

## PalArch's Journal of Archaeology of Egypt / Egyptology

### REGIONAL REPRESENTATIVE COUNCIL AS REPRESENTATION OF REGION POST-CONSTITUTIONAL COURT DECISION

*Yogi Ari Hartanto<sup>1</sup>, Dri Utari Christina Rachmawati<sup>2\*</sup>*

<sup>1</sup>Department of Constitutional Law, Faculty of Law, Universitas Airlangga, Surabaya  
(60286), Indonesia

<sup>2</sup>Department of Constitutional Law, Faculty of Law, Universitas Airlangga, Jl. Airlangga  
No.4-6, Surabaya 60286, East Java, Indonesia.

\*Corresponding Author: [driutari03\\_unair@yahoo.com](mailto:driutari03_unair@yahoo.com)

**Yogi Ari Hartanto, Dri Utari Christina Rachmawati. Regional Representative Council As Representation Of Region Post-Constitutional Court Decision --Palarch's Journal Of Archaeology Of Egypt/Egyptology 17(4), 2217-2223. ISSN 1567-214x**

**Keywords: regional representative council, constitutional court, decision, number 10/PUU-VI/2008**

#### **ABSTRACT**

**Purpose of the study:** The objectives of this research are to learn the Original Intent of the establishment of the Regional Representative Council in an attempt to enforce people's sovereignty and learn the legal consequences of the Constitutional Court's (MK) decision Number 10/PUU-VI/2008.

**Methodology:** This study used a descriptive analytical method, which centers on the problem solving, exposure, interpretation, and analysis. The author will attempt to describe the conditional constitutional decision in MK's decision number 10/PUU-VI/2008 as well as the legal concepts and a few social concepts commonly used in the discussion on representative council.

**Main Findings:** The result of original intent of Regional Representative Council's formation as regional delegates is part of People's Consultative Assembly authorized to take care of the interests of people living in the respective region.

**Applications of this study:** Regional Representative Council is an institution established from the third amendment to the 1945 Constitution. DPD, a regional representative institution, is intended as a counterweight to the DPR (House of Representatives).

**Novelty/Originality of this study:** The Constitutional Court's decision No. 10/PUU-VI/2008 created chances for political parties to participate in running for DPD members.

## INTRODUCTION

An administration free from corruption, collusion and nepotism has been an important aspect in the post-reform era. Good governance is carried out at every level of government in Indonesia through the executive, legislative and judiciary institutions (Rizki et al., 2018). The politics are disappointed in the various failures in anti-corruption reform (Bauhr et al., 2019). In order to improve the government system, community representative institutions are guided by the 1945 Constitution.

The 1945 Constitution (UUD 1945) as the constitution of the Unitary State of the Republic of Indonesia is a constitution underlain by the sovereignty of the people. This people's sovereignty is reflected in the presence of the People's Consultative Assembly (MPR) as contained in Article 1 paragraph (2) of the 1945 Constitution. MPR as the highest institution sits above other institutions.

The member structure of the MPR changes over time. Since the amendment to the 1945 Constitution, the composition changed from House of Representatives (DPR), plus Regional Envoys and Group Envoys to members of the DPR plus members of the Regional Representative Council (DPD). DPD is a new institution, a product of the third amendment to the 1945 Constitution. Being a regional representative institution, DPD is intended as a counterweight to the DPR which is positioned as a political representative institution in a two-chamber representative, expected to bridge regional and central interests, and oversee the process of implementing regional autonomy that fights for a just and equal welfare (Sulaiman, 2013:165).

DPD was initiated to have equal position to DPR (Pasaribu, 2017). This equal position aimed to have DPD and DPR as partners in the discussion of each legislative decision to be made. If that happened, the legislative power would be divided, or no longer centered at one institution that can lead to arbitrariness. Achievements in forming legislation products have become more constructive through the consideration of two institutions that represent politics and the region. Legislative and executive authorities develop policies related to government affairs and monitor laws (Moiseev et al., 2019).

Unlike political representation structure in the DPR, membership in the DPD is formed as a territorial representative (Aji, 2018). This certainly cannot be separated from the spirit of the implementation of regional autonomy. This spirit emerged since the New Order government, which had a tendency to centralism and paid less attention to regional conditions. Reforms are expected to form a state based on democratic principles (Voitsikhovskiy et al., 2019). Considering that the Republic of Indonesia is a vast archipelago with a very heterogeneous population composition consisting of multi ethnic tribes, groups, customs and religions, it is self-explanatory that the central government would find it difficult to manage to regional level (Yusuf, 2013).

The consideration for the examination proposal of this law is motivated by the

petitioner who argues that in the absence of individual conditions that limit political party members to run as DPD candidates, it is considered contradictive to Article 22E paragraph (4) of the 1945 Constitution (Nazriyah, 2011). The absence of these conditions allow political party members to run and win election for DPD member, which is feared to hamper the running of members from non-political party, not to mention that regional interests will be outshined by party's interests.

According to Law Number 8 of 2012 concerning General Election, the process of DPD member election went smoothly, but after that, it was unearthed that some DPD members were connected to several political parties. The connection was challenging to explain, whether the membership is from before or after DPD election (Saleh et al., 2019).

From the above elaboration, the author conducts a research titled "Regional Representative Council as Representation of Region Post-Constitutional Court Decision Number 10/PUU-VI/2008". The study aims to learn the original intent of the formation of the Regional Representative Council in an attempt to enforce people's sovereignty and the legal consequences of the Constitutional Court's decision Number 10/PUU-VI/2008.

## **RESEARCH METHOD**

The sources used in this paper were obtained from library research of legal materials, which consisted of primary and secondary legal materials. Primary legal material is an authoritative legal material, which means it has authority (Mahmud, 2015). Secondary legal materials include all publications on law that are not the official documents like the primary materials (Mahmud, 2015).

The author used descriptive analytical method for the analysis, which is a method that centers itself on the problem solving, exposure, interpretation, and analysis to produce accountable data-based conclusions. The author attempted to explain the conditional constitutional decision of Constitutional Court number 10/PUU-VI/2008, as well as legal concepts and a few social concepts commonly used in the discussion about representative institutions.

## **RESULTS AND DISCUSSION**

### **Original Intent of the Establishment of the Regional Representative Council in the 1945 Constitution of the Republic of Indonesia.**

The concept of regional representation is closely related to the relationship between the people and the region. This representation is needed for the existence of people's participation in government. The people, through representatives, must clearly know and be involved in the process of making legislation products, which will be binding to all the people in their implementation (Efriza, 2014:124).

The concept of this representative was explained by Efriza, who cited Alfred de Grazia, that whatever approach the representative used to carry the assigned tasks, each representative should fulfill certain qualifications that would

guarantee the implementation of the representative function. Representation as far as possible should be an incarnation of the will of the people, so that the election of members of these institutions must be carried out by the people (Efriza, 2014).

Regional representative institutions during the 1945 Constitution were Regional Envoys. Regional Envoys, as part of the MPR at that time, were representatives who were considered to be able to bring the interests of the people in each region and were considered to know and have a comprehensive review of the country's problems in general (Arifin, 2019). Regional Envoys as representatives of a region were established in order to fight for the interests and aspirations of region in national level.

### **Legal Consequences of Constitutional Court's Decision Number 10/ PUU – VI/2008 on the Conditions for Regional Representative Council Membership**

The presence of the Constitutional Court (MK) with their judicial review authority is one form of guarantee effort. Since human rights are regulated in the 1945 Constitution, the Constitutional Court, in addition to having the function of guarding the constitution to be implemented and respected by both the state administrators and citizens, is also a protector of the constitution (Siahaan, 2006).

In the context of constitutional law, the Constitutional Court is constructed as the guard of the constitution that functions to uphold constitutional justice in people's lives. The Constitutional Court is tasked with encouraging and ensuring that the constitution is respected and implemented by all components of the country in a consistent and responsible manner. In the midst of the existing weaknesses in constitutional system, the Constitutional Court acts as an interpreter in hopes that the spirit of the constitution is always intact and co-existing in the lives of the state and society.

The Constitutional Court serves as an institution authorized to examine the substance of the law, which previously did not exist in the New Order era. Judicial review is a mechanism created to give protection of human rights, anticipating possible negative potential from the legislators who want to reduce or undermine human rights and the substance of democracy (Ni'matul Huda, 2014).

In addition, the absence of regulations regarding judicial review has indirectly benefited the authority since no legislative product interferes with it. Therefore, to guarantee that the legislation drafting will be in line with the constitution, mechanisms must be established to supervise through the right to examine (Ni'matul Huda, 2014). Judicial review is a right that can be exercised when the public questions a product of the Law that causes constitutional loss to particular class society.

The decision can be interpreted as a statement made by a judge as an official

who has the authority in a trial. The trial is to settle a case or dispute between the parties. Soedikno Mertokoesoemo (1987) added that decision is not limited to what was said, it is also the statement in written form and then pronounced by the judge at the trial (Mertokoesoemo, 1987). A draft of (written) decision has no power as a decision before it is pronounced at trial by a judge. The decision pronounced in the trial must not be contrary to what is written (Harahap, 1997). Article 47 of Law No. 24 of 2003 concerning the Constitutional Court stated that when the validity of the Constitutional Court's decision is binding at the time the decision was handed down or since it was completely pronounced in a plenary session open to the public (Gaffar, 2009).

This final status of decision is necessary to guarantee the creation of legal certainty. The zero possible legal efforts to take after the issuance of this decision puts this Constitutional Court decision as the one to be accepted as *Res Judicata Facit Ius*, meaning that the decision must be accepted as law in reality (Sambuari, 2013). Decisions as a form of legal action cause conditions where the parties of the case are bound to the issued decisions. The binding power of the Constitutional Court's decision is different from that of ordinary court decisions; not only does it bind the parties to the litigation, but also all people, state institutions and legal entities within the territory of the Republic of Indonesia (Siahaan, 2006).

The parties subsequently bound by this decision can be interpreted as the party who will obey and implement changes in the law created as a result of the decision. This decision shall be applied again to be tested. The Constitutional Court is the first and final level of court, which means that no other legal efforts can be taken. This means that MK's decision is *In Kracht* since this it was issued and has obtained binding power.

## **CONCLUSION**

The Constitutional Court's Decision No. 10/PUU-VI/2008 is classified as conditional constitutional decision. This decision does not actually grant Judicial Review requested by the applicant, and only adds the meaning on Article 13 letter c in its relation with the term of domicile, not a non-political party term. This term gave birth to a new norm issued in Law No. 10 of 2008. The absent of non-political party individual term in Law No. 10 of 2008 which was previously regulated in Law Number 12 of 2003, as well as Constitutional Court's Decision No. 10/PUU-VI/2008 stating that non-political party individual term for DPD member's candidate, is not a norm implicitly embedded to Article 22E paragraph 4 of 1945 Constitution of the Republic of Indonesia. This creates opportunities for political parties' members to participate in the running for DPD member. This political party-affiliated path for DPD member election will be more like a freeway, given that it will be easier to garner support compared to the path of individual member candidate.

## **REFERENCES**

Aji, A. B. (2018). *Politik hukum pengaturan pertanggungjawaban kepala*

- daerah kepada Dewan Perwakilan Rakyat Daerah (*Studi Perbandingan antara Undang-Undang Nomor 22 Tahun 1999 dan Undang-Undang Nomor 23 Tahun 2014*). Universitas Islam Indonesia.
- Arifin, M. Z. (2019). Suatu Pandangan Tentang Eksistensi Dan Penguatan Dewan Perwakilan Daerah. *Jurnal Thengkyang*, 1(1), 1–15.
- Bauhr, M., Charron, N., & Wängnerud, L. (2019). Exclusion or interests? Why females in elected office reduce petty and grand corruption. *European Journal of Political Research*, 58(4), 1043–1065.
- Efriza, S. P. (2014). *Sejarah, Konsep, dan Lanskap Politik Indonesia*, Malang: Setara Press.
- Gaffar, J. M. (2009). Kedudukan, Fungsi Dan Peran Mahkamah Konstitusi Dalam Sistem Ketatanegaraan Republik Indonesia. *Jakarta: Sekretariat Jenderal & Kepaniteraan Mahkamah Konstitusi*.
- Harahap, Z. (1997). *Hukum Acara Peradilan Tata Usaha Negara*. RajaGrafindo Persada.
- Mahmud, M. P. (2015). Penelitian Hukum edisi revisi. *Jakarta: Kencana*.
- Mertokoesoemo, R. M. S. (1987). *Perundang-undangan agraria Indonesia*. Yayasan Badan Penerbit Gadjah Mada, Yogyakarta.
- Moiseev, V. V., Sudorgin, O. A., Nitsevich, V. F., & Stroev, V. V. (2019). Business and Power: Problems of Relationships in Russia. *IOP Conference Series: Earth and Environmental Science*, 272(3), 32149.
- Nazriyah, R. (2011). Kemandirian Penyelenggara Pemilihan Umum (Kajian terhadap Putusan Mahkamah Konstitusi No. 81/PUU-IX/2011). *Jurnal Hukum Ius Quia Iustum*, 18, 107–126.
- Ni'matul Huda, P. H. T. (2014). *Negara Perdebatan & Gagasan Penyempurnaan*, Yogyakarta. FH UII Press.
- Pasaribu, P. (2017). Kedudukan dan Fungsi Dewan Perwakilan Daerah (DPD) Dalam Sistem Ketatanegaraan Indonesia. *Yuriska: Jurnal Ilmiah Hukum*, 2(2), 46–57.
- Rizki, R. R., Natalia, K., Lepong, D. R. U., Hermawaty, T., & Wibowo, A. (2018). An Analysis of Law No. 17 Of 2014 on National Parliamentary Assembly, House of Representative, Regional House Council, and Regional House Representative: Viewed From The Principles of Good Governance. *IOP Conference Series: Earth and Environmental Science*, 175(1), 12127.
- Saleh, K., Ngadino, A., & Rannie, M. (2019). *Larangan calon anggota dewan perwakilan daerah berasal dari pengurus (fungsiaris) partai politik (studi kasus putusan mahkamah konstitusi nomor: 30/PUU/XVI/2018)*. Sriwijaya University.
- Sambuari, F. (2013). Eksistensi Putusan Judicial Review Oleh Mahkamah Konstitusi. *Lex Administratum*, 1(2).
- Siahaan, M. (2006). *Hukum acara Mahkamah Konstitusi, Republik Indonesia*. Mahkamah Konstitusi Republik Indonesia.
- Sulaiman, K. F. (2013). *Sistem bikameral dalam spektrum lembaga parlemen Indonesia*. UII Press bekerjasama dengan LEAD Indonesia Institute, Legal Empowerment and ....
- Voitsikhovskiy, A. V., Bakumov, O. S., Ustymenko, O. S., & Marchuk, M. I.

(2019). *The Legal Mechanisms of Ensuring Regional Cooperation in Combatting Crime Within the Framework of the Council of Europe: Experience of Ukraine.*

Yusuf, M. (2013). *Dewan Perwakilan Daerah Republik Indonesia: arsitektur histori, peran, dan fungsi DPD RI terhadap daerah di era otonomi daerah.* Graha Ilmu.