

CONSTITUTIONAL RELATIONS BETWEEN THE PRESIDENT, THE HOUSE OF REPRESENTATIVES, AND THE REGIONAL REPRESENTATIVE BOARDS IN LAWMAKING AFTER THE AMENDMENT OF THE 1945 CONSTITUTION

¹A. Fatoni, ²Arif Rahman

¹Student, ²Lecture of Constitutional Law Program, Faculty of Sharia, Islamic State University of Sultan Maulana Hasanuddin Banten

Email: fatoni1512@gmail.com, arif.rahman@gmail.com

Article History	:	
<i>Submission</i>	:	24 Oct 2024
<i>Last Revisions</i>	:	20 Des 2024
<i>Accepted</i>	:	27 Des 2024
<i>Copyedits Approved</i>	:	31 Des 2024

Abstract

Amendments to the 1945 Constitution shifted legislation authority from the President to the House of Representatives. However, the strengthening of the House of Representatives into a 'super parliament' does not necessarily give it absolute power in lawmaking. Every draft bill, whether originating from the House of Representatives or the President, must be discussed and approved together to be enacted. From the outset, the 1945 Constitution did not apply the pure doctrine of Montesquieu's trias politica. The separation of powers is understood in the sense of 'distribution of power', making the House of Representatives and the President both have legislation authority. The bicameral parliament system allows the Regional Representative Boards to be able to submit draft bills relating to autonomous authority and participate in joint discussions. The participation of the executive in the discussion of the draft bill with the legislative is because the executive holds the function of implementing the law. Thus, the draft bill must be discussed together to obtain the approval of both institutions. Once approved, each draft bill will then be approved by the President

Keywords: Constitutional relations; legislation; government; parliament.

A. INTRODUCTION

The doctrine of "trias politica" proposed by Montesquieu, requires a concept of separation of state power into three main power components, namely the Legislative, Executive, and Judiciary. This separation is a necessity to prevent the concentration of power, considering that in the administration of a government, power should not be centered on one component of government alone, this is certainly to avoid abuse of power in the government body.

Guided by Montesquie's teachings above, inspired the thoughts of legal experts in interpreting these teachings into the form of implications that power must be permanently separated and carried out by its respective organs.¹ This separation is of course intended so that in exercising power, the state does not act based on one hand, but is divided into several branches of power that balance and supervise each other, thus known as the mechanism of checks and balances.

In the Indonesian constitution - the 1945 Constitution - before the amendment, the percentage of power tended to be dominant in the hands of the President.² This can be seen from the provisions of Article 5 paragraph (1) of the 1945 Constitution which states that "The President has the power to form laws with the approval of the House of Representatives"³, then in Article 21 paragraph (1), "Members of the House of Representatives have the right to propose draft laws". This clearly shows the dominance and intervention of executive power over legislative power.

Supposedly, the executive is an actor in exercising the authority to execute legislation made by the legislature, meaning that the power to form laws (legislation) is in the hands of the DPR as a legislative body. The executive is authorized only to execute the regulations made by the legislature. However, in the provisions of the 1945 Constitution before the amendment, the power to form laws was instead in the hands of the President, the DPR was only at the limit of approving,⁴ although the DPR also had the right to propose draft laws to the President.

Nevertheless, the amendments to the 1945 Constitution were a breath of fresh air for Indonesia's legal order. Extreme changes to the power of legislation place the DPR as the main institution holding the power to form laws. The post-amendment 1945 Constitution provides a shift in legislation power from the President to the DPR. The provision is contained in Article 20 paragraph (1) which states, "The House of Representatives has the power to form laws", while Article 5 paragraph (1) states, "The President has the right to propose draft laws to the House of Representatives".⁵ This shift in power makes the DPR

¹ Ernawati Munir, 'Laporan Akhir Pengkajian Hukum Tentang Hubungan Lembaga Negara Pasca Amandemen Uud1945 Departemen Hukum Dan Hak Asasi Manusia Badan Pembinaan Hukum Nasioanal Tahun 200', *Departemen Hukum Dan Hak Asasi Manusia*, 2005, 16. Hal. 57.

² Aidul Fitriaciada Azhari, 'Evaluasi Proses Amandemen UUD 1945: Dari Demokratisasi ke Perubahan Sistem', *Jurnal Ilmu Hukum*, Vol. 9, No. 2, September 2006: 158-171.

³ Nasional, 'Undang-Undang Dasar Negara Republik Indonesia 1945', *Nasional*, 105.3 (1945), 129-33 <<https://webcache.googleusercontent.com/search?q=cache:BDsuQOHoCi4J:https://media.neliti.com/media/publications/9138-ID-perlindungan-hukum-terhadap-anak-dari-konten-berbahaya-dalam-media-cetak-dan-ele.pdf+&cd=3&hl=id&ct=clnk&gl=id>>.

⁴ K Romaliani, 'Hubungan Kewenangan Presiden Dengan Dpr Dalam Pembentukan Undang-Undang Pasca Perubahan UUD 1945', *Jurnal Wacana Hukum*, IX.April (2010), 74-84 <<http://ejurnal.unisri.ac.id/index.php/Wacana/article/view/305>>.

⁵ Pemerintah Indonesia, 'Perundang-Undangan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945', *Undang-Undang Nomor, 23 (2017), 1* <https://www.mpr.go.id/img/sosialisasi/file/1610334013_file_mpr.pdf>.

a super parliament, a representative institution with enormous authority.⁶ However, this is an attempt to restore the legislative power of the 19th century, during which time the legislative power was very dominant. This prominence was a manifestation of the people's increasing aspirations over the dominance of tyrannical kings at the time, said Jimly Asshiddiqie.⁷

Amendments to the 1945 Constitution of the Republic of Indonesia not only brought changes to the constitutional structure of Indonesia, but the changes themselves also had an impact on the authority and working relationships between each of the state's higher institutions, especially in terms of lawmaking. The shift of legislative power from the president to the DPR, as well as the emergence of the DPD Institution also impacted changes in the format of law formation. So, the problem to be studied lies in how is the constitutional relationship between the President, DPR, and DPD in the formation of laws after the amendment of the 1945 Constitution?

B. RESEARCH METHODS

The research method used in this research is juridical-normative,⁸ which is research that refers to legal norms using statutory and conceptual approaches. The nature of the research is descriptive-analytical, which reveals the laws and regulations relating to legal theories that are the object of research.⁹ The data source used is secondary data. The legal materials used are primary legal materials that are authoritative and have binding legal force, such as the 1945 Constitution, as well as related laws and regulations; secondary legal materials in the form of literature outside of primary legal materials obtained from books related to the object of research, journals, articles, theses, dissertations, and other related publications. The data collected is then analyzed qualitatively to obtain research conclusions following the focus of the problem.

C. RESULTS AND DISCUSSION

The 1945 Constitution of the Republic of Indonesia does not include an explicit form of definition or scope of limitation related to the definition of law. Article 20 of the 1945 Constitution (after the amendment) mentions the authority of the DPR to form laws with the agreement of the government (president) but does not explain the scope of the limitations of the laws in question. Moreover, the use of the term "law" in lowercase letters, does it have a different meaning from the word "Law" in capital letters?

The use of capitalization in the word "Law" usually refers to the meaning of the name or designation of a law that is definite, that is, it is directed to a law with a certain number and name. For example, Law No. 18/2003 on Advocates. Meanwhile, the use of the word "law" with lowercase letters is intended in a general sense (genus), not yet certain or not yet related to a certain number and name.¹⁰ Thus, the use of the word "law" above refers to the law as a legal text in a broad sense, which concerns certain materials and forms. This

⁶ Deni Syaputra, 'Kewenangan Presiden, DPR Dan DPD Dalam Pembentukan Undang-Undang Di Republik Indonesia', *Jurnal Menara Ilmu*, XII.4 (2018), 29-38
<<http://jurnal.umsb.ac.id/index.php/menarailmu/article/viewFile/731/650>>.

⁷ Munir. Hal. 59.

⁸ Suteki dan Galang Taufani, *Metodologi Penelitian Hukum*, PT RajaGrafindo, Depok, 2018, hlm. 175

⁹ Zainuddin Ali. (2016). *Metode Penelitian Hukum*. Sinar Grafika, Jakarta. Hal. 105-106

¹⁰ Jimly Asshiddiqie, "*Perihal Undang-Undang di Indonesia*", Sekretariat Jendral dan Kepaniteraan Mahkamah Konstitusi, Hal. 32.

means that when talking about the DPR as an actor of legislation, the law in question is any form of regulation stipulated by the legislature to bind the public, which can be associated with the notion of "enacted law", "statute" or legislation in a broad sense.¹¹

Regulations stipulated by the legislature are certainly different from regulations stipulated by institutions outside the legislature, such as the executive or judiciary. For example, in the executive branch, the government has the authority to regulate by stipulating Government Regulations (PP) or Presidential Regulations (Perpres), and then in the judiciary, the Supreme Court has the authority to regulate and stipulate Supreme Court Regulations (PERMA). Therefore, legislative activities are often distinguished between the notions of judicial legislation, legislation act, and executive act or executive legislation. Thus, regulations enacted by the legislature - laws - are legislative acts, i.e. legal acts formed by the legislature, - the core role holder as the elected representative of the people and representing the interests of the sovereign people - with the joint approval of the executive.

The validity and binding force of laws for the public derive their legitimacy from the consent of the people as the holders of sovereignty. This is a fundamental characteristic of a state that echoes the principles of democracy, where the people have the right to determine the direction and policies of the state with the intermediary of the people's representative body - in this case, the DPR - to voice their aspirations. The government as the recipient of the mandate to carry out state duties should not unilaterally determine everything related to state policies that will bind citizens with obligations that are not agreed upon by themselves, both regarding freedom (liberty), equality, and ownership (property). If the policies issued by the state are deemed to burden the people, then the people are obliged to express their consent through their representatives in the legislature. Therefore, state policies must be contained in the form of laws as legislative products.¹²

In Indonesia, the authority to make laws is not absolutely held by the parliament, but also by other state institutions. This is because Indonesia is not an adherent of pure trias politica teachings, which in the implementation of state administration divides state power into legislative, executive, and judicial institutions, each of which stands alone. In the Indonesian constitutional system, the function of a state institution can also be owned by other state institutions. When guided by the 1945 Constitution of the Republic of Indonesia, Indonesia does not adhere to the pure teaching of trias politica in the sense of separation of powers, but in the sense of distribution of powers between the legislative and executive powers. That is, outside of the DPR - in this case, the President and DPD - both have the authority in the formation of laws.¹³

1. Parliament's Power in Lawmaking

The amendments to the 1945 Constitution of the Republic of Indonesia brought drastic changes to the Indonesian constitutional system. Article 20 paragraph (1) of the 1945 Constitution after the amendment explicitly states, "The House of Representatives has the power of lawmaking", then Article 5 paragraph (1) (before the amendment) which originally read, "The President has the power of lawmaking with the approval of the House of Representatives" after the amendment reads, "The President has the right to propose draft bills to the House of Representatives." This indicates a significant change in the form

¹¹ Jimly Asshiddiqie. Hal. 33.

¹² Jimly Asshiddiqie. Hal. 5.

¹³ Munir. Hal. 57.

of the transfer of the power to form laws from the hands of the President to the hands of the House of Representatives. Jimly Asshiddiqie calls the transfer of power a shift in legislative power from the hands of the President to the hands of the DPR. This makes the President no longer the main actor of legislation (primary legislator) as before.¹⁴

In addition to the power as the main actor in the lawmaking, Article 21 of the 1945 Constitution also stipulates that every member of the House of Representatives has the right to propose a draft bill with conditions and procedures regulated in the rules of procedure. In more detail, the provisions in Article 20 paragraph (1) emphasize that, "The House of Representatives has a legislative function, a budgetary function, and a supervisory function". In other words, the powers of the DPR include legislation, budgeting, and controlling powers.¹⁵ The following is a more complete description of the provisions of Articles 20 and 20A of the 1945 Constitution:

Provisions in Article 20:

- 1) The House of Representatives holds the power to make laws.
- 2) Every draft law is discussed by the House of Representatives and the President for joint approval.
- 3) If the draft law under discussion does not receive collective approval, it may not be resubmitted to the House of Representatives at that time.
- 4) The President ratifies the draft law that has been jointly approved to become law.
- 5) If the President does not ratify the draft law that has been jointly approved, then within thirty days after the draft law is approved, the draft law shall become law and must be promulgated.

Provisions in Article 20A:

- 1) The House of Representatives has a legislative function, a budgetary function, and a supervisory function.
- 2) In carrying out its functions, in addition to the rights set out in other articles of this Constitution, the House of Representatives has the right of interpellation, the right of inquiry, and the right to express an opinion.
- 3) In addition to the rights set out in other articles of this Constitution, each member of the House of Representatives shall have the right to ask questions, submit proposals and opinions, and the right to immunity.
- 4) Further provisions concerning the rights of the House of Representatives and the rights of members of the House of Representatives shall be regulated by law.

In every draft bill, it is a must to be discussed by the DPR and the government to obtain joint approval. To be passed into law, the draft bill must be jointly approved by the Parliament and the President or the Government. This is an absolute requirement, as other countries require draft bills to always be discussed by Parliament and the Government, because in the future it is the government that carries out the function of implementing the law, so the government must participate in discussions with parliament to obtain joint approval. After obtaining joint approval, each draft bill will then be duly passed by the President.¹⁶

2. Constitutional Relations between the House of Representatives and the President in Lawmaking

¹⁴ Jimly Asshiddiqie. Hal 318.

¹⁵ Pemerintah Indonesia. Hal. 63.

¹⁶ Jimly Asshiddiqie. Hal 318.

As explained earlier, the power of lawmaking, before the amendments to the 1945 Constitution, was vested in the president with the approval of the DPR. As Article 5(1) reads, "The President has the power to form laws with the approval of the House of Representatives". This is certainly a very fundamental deviation from the principle of state administration. The authority to form laws should be in the hands of the legislative body as an extension of the people as the holder of popular sovereignty. But instead of being the core actor in the legislative authority, the DPR only functions as a rubber stamp "approval body" for the draft laws that have been formed by the president.

The overpowering distribution of power to the president, who is the supreme leader of the executive, has resulted in many legislative products that only accommodate the interests of the ruler rather than the people. This is reminiscent of Lord Acton's statement that power always tends to develop into arbitrariness, and absolute power also tends to be absolute arbitrariness (Power tends to corrupt and absolute power corrupts absolutely).¹⁷ The state is always synonymous with power, and power tends to lead to arbitrariness, corruption, in the sense of abuse of power.¹⁸ Murray N. Rothbard, in his book titled *Anatomy of the State*, reveals that the state is generally interested in protecting itself rather than its people,¹⁹ meaning that the government as the embodiment of state power also has its own interests and goals which sometimes harm the public interest.

After the amendment of the 1945 Constitution, the authority to form laws "legislative act" was transferred to the DPR as in the amendment of Article 5 paragraph (1) juncto Article 20 paragraph (1) in the first amendment of the 1945 Constitution which was reaffirmed in the addition of article 20 paragraph (5) of the second amendment of the 1945 Constitution, where the power to form laws is in the hands of the House of Representatives, while the President is given the authority in the form of the right to submit draft laws to the House of Representatives for joint discussion. However, although the House of Representatives holds the main power in the lawmaking, the ratification of the law itself remains in the hands of the president.

However, the President's power in lawmaking is only limited, in other words, the President is not weakened in his legislative power. From a constitutional point of view, the presidential system adopted by Indonesia positions the President as both head of state and head of government (single executive).²⁰ Both positions are fused in the office of the president, both as ceremonial power and political power. This means that the president has a single position in running the state government and is positioned as the highest organizer of government.

As the highest organizer of government, all duties and functions of *staatregering* rest with the president. George Jellinek states that government contains formal and material forms.²¹ In formal form, government means the power to regulate and decide. Meanwhile,

¹⁷ Lord Acton sebagaimana dikutip Jimly Asshiddiqie, "*Konstitusi dan Konstitualisme Indonesia*", Sekretariat Jendral Mahkamah Konstitusi Republik Indonesia, Hal. 176.

¹⁸ Syaputra. Hal. 33.

¹⁹ Murray N. Rothbard, *The Anatomy of the State, Contemporary Anarchism*, 2017 <<https://doi.org/10.4324/9781351319324>>.

²⁰ Sudirman, 'Kedudukan Presiden Dalam Sistem Pemerintahan Presidensial', *Fakultas Hukum, Universitas Brawijaya*, 2013, 1-27 <<http://hukum.studentjournal.ub.ac.id/index.php/hukum/article/view/526>>.

²¹ Sita Agustina, 'Analisis Tentang Pengaturan Oleh Pemerintah Dalam Sistem Pemerintahan Negara Hukum Indonesia', *Cakrawala Hukum*, 5.2 (2014), 168-79 <<https://jurnal.unmer.ac.id/index.php/jch/article/view/698>>.

in the material form, it contains elements of commanding and executing. If guided by Jelinek's statement, the power to regulate can be interpreted as the power to form regulations. Thus, the President as the holder of government power, means organizing government and regulation. So it can be said that the President can form laws and regulations.²²

Based on this description, then associated with the presidential system adopted by the 1945 Constitution, it must be understood that the power to form laws and regulations in question is the power of regulations under the law. In other words, the authority to form laws in the form of an "executive act", namely the authority to form laws and regulations outside the "legislative act". Such as Government Regulation in Liew of Law (*Peraturan Pemerintah Pengganti Undang-Undang/PERPU*) stipulated by the president in the event of a compelling emergency, Government Regulation (*Peraturan Pemerintah/PP*) stipulated by the president to implement the law, and Presidential Regulation (*Peraturan Presiden/Perpres*).²³ Meanwhile, at the Law level, it is still the authority of the DPR. This is because the purpose of the presidential system itself is to create a stable government that is accountable to the public.

However, although the authority to form laws is in the hands of the DPR, the President's power gap tends to be still strong with the joint discussion stipulated in Article 20 paragraph (2). The strength of the President's position is also reflected in paragraph (3) of Article 20 of the first amendment to the 1945 Constitution, which states that if it does not receive joint approval, the draft law may not be resubmitted in the trial of the DPR at that time.²⁴ This has certainly sparked debate among experts. The reason is that the power to make laws is indeed vested in the DPR, but on the other hand, the power is also given to the President. This kind of provision can certainly cause problems in practice. It is possible that during the joint discussion, there is a clash of opinions between the DPR and the President so they do not get joint approval. For example, the DPR does not approve a draft law proposed by the President, and the President refuses to ratify a draft that has been approved by the DPR. This can lead to a "deadlock", causing disharmony in the working relationship between the President and the DPR.²⁵

Regardless, the role of the president to be able to provide input and consideration in discussions with the DPR is intended to avoid the absolute power of the DPR in the formation of laws. The provision to give a veto to the President is understood because it is the President who will implement the law. Therefore, in the legislative process, the president's authority as the executive is only related to planning laws and discussing them with the DPR until they become laws.

3. Constitutional Relations Between the House of Representatives and the Regional Representative Boards in Lawmaking

Theoretically, the use of a parliamentary system in a country is influenced by the character of representation adopted. Jimly Asshiddiqie said, three characteristics of representation in the parliamentary system, including: 1) Political representation which produces political representatives with political party or non-political party backgrounds,

²² Munir. Hal. 67

²³ Syaputra. Hal. 33.

²⁴ Pemerintah Indonesia. Hal. 53.

²⁵ Lili Romli, 'Problematik Dan Penguatan Sistem Presidensial', *Jurnal Communitarian*, 1.1 (2018), 5-33 <<https://doi.org/10.56985/jc.v1i1.70>>.

2) Regional Representation (regional/territorial representation) which produces regional representatives from each autonomous government area, 3) Group Representation (functional representation) which produces representatives of functional groups.²⁶ If the country embraces one of the three, the structure of the representative institution is reflected in the structure of a unicameral parliament. If the system adopted includes two functions, then the two functions are institutionalized in the structure of a two-chamber parliament (bicameral parliament). If the system adopted includes three functions, then the three functions are institutionalized in a three-chamber parliament structure (tricameral parliament).

In Indonesia, according to the 1945 Constitution, the character of representation used is Political Representation through the House of Representatives (DPR) and Regional Representation through the Regional Representative Board (DPD). This means that Indonesia theoretically adheres to a bicameral parliamentary system,²⁷ where Indonesia adheres to two of the three characteristics of representation, namely political representation and territorial/regional representation. In carrying out its functions, DPR doubles as a political representative as well as a representative of the people with the portion of duties and functions as stipulated in Article 20A paragraph (1) of the 1945 Constitution, including DPR has the duties and functions of legislation, supervision (controlling), and budgeting (budgeting). Not much different, DPD also carries the same function as DPR which is legislation, supervision, and budgeting.²⁸ However, apart from that all the duties, functions, and authority of DPD tend to be weaker than DPR. For example, in the legislative function, the regulation in Article 20 of the 1945 Constitution states that the DPR is the holder of power in the formation of laws, while the DPD is only given the right to propose certain laws relating to regional autonomy following Article 22D paragraph (1) of the 1945 Constitution. The strong position of DPR compared to DPD shows that the representative system adopted by Indonesia is a weak bicameral system (soft bicameralism).²⁹

In the legislation function, the pattern of working relationship between DPR and DPD is a functional relationship pattern. Where both institutions have the same duties, functions, and authority in the field of legislation. The pattern of working relationship is found at the stage of submission of the bill, discussion, until the enactment of a bill. In the stage of filing the bill, DPD can submit a bill relating to regional autonomy, central and regional relations, the establishment and merger and expansion of regions, the management of natural resources and other economic resources, as well as those relating to the financial balance between the center and the regions to DPR. Then the draft law will only be brought into discussion with the President if it is accepted and approved by the DPR. This provision follows Article 22D of the 1945 Constitution. But in terms of the submission of the draft

²⁶ Jimly Asshiddiqie, 'Pengantar Ilmu Hukum Tata Negara Jilid 1', *Buku Ilmu Hukum Tata Negara*, 1 (2006), 200 <www.jimly.com/pemikiran/getbuku/4>.

²⁷ Miki Pirmansyah, 'Eksistensi Dewan Perwakilan Daerah Dalam Sistem Bikameral Di Indonesia', *Jurnal Cita Hukum*, 2.1 (2014) <<https://doi.org/10.15408/jch.v1i1.1461>>.

²⁸ DPD RI, 'Peraturan Dewan Perwakilan Daerah Republik Indonesia Nomor 6 Tahun 2012 Tentang Pedoman Pelaksanaan Pengawasan Dewan Perwakilan Daerah Republik Indonesia', *Dewan Perwakilan Daerah Republik Indonesia Peraturan*, 2012, 250–250.

²⁹ Adika Akbarrudin, 'Pelaksanaan Fungsi Legislasi DPR RI Dan DPD RI Pasca Amandemen UUD 1945', *Pandecta: Jurnal Penelitian Ilmu Hukum (Research Law Journal)*, 8.1 (2013), 52–66 <<https://journal.unnes.ac.id/nju/index.php/pandecta/article/view/2352>>.

law, Article 147 of Act No. 27 Year 2009 on the MPR, DPR, DPD, and DPRD³⁰ confirms that if the draft law proposed by DPD is accepted or approved by DPR, then the draft law becomes DPR's draft law.

At the discussion stage, DPD is authorized to participate in the discussion of the draft law with DPR and the president through two levels of talks, namely: 1) Level I talks in the commission meeting, joint commission meeting, Legislation Committee meeting, Budget Committee meeting, or special committee meeting; 2) Level II talks in the plenary session. At the Level I talks, DPD has the right to deliver views and mini opinions at the end of Level I talks if the draft law discussed is related to the authority of DPD as referred to in Article 71 letter e of Act No. 27 Year 2009. Likewise, at the stage of level II talks, DPD has the right to express its views in the joint discussion. If noticed, the participation of DPD in the discussion does seem less and limited, unlike the DPR which is dominant in everything from submission to the decision of whether the law is approved or not.³¹

The limited power of DPD is difficult to argue, this is because the existence of DPD itself is currently more or less limited to the sub-ordination of DPR. Although the DPD has the same authority as the DPR, the authority is only limited to matters relating to autonomy authority. Instead of gaining balanced power - like a bicameral system in general - DPD seems only as an extension of DPR at the regional level. Whereas supposedly, in a bicameral system, each chamber has relatively balanced authority to create a mechanism of checks and balances.

D. CONCLUSION

Amendments to the 1945 Constitution of the Republic of Indonesia have created a significant shift in power in lawmaking. The power that was originally in the hands of the President, 'executive heavy', became the power of DPR, 'legislative heavy'. In addition, the emergence of the DPD institution as a 'regional representation' is a renewal of the chaotic bicameral parliamentary system in Indonesia.

The constitutional relationship between the three institutions creates a complex pattern of working relationships in law-making. The DPR holds the dominance of power in the legislative function, making it the main actor in the formation of laws in the function of political representation as well as representation of the people. The President, in addition to his right to the authority to submit draft laws to DPR to be discussed together, also has the power in the ratification of the draft law into law. The DPD can submit draft laws relating to its autonomous authority to the DPR to be approved and discussed with the DPR and the President. DPD can also participate in the joint discussion of the bill with DPR and the President.

Every draft bill, whether it comes from the DPR - including draft bills originating from the DPD, if approved by the DPR then it becomes a DPR bill - or the President will be discussed together to obtain mutual consent. Without the agreement between the two parties, the draft law can not be passed into law. As we understand, since the beginning, the 1945 Constitution did not apply Montesquie's Trias Politica purely. The concept of separation of powers was adopted in the sense of power-sharing, "distribution of power", making state institutions not stand on their own. This means that legislative power does not

30 DPR RI, 'Undang-Undang Tentang MPR, DPR, DPD, & DPRD (UU No. 27 Tahun 2009)', 2009, 1-239 <http://www.dpr.go.id/dokjdi/dokument/uu/UU_2009_27.pdf>.

31 Akbarrudin. Hal. 59-60.

only reside with the DPR but also with the President to create a mechanism of checks and balances.

REFERENCES

- Agustina, Sita, 'Analisis Tentang Pengaturan Oleh Pemerintah Dalam Sistem Pemerintahan Negara Hukum Indonesia', *Cakrawala Hukum*, 5.2 (2014), 168–79 <<https://jurnal.unmer.ac.id/index.php/jch/article/view/698>>
- Akbarrudin, Adika, 'Pelaksanaan Fungsi Legislasi DPR RI Dan DPD RI Pasca Amandemen UUD 1945', *Pandecta : Jurnal Penelitian Ilmu Hukum (Research Law Journal)*, 8.1 (2013), 52–66 <<https://journal.unnes.ac.id/nju/index.php/pandecta/article/view/2352>>
- Asshiddiqie, Jimly, 'Pengantar Ilmu Hukum Tata Negara Jilid 1', *Buku Ilmu Hukum Tata Negara*, 1 (2006), 200 <www.jimly.com/pemikiran/getbuku/4>
- DPR RI, 'Undang-Undang Tentang MPR, DPR, DPD, & DPRD (UU No. 27 Tahun 2009)', 2009, 1–239 <http://www.dpr.go.id/dokjdih/document/uu/UU_2009_27.pdf>
- Munir, Ernawati, 'Laporan Akhir Pengkajian Hukum Tentang Hubungan Lembaga Negara Pasca Amandemen Uud1945 Departemen Hukum Dan Hak Asasi Manusia Badan Pembinaan Hukum Nasioanal Tahun 200', *Departemen Hukum Dan Hak Asasi Manusia*, 2005, 16
- Nasional, 'Undang-Undang Dasar Negara Republik Indonesia 1945', *Nasional*, 105.3 (1945), 129–33 <<https://webcache.googleusercontent.com/search?q=cache:BDsuQOHOci4J:https://media.neliti.com/media/publications/9138-ID-perlindungan-hukum-terhadap-anak-dari-konten-berbahaya-dalam-media-cetak-dan-ele.pdf+&cd=3&hl=id&ct=clnk&gl=id>>
- Pemerintah Indonesia, 'Perundang-Undangan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945', *Undang-Undang Nomor*, 23 (2017), 1 <https://www.mpr.go.id/img/sosialisasi/file/1610334013_file_mpr.pdf>
- Pirmansyah, Miki, 'Eksistensi Dewan Perwakilan Daerah Dalam Sistem Bikameral Di Indonesia', *Jurnal Cita Hukum*, 2.1 (2014) <<https://doi.org/10.15408/jch.v1i1.1461>>
- RI, DPD, 'Peraturan Dewan Perwakilan Daerah Republik Indonesia Nomor 6 Tahun 2012 Tentang Pedoman Pelaksanaan Pengawasan Dewan Perwakilan Daerah Republik Indonesia', *Dewan Perwakilan Daerah Republik Indonesia Peraturan*, 2012, 250–250
- Romaliani, K, 'Hubungan Kewenangan Presiden Dengan Dpr Dalam Pembentukan Undang-Undang Pasca Perubahan UUD 1945', *Jurnal Wacana Hukum*, IX.April (2010), 74–84 <<http://ejournal.unisri.ac.id/index.php/Wacana/article/view/305>>
- Romli, Lili, 'Problematic Dan Penguatan Sistem Presidensial', *Jurnal Communitarian*, 1.1 (2018), 5–33 <<https://doi.org/10.56985/jc.v1i1.70>>
- Rothbard, Murray N., *The Anatomy of the State, Contemporary Anarchism*, 2017 <<https://doi.org/10.4324/9781351319324>>
- Sudirman, 'Kedudukan Presiden Dalam Sistem Pemerintahan Presidensial', *Fakultas Hukum, Universitas Brawijaya*, 2013, 1–27 <<http://hukum.studentjournal.ub.ac.id/index.php/hukum/article/view/526>>
- Syaputra, Deni, 'Kewenangan Presiden, DPR Dan DPD Dalam Pembentukan Undang-Undang Di Republik Indonesia', *Jurnal Menara Ilmu*, XII.4 (2018), 29–38 <<http://jurnal.umsb.ac.id/index.php/menarailmu/article/viewFile/731/650>>
- Toding, Adventus, 'DPD Dalam Struktur Parlemen Indonesia : Wacana Pemusnahan Versus Penguatan DPD in the Structure of The Parliament', *Konstitusi*, 14.2 (2017), 304
- Asshiddiqie, J. *Perihal Undang-Undang di Indonesia*. Jakarta: Konstitusi Press, 2006.

A. Fatoni, Arif Rahman

ADJUDICATION : Journal Knowledge Law, Volume 8 Number 2, Dec 2024. Pp . 169-182

<https://doi.org/10.30656/ajudication.v8i1.8972>

P-ISSN 2613-9995 & E-ISSN 2614-0179

Jimly Asshidiqie, *Konstitusi dan Konstitualisme Indonesia*. Jakarta: Sinar Grafika, 2011.