carried out.

Then the names of the elected candidates for BPK members are submitted by the DPR to the President no later than 30 (thirty) days

before the term of office of the BPK members ends. If you look at the existing rules, it can be said that DPD's authority in giving consideration to prospective BPK members also shows the weakness of DPD because it only gives consideration to the DPR and does not participate in deciding and determining BPK members. It is also debilitating that if DPD's considerations are not conveyed, the election of BPK members will still be held. This indicates whether or not there is a DPD consideration, it will not affect the implementation of the election for BPK members.

## **B. The Authority of US Senate**

The legislative power of the United States is in the hands of the parliament which consists of the Senate and the House of Representatives. As the upper house of the congress, the Senate has authorities such as:

### ***1. Reviewing and discussing bills made with the House of representatives***

As stated in the constitution, the power to legislate or form law is held by the House of Representatives and the Senate, which will be discussed together in the Congress. In Article, I Section 7 Clause 1 "All Bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with Amendments as on other Bills" (Constitution of The United States Article 1 Section 7).

Based on the constitution, each bill must be approved by the two chambers of Congress, namely the Senate and the House of Representatives. Before becoming a law, it must be proposed to the President for approval. If agreed, the law will be signed, and if not, the President will return it to the Senate and the House of Representatives by providing reasons for the objection. The president's refusal is known as the "Veto", but the President's veto does not automatically invalidate the proposed bill. Then after the bill is returned to the submitting room, a vote is held. If at least two-thirds of the members of each room agree,



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the bill will become law even though it is without the approval of the President (Hadi, 2013).

## ***2. Decide and adjudicate impeachments submitted by the House of Representatives***

One of the powers of the House of Representatives as mandated by the constitution regarding impeachment is contained in Article 1 Section 2 which states "The House of Representatives shall choose their Speaker and other Officers; and shall have the sole Power of Impeachment."

If an official has been impeached by the House of Representatives, it will be discussed through the Senate and no one will be found guilty without the consent of two-thirds of the Senate members who are present. The Senate's authority is contained in the United States Constitution Article I Section 3 "The Senate shall have the sole Power to try all Impeachments ..." (Constitution of The United States Article 1 Section 3).

## ***3. Deciding or rejecting public officials proposed by the president***

With regard to the powers given by the United States constitution regarding the approval of public officials proposed by the President contained in the Constitution which gives authority to the President and Senate as stated in Article II Section 2 "he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States,"

All proposals submitted by the President are routinely confirmed by the Senate. With the thousands of proposals that each Congress receives, it is impossible for the Senate to consider all of them in detail. Although all candidates are confirmed promptly and regularly by the Senate, the process also enables face serious supervision of a candidate when needed. Most were approved on a regular basis, while a small proportion got attention from media and Congress. When it

comes to executive positions, candidates for policymaking positions are more likely to be scrutinized, and to be more difficult to confirm rather than for non-government policy positions (Rybicky,2017: 12).

#### **4. *Accept or reject the international treaty***

Treaty is a serious legal action in both international and domestic law. The agreement in question binds the parties and forms part of international law. The existing treaties in the United States are binding on federal states. Including part of what is called the constitution as the highest law in a country.

However, the use of the word treaty has a different meaning in the United States and international law. In international law, the word "treaty" is a legally binding agreement between countries. Meanwhile, in the United States the word "tract" is contained in the sentence in the constitution, Article II Section 2 "He (President) shall have power, by and with the advice and consent of the Senate, to make treaties."(Anonim, <https://www.law.cornell.edu/>, 2019)

In relation to any agreement making by the executive, he must deal with the Senate. Despite the President, Senate, and the House of Representatives have different institutional interests, yet they have responsibility for making international treaties that become national interest in the most effective and efficient manner. The Senate's authority to provide input and approval gives precaution to an international agreement before it is ratified into a legal agreement.

Although sometimes the Senate plays a role to initiate or develop a treaty, the current role of the Senate focuses on assessing whether a completed treaty can be ratified by the state. Senate's advice and approval is included at the time of ratification by the president. When senate proposes an agreement, it can be in the form of a written agreement. They agree with the conditions, rejecting and returning it, or preventing its validity by withholding the agreement. An agreement must be approved by a two-thirds of the Senate members. Senate can

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also change or influence the contents of an agreement before submission (Helms, 2001: 30).

### **C. Comparison of the Authority of the Regional Representative Council and the Senate**

The comparison of the Regional Representative Council of the Republic of Indonesia and the United States Senate can be explained by the similarities and differences in the powers owned by each state institution. It needs to be emphasized before analyzing the authority of each institution, that the Regional Representative Council of the Republic of Indonesia and the United States Senate are legislative institutions that are similar institutionally, DPD RI is a form of provincial representation where each province has 4 (four) representatives that will voice their aspirations existing in their respective regions and are elected through general elections. Meanwhile, the Senate is also a form of regional representation in a legislative gency whose members consists of representatives from each state and is elected through general elections. And each state is represented by two senators. So, Senate membership is a regional representation regardless of the number of residents in the state.

The similarities and differences in authority between the Regional Representative Council of the Republic of Indonesia and the United States Senate are as follow:

#### **1. Legislative Power (forming laws)**

Regional Representative Council has limited power in the field of legislation, which is limited to budget drafting, supervision and consideration. DPD's legislative authority is contained in Article 22D section 1 and 2 of the 1945 constitution, namely:

- a. The Regional Representative Council may propose to the House of Representatives bills related to regional autonomy, central and regional relations, the formation and expansion and merger of regions, management of natural resources and other economic

resources, as well as those related to regional central financial balancing;

- b. The Regional Representative Council participated in discussing the bills related to regional autonomy; central and regional relations; the establishment, expansion and merger of regions, management of natural resources and other economic resources, as well as financial considerations from the central and regional levels; as well as giving advice to the House of Representatives on bills on the State revenue and expenditure budget and bills related to taxes, education and religion.

Furthermore, the legislative authority possessed by the United States Senate is written in the Constitution. The power to legislate or form law is vested in the House of Representatives and the Senate, which will be discussed together in congress. As stated in the United States constitution Article I Section 7 Clause 1 "All Bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with Amendments as on other Bills."

So it can be concluded that the differences between DPD and the Senate in terms of the legislation are; In the case of proposing a bill, DPD's power is very limited while the Senate has broad and unlimited power. And DPD does not have the authority to form or approve laws, while the Senate's authority can form its own laws which are discussed with the House of Representatives.

## **2. Submission or Consideration of Public Officials Election**

DPD's authority in proposing public officials is regulated in the 1945 Constitution Article 23F section (1) which states "BPK members are elected by the DPR with DPD's considerations and inaugurated by the President".

Meanwhile, the Senate's authority to regulate the election of public officials is written in the United States Constitution Article II Section 2 "he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and

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consuls, judges of the Supreme Court. , and all other officers of the United States,”

As stated in the 1945 constitution, DPD's authority in terms of proposing and electing public officials only concerns the election of members from one institution, namely the Supreme Audit Agency (BPK). In accordance with the constitution, it is the DPR that elects BPK members by the agreement of DPD. DPD in this case only has the authority to propose or provide considerations and does not have the authority to determine BPK members. If DPD's consideration is not conveyed, the election of BPK members will still be carried out. This indicates whether or not there is a DPD consideration, it will not affect the implementation of the election for BPK members.

Meanwhile, in the United States Constitution, it is the Senate that has the authority to decide or reject submission regarding the appointment of a public official submitted by the President, although the Senate also has the right to make such a proposal. In this regard, the ranks of public officials proposed by the Senate are broader, namely regarding the positions of the Cabinet of Presidents, Ambassadors, Supreme Court Justices, Federal Judges and certain officials in the executive department, independent institutions and certain supervisory boards.

It can be concluded that DPD RI only has the authority to propose the election of members of one institution, namely the Supreme Audit Agency (BPK), and DPD does not have the authority to decide it. The appointment of these members remains with the President. While the authority that the United States Senate has regarding the appointment of public officials, its authority is not only related to the election of members from one institution but is more extensive and has the authority to propose public officials on its own initiative and can decide or reject proposals for public officials on the President's submission. This authority gives the Senate stronger power regarding the selection of public officials.

### **3. *The Authority of Law Supervisor***

DPD's authority as a supervisor is regulated in the constitution of Article 22D paragraph (3): "DPD can supervise the implementation of laws on regional autonomy, formation, expansion and merger of regions, central and regional relations, management of natural resources and other economic resources, implementing the state revenue and expenditure budget, education, and religion and submitting the results of their supervision to the DPR as material for consideration in order to follow up."

In carrying out its supervisory duties, DPD may hold joint meetings with local governments, DPRD's, and elements of society in their constituencies. Even though it has the authority as a supervisor, DPD's role as a supervisory function is very small because it does not have the right to follow up on its supervision. DPD can supervise the implementation of laws, which in turn, the results of its supervision cannot be followed up by DPD itself, because it submits the results of its supervision to the DPR as consideration. Thus, it is the DPR that determines whether or not the results of the supervision are used.

The authority as the supervisor of this law is the authority of DPD which only concerns the supervision of regional regulations. Whereas the DPR still has greater authority to supervise the implementation of laws. Meanwhile, the things concerning this authority in the United States government system are submitted to the legislative body in the respective federal governments.

### **4. *Breaking and adjudicating impeachment***

One of the powers of the House of Representatives, as mandated by the constitution regarding impeachment, is written in Article 1 Section 2, which states "The House of Representatives shall choose their Speaker and other Officers; and shall have the sole Power of Impeachment."

If an official has been impeached by the House of Representatives, it will be discussed through the Senate and no one

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will be found guilty without the consent of two-thirds of the Senate members who are present. The Senate's authority is written in the United States Constitution Article I Section 3 "The Senate shall have the sole Power to try all Impeachments ..."

The authority regarding impeachment belongs to the House of Representatives but those who judge in this matter are owned by the Senate. The Senate has the role of deciding or approving impeachments made by the House of Representatives. DPD does not have any authority related to this matter. The authority to apply for impeachment in Indonesia is entirely delegated to the DPR, but the next one to decide is the Constitutional Court. Submission of impeachment, in this case, is only made to impeach the President/Vice President.

### **5. *Accepting or rejecting international treaty***

In relation to any treaty made by the executive, it must deal with the Senate. Although the President, Senate, and the House of Representatives have different institutional interest, they have a common responsibility in making international treaty which is of national interest in the most effective and efficient way. The authority of the Senate to provide input and approval gives precaution to an international treaty before it is ratified into a legal agreement.

Although Senate sometimes has the role of initiating or developing an agreement, the current role of the Senate focuses on assessing whether a completed agreement can be ratified by the state. The Senate's advice and approval is included at the time of approval by the president. When the Senate gives consideration to an agreement, it can be in the form of written approval, agreeing with conditions, rejecting and returning it, or preventing its validity by withholding the agreement. A treaty must be approved by two-thirds of the Senate members. Senate can change or influence the contents of the treaty before submission. The authority to enter into international agreements is the authority possessed by the executive; all of these agreements are first submitted to the Senate for consideration whether the

agreement can be approved or not. Similar to Indonesia, the authority to make agreements is owned by the executive, but with the approval of the House of Representatives (DPR). This means that DPD does not have the authority to grant approval for international treaty but the authority is given to DPR.

## **CONCLUSION**

The Regional Representative Council of the Republic of Indonesia and the United States Senate both have their own power as stipulated in the the constitution of each institutions. The Regional Representative Council of the Republic of Indonesia within the framework of the legislative body in Indonesia is the second chamber which has the following powers:

1. DPD is a proponent of the Bill
2. DPD's authority in the discussion and consideration of the Bill.
3. DPD has the authority to oversee the law
4. DPD's authority in giving consideration to prospective members of the BPK.

The same position for the Senate within the framework of the legislative body has a role as the second chamber which has the following powers:

1. Reviewing and discussing the bills that are proposed or made with the House of Representatives
2. Deciding and adjudicating impeachments submitted by the House of Representatives
3. Deciding or rejecting the public official proposed by the President
4. Accepting or rejecting the International treaty.

The similarities and differences between the Regional Representatives Council of the Republic of Indonesia and the United States Senate can be seen through their legislative power and proposal for public officials. The fact that DPD has very limited power in giving opinion and suggestions regarding the process of formulating the law. This means that DPD is expert staff that functions to propose, but does



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not have the authority as "decision-maker" in the process of forming laws. Meanwhile, the legislative authority in the United States is held by two chambers, namely the Senate and the House of Representatives, which have a balanced and equal legislative role and function. It can be said that the Senate's authority is unlimited in terms of proposing a bill. The Senate can submit any bill on his own initiative and pass it through congress with the House of Representatives.

Furthermore, the authority possessed by DPD regarding proposing public official is only related to one institution, the Supreme Audit Agency (BPK). It is only as a consideration, and the President determines it. Meanwhile, the United States Senate has authority not solely in relation to the election of members from one institution but is more extensive and has the authority to propose public officials on their own initiative and can decide or reject the submission of public official based on the President's submission.

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