

# Implications of Regional Representative Council Supervision Arrangements According to the 1945 Constitution of the Republic of Indonesia

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## Abstract

The supervision arrangements for the Regional Representative Council in Indonesia can be said to be still unclear because in Article 22 D paragraph (3) of the 1945 Constitution of the Republic of Indonesia it is emphasized that supervision of the Regional Representative Council requires follow-up by the People's Representative Council. This research aims to analyze the implications of the supervisory arrangements of the Regional Representative Council according to the 1945 Constitution of the Republic of Indonesia. This research is legal research that prioritizes conceptual, historical, and statutory approaches. The research results confirm that the supervisory authority possessed by the Regional Representative Council can be less effective because the follow-up to the results of the Regional Representative Council's supervision will depend greatly on the political will of the People's Representative Council. The weak authority of the Regional Representative Council is due to political and legal matters; changes to the 1945 Constitution place more emphasis on strengthening the institution of the People's Representative Council. Therefore, maintaining the supervisory arrangements of the Regional Representative Council needs to be carried out by amending the 1945 Constitution of the Republic of Indonesia regarding the authority of the Regional Representative Council so that the implications of the supervisory arrangements of the Regional Representative Council become effective and can strengthen the function of checks and balances with the People's Representative Council.

**Keywords:** Regional Representative Council, People's Representative Council, Supervision.

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## I. INTRODUCTION

The Constitution of the Republic of Indonesia (UUD NRI 1945) broadly regulates two things, namely those related to the separation or distribution of powers and the regulation of human rights (Prasetyo, 2023). Separation or division of powers always discusses the separation or division of authority between state institutions. Theoretically, the separation of powers always refers to Montesquie's teachings about the political triad, where state power is divided into 3 branches of power, namely executive, legislative, and judicial (Annisa, 2021).

Montesquie's doctrine of the separation of powers experienced development in its history. Therefore, the pattern of separation of powers between one country and another can be said to have differences. Among the many countries that claim to adhere to the doctrine of the separation of powers, only the United States is considered to consistently implement the doctrine of the separation of powers in a pure manner (Michaels, 2020).

Theoretically, Montesquie's teachings on the separation of powers are divided into legislative power which functions to form laws, executive power which functions to implement laws and judicial power which functions to carry out court functions (Pojanowski, 2019). In its development, legislative power not only functions to form laws but also carries out other functions such as budget functions and supervisory functions (Hananto Widodo, Sudarsono Moh Fadli, 2019)

According to Jimly Asshidique, more countries in the world use the supervisory function than the legislative function for their representative institutions (Asshidique, 2007). People's representative institutions are generally divided into two, namely people's representative institutions which have a one-room structure, and people's representative institutions which have a two-room structure. The principle difference between people's representative institutions that have a one-room structure and those that have a two-room structure is related to the concept of representation (Widiarto, 2021).

Countries that have a people's representative institution with a one-chamber structure only have one representative, namely the political representative. Political representatives are representatives whose

representatives come from political parties (Soesaty, 2024). This chamber of political representatives is usually referred to as the People's Representative Council or *House Of Representative* (Muller, 2020). Meanwhile, countries that have people's representative institutions with a two-chamber structure have two representatives, namely political representatives, and representatives which depend on what the people's representatives concerned will represent (Endah Permatasari & Juwono, 2022).

Elements of representation apart from political representation, in the United States there are representatives from the states which are referred to as *Senate* (Muller, 2020). Meanwhile, in England representatives other than political representatives are usually called *House Of Commons*, there are representatives of the nobility called as *House of Lords* (Budiardjo, 2024). Meanwhile, Indonesia also has representatives from the regions known as the Regional Representative Council. The construction of a people's representative institution in Indonesia, even though it has representatives other than the People's Representative Council which represents politics, and also has a Regional Representative Council which represents regional interests, cannot be called a people's representative institution which has a two-chamber structure.

The structure of the Indonesian people's representative institution cannot be called a people's representative institution with a two-chamber structure which can be seen in the formulation of Article 2 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Article 2 paragraph (1) of the 1945 Constitution of the Republic of Indonesia 1945 states "The People's Consultative Assembly consists of members of the People's Representative Council and members of the Regional Representative Council who are elected through general elections and are further regulated by law." The formulation of Article 2 paragraph (1) of the 1945 Constitution of the Republic of Indonesia does not mention the People's Representative Council and the Regional Representative Council as an institution but does mention members, both members of the People's Representative Council and the Regional Representative Council. Therefore, the formulation of Article 2 paragraph (1) does not confirm that the system of Indonesian people's representative institutions does not adhere to people's representation with a two-chamber structure. Thus, if Indonesia adheres to a representative model with a two-chamber structure, then the formulation should be as follows: "The People's Consultative Assembly consists of the People's Representative Council and the Regional Representative Council...".

According to the 1945 Constitution of the Republic of Indonesia, the People's Representative Council has much stronger authority than the Regional Representative Council. In terms of legislation, the People's Representative Council has the authority to form laws, while the Regional Representative Council's legislative authority is limited to only relating to regional issues. In the process of forming laws in general, the Regional Representative Council is not involved (Aulia et al., 2021).

As is known, the House of Representatives, apart from having authority in the field of legislation, also has authority in the field of supervision and budgeting. In the field of supervision, the Regional Representative Council also has constitutional authority (Manan et al., 2021). The authority of the Regional Representative Council in carrying out supervision is regulated in Article 22 D paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states "The Regional Representative Council can supervise the implementation of laws regarding regional autonomy, the formation, expansion, and merger of regions, relations central and regional, management of natural resources and other economic resources, implementation of the state revenue and expenditure budget, taxes, education, and religion and conveying the results of their supervision to the House of Representatives as material for consideration for follow-up." The supervisory function of the Regional Representative Council as emphasized in Article 22 D paragraph (3) has a vague meaning, especially the follow-up to the supervision of the Regional Representative Council by the People's Representative Council.

Based on the background of the problem above, this research aims to answer the problem formulation, namely: what are the implications of the supervision arrangements of the Regional Representative Council according to the 1945 Constitution of the Republic of Indonesia?

## **LEGAL MATERIALS AND METHODS**

This research explores the implications of supervision of the Regional Representative Council as contained in the 1945 Constitution of the Republic of Indonesia. The object to be studied in this research is the implications of supervision of the Regional Representative Council based on the 1945 Constitution of the Republic of Indonesia. Based on the research object, this research is based on positive law or applicable laws and regulations. The object studied in this research is research in the field of constitutional law.

Based on the research objects above, this type of research is legal research. Legal research is a process of

finding legal regulations, legal principles, and legal doctrines to answer problems encountered (Negara, 2023). This is based on the characteristics of normative legal science.

This legal research uses three approaches, namely:

- 1) Legislative Approach;
- 2) Conceptual Approach; And
- 3) Historical Approach

The statutory approach is an approach that uses statutory regulations. Legislative regulations are written legal norms that are generally binding, starting from the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) to the statutory regulations relevant to this research, namely the 1949 Constitution of the United States of Indonesia and the Law -Provisional Constitution of 1950. Next, the conceptual approach is based on a concept that is not clear in the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), namely the concept of supervision.

As a consequence of legal research, the legal materials used in this research are primary legal materials, secondary legal materials, and tertiary legal materials (non-legal). In normative research, legal materials are very important. Primary legal materials are in the form of statutory regulations, secondary legal materials are in the form of journals, books, papers, and the internet, while tertiary legal materials (non-legal) are in the form of dictionaries and non-legal writings that are related to the research focus.

A. Primary legal materials in this research are legal materials that are the focus of conducting research. These legal materials include:

- 1) 1945 Constitution of the Republic of Indonesia; And
- 2) Constitution of the Republic of the United States of Indonesia (RIS) of 1949.

B. Secondary legal materials are supporting and strengthening legal materials for primary legal materials which include:

- 1) Opinions of constitutional law experts and political-legal experts;
- 2) Books on political science and constitutional law;
- 3) Dissertation, Thesis, or research report;
- 4) Articles and papers; And
- 5) Internet

C. Tertiary (non-legal) legal materials are supporting legal materials from primary legal materials and secondary legal materials. Included in tertiary legal materials are:

- 1) Legal Dictionary; And
- 2) Language Dictionary.

## II. RESULT AND DISCUSSION

Understanding the supervisory function of the Regional Representative Council cannot be separated from the history of the people's representative institutions in Indonesia. There are at least four Constitutions that have been in force in Indonesia, namely the 1945 Constitution, the 1949 Constitution of the United States of Indonesia, the 1950 Provisional Constitution, and the amended 1945 Constitution. The 1945 Constitution regulates the institution of people's representation into two, namely the People's Consultative Assembly as the highest state institution and the People's Representative Council as the highest state institution (Kusuma, 2011).

The existence of the People's Consultative Assembly as the highest state institution has led several experts to perceive that the Indonesian constitutional system adheres to the supremacy of the People's Consultative Assembly, not the supremacy of the constitution like countries that adhere to a presidential system (Soesatyo, 2024). Meanwhile, the People's Representative Council is referred to as a high state institution to differentiate its position from the People's Consultative Assembly, even though some of the members of the People's Consultative Assembly are members of the People's Consultative Assembly.

The position of the People's Representative Council as a high state institution is equivalent to other state institutions such as the President, the Supreme Advisory Council, the Supreme Court, and the Supreme Audit Agency. The position of the People's Representative Council can be said to be quite strategic because in quantity the People's Representative Council constitutes the majority of the membership of the People's Consultative Assembly. Historically, the membership of the People's Consultative Assembly consisted of members of the People's Representative Council, group delegates, and regional delegates.

After changes to the 1945 Constitution, the position of the People's Consultative Assembly as the highest state institution was abolished. The existence of the People's Consultative Assembly remains constitutionally recognized, but the People's Consultative Assembly is no longer the highest state institution. With the disappearance of the nomenclature of the highest state institutions, the nomenclature of the highest state

institutions also disappears, because the emergence of the term high state institutions is a consequence of the existence of the highest state institutions.

The position of state institutions regulated in the Constitution has the same position. Be it the People's Consultative Assembly, the People's Representative Council and others. Therefore, the relationship between state institutions after the changes to the 1945 Constitution is more about a relationship of mutual correction or checks and balances.

*Check and balances* In the post-New Order Indonesian constitutional system, it is more widely interpreted as a mutually corrective relationship between one state institution and another state institution (Syakura, 2022). However, there is also a relationship between *checks and balances* in an internal institution, namely within the people's representative institution. *Check and balances* in a people's representative institution, can be done if the structure of the people's representative institution is two chambers (Ardhanariswari et al., 2023).

In countries with a two-chamber structure of people's representative institutions, the relationship between the two chambers balances each other out. Each country with a two-chamber structure in its representative institutions has its characteristics. The differences in relations between the two chambers in the people's representative institutions will be largely determined by the bicameral model adopted by each country. Giovanni Sartori divides bicameral into three models, namely (Viveros & Mesa, 2015)(Isra, 2019):

1. A weak bicameral system, namely if the power of one chamber is much more dominant than the other chamber;
2. A bicameral system that is symmetrical or relatively equally strong, that is, if the power between the two chambers is almost the same; And
3. *Perfect bicameralism*, is when the power between the two chambers is exactly balanced.

Several countries adhere to its *bicameralism system*, usually placing the Upper House with higher authority than the Lower House, except for the United States. The United States has a Senate that has greater authority than the House of Representatives. The authority of the Senate in the United States is much stronger than that of the House of Representatives (Bilder, 2023). Every international agreement, as well as important appointments, such as Ministers, Ambassadors, and Supreme Court Justices, must be approved by the Senate (Bilder, 2023).

Unlike countries that adhere to *bicameralism*, Indonesia after the changes to the 1945 Constitution did not design a people's representative institution with a two-chamber structure. When compared with the people's representative institutions before the changes to the 1945 Constitution, the people's representative institutions after the changes to the 1945 Constitution are more progressive. Before the amendment to the 1945 Constitution, regional delegates as an element in the People's Consultative Assembly did not have independent authority.

The authority possessed by regional delegates is the institutional authority of the People's Consultative Assembly. This means that regional delegates can only use their authority if they do so together with other elements of the People's Consultative Assembly, such as the People's Representative Council and group delegates. Therefore, the birth of the Regional Representative Council replacing the regional delegate format is something that should be appreciated.

In Article 22 D of the third amendment to the 1945 Constitution, the Regional Representative Council has independent authority, although this authority is limited. The Regional Representative Council has legislative and supervisory authority at the same time. In Article 23 the Regional Representative Council also has a role in budget matters. However, the authority of the Regional Representative Council in legislation, supervision, and budgeting is very limited.

In its legislative function, the Regional Representative Council only has the authority to submit draft laws related to regional autonomy, central and regional relations, formation and expansion and merger of regions, management of natural resources and other economic resources, as well as those relating to central financial balance. and regional (Endah Permatasari & Juwono, 2022)(Syafei & Darajati, 2020). The Regional Representative Council also discussed draft laws relating to regional autonomy; central and regional relations; formation, expansion, and merger of regions; management of natural resources and other economic resources, as well as balancing central and regional finances; as well as providing consideration to the House of Representatives on draft laws on the state revenue and expenditure budget and draft laws relating to taxes,

education, and religion.

Based on the stages of law formation, the Regional Representative Council can only function at the Level I planning, drafting, and discussion stages. Meanwhile, at the Level II discussion stage, the Regional Representative Council is not involved. The Level II discussion stage is also quite crucial because the joint agreement between the Government and the House of Representatives is carried out at this stage.

This joint agreement carried out by the House of Representatives and the President is said to be a quite crucial stage, because approval of a policy, including this draft law, is a form of supervision. If there is a bill that is an initiative of the President, but the Regional Representative Council cannot reject this bill at the approval stage, then this bill will become law without any significant supervision from the Representative Council Area.

Supervision of draft laws originating from the President's proposal is important, because after all the Regional Representative Councils have strong legitimacy because they are legislatures directly elected by the people (Muh. Khaerul Anas, A. Muin Fahmal, 2021). The legitimacy of the Regional Representative Council is also politically stronger than that of the People's Representative Council because the people elect members of the People's Representative Council based on a district system, not proportional.

The authority of the Regional Representative Council which is weaker compared to the People's Representative Council has nothing to do with the model of weak *bicameralism*, because the structure of the people's representative institutions according to the Constitution of the Republic of Indonesia is not *bicameralism*. A people's representative institution with a two-chamber structure can not only be interpreted as having two chambers in one representative system but is also seen in the concept of the people's representative institution, whether the two chambers balance each other or not.

The concept of balancing each other in a two-chamber structure in a people's representative institution is not only related to the legislative authority possessed by each chamber which is equally strong (Manan et al., 2021). But also with the independent authority of each chamber to supervise the Government's performance. Article 22 D of the 1945 Constitution of the Republic of Indonesia does not give full authority to the Regional Representative Council in carrying out supervision. Article 22 D paragraph (4) of the Constitution of the Republic of Indonesia also limits the authority of the Regional Representative Council in supervising the implementation of laws to only regional issues. These limits on the supervision of regional issues will make the authority of the Regional Representative Council weaker than that of the People's Representative Council. The Regional Representative Council cannot supervise Government policies that have a broad impact on the life of the nation and state as the People's Representative Council can do.

The Regional Representative Council as a people's representative institution also has a representation function like that of the People's Representative Council. The representation function serves as a channel for the aspirations and interests of the people (Jaja & Aditya, 2022). The representation function and control function of the People's Representative Institution are theoretically different, but the birth of the control function and the legislative function is a manifestation of the representation function. The control function can work if the people's representative institutions are sensitive to people's aspirations. If the people's representative institution considers that there is an issue that makes the people uneasy or uneasy, then the people's representative institution should immediately respond by carrying out its supervisory function.

The implications of the supervision of the Regional Representative Council will also be a big question because the position of the Regional Representative Council is only to support the People's Representative Council. The position of the Regional Representative Council as a supporter of the People's Representative Council can be justified because all of the legislative and supervisory functions of the Regional Representative Council will end and stop with the People's Representative Council. Thus, the implications of the supervision of the Regional Representative Council will depend greatly on the political will of the DPR.

The non-independent supervision that the Regional Representative Council does not have also causes uncertainty about the type of supervision carried out by the Regional Representative Council. As is known, parliamentary supervision consists of several types, namely (Mashdurohatun et al., 2021): first, the right to inquiry, namely the right to investigate by parliament. Second, the right of interpellation, namely the right to request information from parliament. Third, the right to express an opinion.

According to John Stuart Mill, the main objective of parliamentary supervision of the executive is to provide

information to the public about the substance of government and ensure openness in government administration (A'an Effendi, 2017)(Hill, 2020). Montesquieu held views similar to Stuart Mill regarding the purpose of parliamentary oversight. According to Montesquieu, the purpose of oversight of the legislative body is to shine a clear light on government actions, to create transparency, and to maintain government responsibility towards the legislative body and citizens (Marpaung, 2022).

From the two philosophers' opinions above regarding the purpose of parliamentary supervision, it can be emphasized that the purpose of parliamentary supervision of the executive is a consequence of parliament as the implementer of people's sovereignty(Farrell et al., 2020). Implementation of popular sovereignty by parliament, because parliament is elected by the people. The supervisory function of the Regional Representative Council cannot fully carry out the objectives of parliamentary supervision.

In the aspect of administrative law, the implementation of any supervisory function always has three main components, namely authority, procedures, and the consequences of the use of that authority (Susanto et al., 2024). Supervision carried out by the Government on permit users, for example, will always have serious implications if the permit user violates the law. The permit held by the permit user can be revoked if the violation committed is a truly serious violation (Leo Agustino, M.Dian Hikmawan, 2023).

The use of the right to inquiry as one of the powers possessed by the parliament or legislative body will also have serious consequences for the President if the President is proven to have committed a serious violation of the law or disgraceful conduct. The authority to use the right of inquiry, the right of interpellation, and the right to express one's opinion constitutionally belongs only to the House of Representatives. Meanwhile, the type of supervision of the Regional Representative Council is unclear, because the authority of the Regional Representative Council in carrying out supervision only extends to the authority and procedure components.

The supervisory authority possessed by the Regional Representative Council does not have significant legal consequences. Supervision from the Regional Representative Council will only have implications and these implications will really depend on the People's Representative Council which will follow up on the results of the supervision of the Regional Representative Council. Therefore, the results of supervision from the House of Representatives are only in the form of findings, and whether these findings are followed up or not will completely depend on the House of Representatives.

Conceptually there is a quite significant difference between legal consequences and legal implications. The word consequence itself has the meaning of being the end or result of an event, condition, or condition that preceded it. Meanwhile, the term implication has an indirect meaning (Hamidi, 2006). Therefore, the difference between consequences and implications is that consequences have direct meaning while implications have indirect consequences.

The effectiveness of supervision, whether it is supervision carried out by the Government on its subordinates and the public or carried out by parliament on Government policies, will greatly depend on the consequences or implications of the supervision that has been carried out (Bulman-Pozen & Seifter, 2022). If the legal consequences of supervision have an impact on the behavior or policy being supervised, then the supervision is effective, whereas if the legal consequences of supervision do not have a significant impact on the behavior or policy being supervised, then the supervision is less effective.

The supervisory authority possessed by the Regional Representative Council can be less effective because the follow-up to the results of the Regional Representative Council's supervision will depend greatly on the political will of the People's Representative Council. The House of Representatives is a political institution that is a group of people who come from political parties, so the decisions taken by the House of Representatives will depend on the meeting point of political interests in the House of Representatives.

The Regional Representative Council is also a political institution because the Regional Representative Council is also a Legislative Body or Parliament, but the composition of the Regional Representative Council is different from the composition of the People's Representative Council. Membership in the Regional Representative Council comes from members of non-political parties, while membership in the People's Representative Council comes from members of political parties. Therefore, members of the Regional Representative Council have stronger legitimacy than members of the People's Representative Council. The strength of the legitimacy of members of the Regional Representative Council is that they are elected directly by the people without going through political parties.

The strong legitimacy of the members of the Regional Representative Council should be directly proportional to their institutional authority. However, ironically the Regional Representative Council does not have strong authority in the supervisory aspect. The follow-up to the results of supervision carried out by the Regional Representative Council indicates that the position of the Regional Representative Council is not the same as the People's Representative Council.

The weak authority of the Regional Representative Council is due to political and legal matters; changes to the 1945 Constitution place more emphasis on strengthening the institution of the People's Representative Council. Strengthening the House of Representatives, because, during the New Order, the position of the House of Representatives was always weak when dealing with the President. Members of the People's Representative Council are the strongest element of the People's Consultative Assembly, which is the President's superior.

This strengthening of the People's Representative Council is not directly proportional to other people's representative institutions, namely the Regional Representative Council. The Regional Representative Council is a new institution, so the establishment of authority from the Regional Representative Council is different from the establishment of authority from the People's Representative Council. The authority of the People's Representative Council is only to strengthen it, while the Regional Representative Council cannot just strengthen it, because the Regional Representative Council is a new institution, of course, the authority possessed by the Regional Representative Council is completely new.

Historically, Indonesia has also experienced a period of the form of the United States of Indonesia when the 1949 RIS Constitution came into force. When the 1949 RIS Constitution came into force, Indonesia also had a senate, and the senate as regulated in Articles 80 to Article 94 of the 1949 RIS Constitution also did not regulate the authority of the senate as a whole. firm, including the Senate's authority to carry out supervision (Risky et al., 2023). Thus, the Senate, which represents the regional states, also has the same weak authority as the Regional Representative Council.

### III. CONCLUSION AND SUGGESTIONS

The implication of the supervisory arrangements of the Regional Representative Council according to the 1945 Constitution of the Republic of Indonesia is that the supervisory authority possessed by the Regional Representative Council can be said to be less effective because the follow-up to the results of the Regional Representative Council's supervision will be very dependent on the political will of the People's Representative Council. The weak authority of the Regional Representative Council is due to political and legal matters; changes to the 1945 Constitution place more emphasis on strengthening the institution of the People's Representative Council. Therefore, maintaining the supervisory arrangements of the Regional Representative Council needs to be carried out by amending the 1945 Constitution of the Republic of Indonesia relating to the authority of the Regional Representative Council so that the implications of the supervisory arrangements of the Regional Representative Council become effective and can strengthen its function. *check and balances* with the House of Representatives.

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