

## **An analysis of the existence of the Authority of the Regional Representative Council Against Amendments to the Constitution of the Republic of Indonesia Year 1945 Article 22d Constitutional Law in the Perspective of Islam**

**Eka Cahya Wardhani**

**Faculty of Syari'ah and Law, State Islamic University (UIN) Raden Fatah Palembang**  
Email: *Wardhanieka166@gmail.com*

### ***Abstract***

*This research is a form of assessment authority of the Regional Representative Council Republic of Indonesia (DPD RI) as a new state agency of Indonesia Constitutional Structure which is the result of the 3rd amendment to the Constitution of 1945. This study aims to (1) know how the existence of the authority of the Regional Representative Council Republic of Indonesia in the parliamentary system in Indonesia post third amendment UUD 1945 Article 22D and (2) determine how the authority of the Regional Legislative Assembly of Republic Indonesia and natural analysis of constitutional law Islam. This research is a form of library research that emphasizes a normative juridical approach, namely a review of the legislation which is the focus of this research on the aspects of the existence of the authority of the Regional Representative Council in Article 22D of the Constitution of the Republic of Indonesia. The steps taken in collecting data were collecting books related to the existence of the authority of the Regional Representative Council in article 22 D of the 1945 Constitution and classifying existing data in books or reading material that are related to the problem under study accordingly. with the necessary requirements. Furthermore, the data obtained were analyzed using descriptive analysis techniques.*

***Keywords: AhlulHalli Wall Aqdi, DPD, Authority***

### **Background**

In general, positive law in Indonesia is an adoption of Dutch colonial law. The positive law is adopted and absorbs the values and interests of all religions, ethnicities, traditions and cultural diversity that exist in Indonesia. In line with this, Indonesia as a State of law has undergone various phases of change in Perundang-undangan. One of the urgent changes is that the 1945 Constitution of the Republic of Indonesia, is now abbreviated to UUD 1945, has been amended four times. The change process based on the decision of Hakim of the Constitutional Court as the only institution authorized to interpret the Constitution of Republic of Indonesia 1945.

The theory of cultural constitution which is used to explore the depth of the changes informally Constitution Republic of Indonesia 1945 in line with the *theory of Interest Institutional Countries* In Islam which Indonesia is a state law that applies the concept of abiding to government, as well as the theory of authority implemented within the system the parliament Indonesia namely system bicameral also the theory of *Institutional Countries* in

Islam which used to be to analyze the position of the House of Representatives in the state system of Islam.

Theory of Interest State Management institutionally state in contemporary Islam is the basis of this research in an effort to strengthen the early history of the 1945 amendment changes made through the general assembly of the People's Consultative Assembly (MPR) in 1999. These changes relate to the reform of the post government Suharto where the Constitution 1945 is considered not to develop the aspirations of the Indonesian people.

There were two fundamental changes made, namely 1) a shift in power to form a Law, namely from the President to the House of Representatives; and 2) limitation of the term of office of the president for five years after which there can be re-elected to the same office for only one term.

Amendments Act of 1945, the second, third and fourth is done via the annual session of the Assembly. These amendments were carried out sequentially in 2000, 2001 and 2002. After the amendments to the 1945 Constitution, there were changes to the legislative function of the House of Representatives. If before the amendment of the Act of 1945, based on the formulation of Article 5 Paragraph (1) and Article 20 Paragraph (1) The House of Representatives has only a weak legislative function in the process of formation of the Act. However, after the first amendment to the 1945 Constitution, the formulation contained in Article 5 Paragraph (1) and Article 20 Paragraph (1) underwent a very significant change, which had implications for placing the Constitution as the main institution holding the power to make Laws. Invite. Apart from these two Articles, the dominance of the House of Representatives in the legislative process is strengthened by Article 20 Paragraph (5) of the 1945 Constitution.

In the preparation of the national legislation program, the Regional Representative Council is completely not involved and only involves the President and the House of Representatives. In addition, the Draft Law that was submitted by the Regional Representative Council during the discussion became a proposal for the initiative of the House of Representatives. Thus, the objective of establishing the Regional Representative Council as a counterweight to the House of Representatives in the principle of *checks and balances* is not carried out properly. With the issue of decision of the Constitutional Court Number 92/PUU-X/2 about People's Consultative Assembly, the House of Representatives, the Regional Representative Council and Dew's legislative and Law No. 12 of 2011 about Establishment Regulation Legislation and the return of the legislative function of the Regional Representative Council to re-align with the President and Parliament in accordance with the provisions of the Constitution of 1945. Thus, untuk embodies the principle of *checks and balances* need to do more efforts to strengthen the legislative function of the Regional Representative Council in order to have a more role in the Indonesian constitutional system.

The Regional Representative Council is the upper house which has the same authority as the DPR. But in reality the Regional Representative Council can only be said to be a complementary body of the DPR. One example of the interests between the two is the authority of the DPD and the DPR which can be seen in Law Number 42 of 2014 concerning amendments to Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council. In this Law, the DPR

is given the authority to be able to decide on Invitational Legislation through joint agreement with the president.

Whereas in the Regional Representative Council, the 1945 Constitution does not contain the authority of the DPD RI to be able to decide on legislation like the DPR RI, but only the DPD's legislative function is only to give consideration. The DPD's authority is based on a constitutional basis which is then reduced by the Law on the MPR, DPR, DPD, and DPRD (MD3 Law) which has resulted in constitutional losses for the DPD. There are several articles that have reduced the function and authority of the DPD from the will of the constitution. This condition is considered not to provide a good system considering the very strong legitimacy of DPD members and the DPD as a high state institution, should be able to work with significant authority as *territorial representation*.

DPD RI The House of Representatives is a representation of the people. Institutions representative of the people in Islam as *Ahlal-Hall Wal laqdi*, *ahl al-halliwaal-aqd i* but not the same, the term that is used by the jurists and experts history to refer to people who have the power, influence and become a reference in completing problem. They are figures, scholars, tribal leaders who have functions and authorities, namely:

*First*, *ahlal-halli waal aqd i* has the highest power to elect and *bai 'at the* imam and to dismiss and dismiss the caliph. *Secondly*, *m empunyai* direct authority *lif pan* society to the beneficiaries. *Third*, have the power to Act yangmengikat to the entire community in the *h al* unregulated *firm ole h* Qur 'an and Al-Hadith. *Fourth*, the place where the imam is consulted in determining his policies. *Fifth*, oversee the running of the government (Khalik, 2005).

Based on the paragraph that can be understood that every Muslim have to obey Allah by doing what he told and stay away from all what that forbids, also obey His Messenger to follow everything what that said and done by Rasulullah, and obey Ulil with authority, the government or the ruler included in it is *AhlulHalli Waal Aqdi*.

The position of DPD RI in the system of governance of State Indonesia that already exists seems inconsistent or not appropriate, DPD is an institution that has a position of authority are limited. In fact, the existence of the DPD RI can be improved and strengthened again by its existence and position. The history of state administration in Islam explains that the caliphate period while democracy was present during the Khulafaurashidin period. Furthermore, it developed in the dynasty until the Ottoman era to the kingdoms and sultanates in Indonesia. The presence of a democratic state emerged in the contemporary era, including the history of the Regional Representative Council in Indonesia.

## Theoretical framework

### 1. Authority theory

This study uses Ferrazi's theory of authority. In his book, he explains that authority is the right to carry out one or more management functions, which include regulation (regulation and standardization), management (administration) and supervising (supervision) or a certain matter. The basis for this theory is based on elements 1) authority as the right to carry out one or more management functions, 2) regulation in regulation and standardization, 3) administrative management) and supervising (supervision) of certain affairs.

In his work Hadjon (1997) divides the ways of obtaining authority in two ways, namely: 1) attribution; 2) Delegation; 3) and sometimes a mandate. The explanation is as

described as follows: First, attribution means the emergence of a new authority which previously did not belong to the relevant government organ. Second, Delegation is defined as the handover of the authority to make a besluit by a government official (State Administration official) to the other party. With the word submission, this means that there is a transfer of responsibility and those who give delegations to those who receive the delegation (delegates). A delegation must meet certain conditions, including 1) it must be definitive in which the delegates can no longer use the delegated authority by themselves; 2) Based on statutory provisions; 3) not to subordinates, meaning that in the hierarchical relationship of staff, no delegation is allowed; 4) the obligation to provide information (explanation); and 5) provide instructions (instructions) regarding the use of said powers. From the mandate aspect, it means a delegation of authority to subordinates. The Pelimpahari intends to authorize subordinates to make decisions a/n the State Administration official who gives the mandate. Responsibility does not shift to the mandate, but responsibility remains with the mandate, this can be seen and said (on behalf of). Thus, all legal consequences resulting from a decision issued by the mandate are the responsibility of the mandate. As a concept of public law, authority consists of at least three components, namely 1) influence; 2) legal basis; and 3) legal conformity.

## 2. The theory of law change

In this study, Daniel S. Lev's theory of legal change is used in his theory of legal change, namely by expressing his perception of the law used. According to Lev (2002), law is not written law or legislation. Laws that have changed are laws that are practiced on a daily basis by law enforcers, such as; judges, prosecutors, lawyers, police and so on. Therefore, if their behavior changes, it means that the law has changed, even though the laws and regulations are still the same as before.

The concept of a rule of law is commonly termed a constitutional democracy. A teaching that places the constitution as the determinant of the limits of government power and guarantees the political rights of the people, so that the power of the government (executive) must be balanced by the power of the parliament (legislature) and the legal institution (judiciary).

Law is a series of rules that control certain human behavior and actions in social life. The law itself has a permanent characteristic, namely the law is an abstract regulation, the law to regulate human interests, anyone who violates the law will be subject to sanctions in accordance with what has been determined. In terms of the formation of law, law can be in the form of written law (statute law, writer law), which is a law made by an authorized agency or institution in a country and in its application it is often referred to as statutory regulation. Written law is usually codified in a certain type of law systematically so that it is easy to learn. In addition, there are also unstatute laws (unwritten law) that are laws that live in society, which are not written, but are enforced and obeyed by the community as written law.

In order for the function of law to run as expected, the law must not be static, but must be dynamic, it must always be changing in line with the times and the dynamics of community life. Therefore, if a law is made at a time when a need is felt, then that need is no longer there, then it is a very wise matter that the law is changed and adapted to the conditions of the times.

In changing laws with new laws, several conditions are needed so that the new law can be effective in people's lives. These conditions include, first; the law made must be permanent, not adcho, second; The new law must be known by the public because it is in the public's interest to be regulated by the new law. It is better if before the law is applied to the community, first it is socialized to the community, so that the community is ready to accept it, third; the new law does not contradict each other, especially with the positive law that is currently in force, fourth; must not be retroactive (retroactive), fifth; the law made must contain philosophical, juridical and sociological values, sixth; should avoid changing a law frequently because society can lose the measure and guidance in interacting in society, seventh; the application of the new law should take into account the legal culture of the community, eighth; the new law should be made in writing by the competent authority to make it.

### 3. The *bicameral* theory

Bicameral teori taken from the thought of Mughan and Patterson (2007) states that an upper houses (second room or upper house) is needed for a reason and bicameralism is important for theory and practice in democratic governance. This relates to the interests of the parliamentary institution potentially as a means of consideration, in terms of influencing the legislative process, and as an attempt to enhance democratic legitimacy by examining the movement of the majority of single-party governments. Not only that, the senate (second chamber or upper house) tends to have an important influence in strengthening the considerations of policies issued by the legislature.

The first chamber generally represents the interests of parties on a national scale, while the second chamber is generally an institution that represents regional or functional groups. Furthermore, the term DPD will be used to refer to the upper house or the second chamber, and the DPR to refer to the lower house or the first chamber as long as it does not refer to a country. According to TriasPolitika, the theory of power sharing is a concept of government that is now widely embraced in various countries, the basic concept is like that of a country. mentioned by John Locke . Montesquieu (2004) states that power in a country should not be delegated to one political power structure but must be separated in different state institutions. The political principle that is currently being applied is the separation of powers to 3 (three) different institutions, namely, the Legislative, Executive and Judiciary.

Parliamentary design in the contemporary era tends towards a legislative body consisting of two houses, which are usually arranged into a lower house (with various names such as House of Representatives, House of Commons, Chamber of Deputies, Federal Assembly, and so on) and an upper house (with various names such as House of Representatives, House of Commons, Chamber of Deputies, Federal Assembly, etc.) various names such as Senate, House of Lord). The political need underlying the symptoms of the proliferation of the bicameral system is related to demands for regional representation (autonomous regions or states) on the national stage of power (the United States model) rather than because of the motive to preserve the political privelese of a particular social class (British model) which is increasingly feels less relevant in the context of contemporary socio-political change.

#### 4. The Theory of State Institutional Objectives in Islam

The Regional Representative Council is a contemporary state institutional development that has not been recognized in Islamic constitutional law. The basic construction of the Regional Representative Council appears in line with the democracy movement in the world, including in Indonesia. In institutions such as the presence of the Regional Representative Council as an effort to strengthen the implementation of regional autonomy. This means that its establishment functions to provide opportunities for local communities to participate in providing policies at the national level, especially those related to regional needs. For this reason, the theory of deliberation and *maslahah* theory is used.

The theory of deliberation is a negotiation activity by exchanging opinions from various parties regarding a problem to be considered and decided upon and the best is taken for the benefit of all (Surah Ali 'Imran 3: 159). In the context of *maslahah* theory, it is based on ethical values of utilization in an institution. Both theories are used to strengthen the important role of the Regional Representative Council.

### Research Methods

#### Research Design

This study used a literature study (library research) which emphasizes a normative juridical approach, namely a review of the legislation which is the focus of this research on aspects of the existence of the authority of the Regional Representative Council in Article 22D of the Constitution of the Republic of Indonesia.

#### Types and legal materials

In this research, the type of data used is qualitative which is relevant to the existing problem formulation. So that in this study using primary data sources and secondary data sources distributed by the literature in this study.

#### Secondary legal materials

Secondary legal materials for this research are obtained from library materials which include official documents of the object of research and library books (offline literature and online literature). The sources of secondary legal materials include three parts, namely: *First*, Primary Legal Materials in the form of binding legal materials. The primary legal materials used and supporting this research consist of laws and regulations, namely the 1945 Constitution Article 22 D.

*Second*, secondary legal materials as providing various explanations regarding primary legal materials such as the results of legal research discussing the position of the DPD in the House of Representatives such as Sovia Hasanah, Differences in Duties and Authorities of the DPD and DPRD (2015), Suladri, Reconstruction of DPD and DPR Position Towards bicameral Yang Setara (2012) and several previous studies that have been previously reviewed.

*Third*, tertiary legal materials as guidance and explanation for primary and secondary law such as the Legal Dictionary, encyclopedia, and *Fiqh Siyasah*, Islamic State Law.

**Data Collection Technique**

The steps taken in collecting data are:

- a. Collecting books related to the existence of the authority of the Regional Representative Council in article 22 D of the 1945 Constitution.
- b. Classify existing data in books or reading material that is related to the problem under study according to the necessary requirements.
- c. Reading examines and processes books or reading material that are related to the problem under study.

**Data Analysis Technique**

The data analysis technique used in this research is analytical descriptive, which describes the authority of the Regional Representative Council in the 1945 Constitution Article 22D which is contained in the writings and then analyzed. Therefore, the researcher wants to describe the authority of the Regional Representative Council in the 1945 Constitution Article 22D regarding the analysis of the amendments to the 1945 Constitution Article 22D on the existence of the authority of the Regional Representative Council in the perspective of Islamic State constitutional law. In analyzing the data, compilers use the inductive method. The inductive method is a method of thinking that departs from specific facts. Specific events that are particularly drawn are generalizations which have a general character.

**Findings and Discussion****A. Amendments to the Law of the Republic of Indonesia Year 1945 On the Authority of the Regional Representatives Council**

Reconstruction of the Authority of the Regional Representative Council in the Amendment to the Law of the Republic of Indonesia Year 1945 Understanding the word reconstruction which is defined as "rearranging". In Jacques Derrida's study, as quoted from Dadang, that the reconstruction in the study of science shows that there are other thoughts that can be alternative thoughts besides "existing" thoughts.

From the aspect of the authority of the Regional Representative Council there are many things that show the weakness of the results of the interpretation *dian bar none*, the demands for democratization charging member institutions in a comprehensive yet in the fox where the selection of the DPD to always follow include folk. This means that initially the DPD with the Regional Representative System changed to be more transparent with the election system following the election system for members of the legislature.

DPD is a representative institution regionalism member - members are individuals. Thus the duties, functions and authority of DPD are closely linked to promote and integrate the aspirations, interests, and the existence of territories - territories/areas - areas that *demiikian* many and varied in Indonesia by *menjagadan* upholding the Unitary Republic of Indonesia.

According Asshiddiqie (2006) 1) *embaga* legislature has three types of functions, namely the function of regulation (legislation), the function of supervision (control), and the function of consideration and representation (representation). In a representative function, there are three representative system of democracy practiced in different countries, namely: 1) Representation System of Political (*political representation*); 2) System representatives

of territorial ( *territorial representation or regional representation* ); 3) The representative system of functional ( *functional representation* ).

The background for the formation of the DPD-RI is not fully reflected and spelled out in the provisions of Article 22D of the 1945 Law of the Republic of Indonesia. Therefore, the fifth amendment and so on must be made to continue to perfect the basic laws that are the guide for state life. Proposed DPD-RI about changes in the Act RI 1945 in the text of the Law of Republic of Indonesia in 1945, the Council of Representatives may submit to the Parliament of R Definition Act that related to regional autonomy, central and local relations, the establishment and expansion as well as the incorporation areas, management of source power of nature and resource economics others, as well as that related to the financial balance of central and local ( Fatwa , 2009 ). This 1945 Law has undergone 4 changes in which there are several articles and provisions that have been amended and some of them remain unchanged as explained in the previous chapter . Meanwhile, significant changes in the amendments to the emergence of the Regional Consultative Council occurred in the third amendment.

The formation of the DPD is an enhancement of the Regional Representative as an additional member in the MPR, as stipulated in the previous provision. The idea of forming the DPD-RI aims to increase the degree of regional representation so that it is hoped that the DPD-RI will be able to organize and interpret regional interests in policies and regulations at the national level. This means that the presence of the DPD-RI as the second chamber in the parliament is very important and strategic in the development of the Indonesian constitutional system in order to realize the principle of mutual monitoring and balancing in the discussion process, there is a strong view of the need for an institution that can represent regional interests, and to maintain balance between regions. and between the center and the regions, in a fair and harmonious manner.

Building a Pro-People's Representative Council As explained in previous conceptual studies that the Regional Representative Council which is regulated in several Regional Regulations and Laws and several Articles explains that the formation of the DPD as a new state institution aims to provide regional people to take part in making policies. at the national level, especially those related to regional interests (Arifin, 2005) .

In theory, as a democratic state, the people are sovereign, meaning that the decisions made by this body are authentic votes of the general will. Because of that, his decisions, both policies and laws, are binding on the whole society (Budiarjo, 2013). Therefore, the Regional Representative Council (DPD) is the highest state institution in the Indonesian constitutional system whose members are representatives from each province who are elected through general elections.

One of the obligations of DPD members is to absorb, collect, accommodate and follow up on the aspirations of the community and regions. As a tool to accommodate regional interests, the absorption of aspirations is the most important activity of the members of the Regional Representative Council. In the operationalization of its implementation, the absorption of community aspirations can be carried out in two ways, namely directly and indirectly. The aspirations of people from each region are usually very diverse. It is from this diversity that the people's representatives can see synergistic needs.

In various regulations, it is explained that the Regional Representative Council is the representative of the people who is appointed to listen to the aspirations of the grassroots



community which are then brought to the center to be processed and get funds or funds. So far, the people have not received the aspirations of what they want, the existence of the Regional Representative Council is actually expected to be a bridge for those who convey their aspirations to feel the attention of the House of Representatives.

Unbalanced Authority between DPR and DPD Between one institution and another institution has different and unbalanced powers, especially in the field of legislation and supervision of the implementation of laws. As stated in Article 20 paragraph (1); The People's Representative Council holds the power to form laws; paragraph (2); Each Draft Law is discussed by the House of Representatives and the President for mutual approval; if the Draft Law may not be submitted again in the session of the House of Representatives at that time; paragraph (4); President and Laws; paragraph (5); in the event that the jointly approved draft law is not ratified by the President within thirty days of the approval of the draft law, the Draft Law becomes lawful and must be promulgated (Megawati & Murtopo, 2006) .

The functional aspects strengthened by the DPD in strengthening its authority through decision 92 / PUU -X / 2012 lie in the legislative and budgeting functions. The legislative function as explained above is that the DPD demands equality with the DPR, accompanied by a request to increase its institutional degree in the legislative mechanism from what was previously treated by the MD3 Law and the P3 Law as being treated equally with factions and DPR members to be as appropriate. a state institution is required.

#### **B. The existence of the Regional Representative Council in the Amendment to the Law of the Republic of Indonesia of 1945 and the authority of the DPD in the perspective of Islamic constitutional law**

Basically the DPD does not hold the power in the formation of laws. The DPD can only submit laws to the DPR. Thus, the DPD does not have the right to independent initiative in making laws. DPD does not have constitutional power for competence, because the DPD does not actually have the authority up to the decision-making level, including in the legislative process. although DPD can propose R Definition Act, kekuatannya not absolute because it systematically this provision relates to Article 20, paragraph I which consists of the House of Representatives held sway m embentuk Act and p origin 20 Paragraph (2) of s ach bill debated by the Parliament and the President to get mutual consent. Based on this provision, it is clear that decisions on legislation are only made by the DPR and the President. D PD can participate in the discussion, but not to make decisions. DPD in the discussion Ra keikutserataan ncangan Act legislation related to the authority of the DPD, the DPD can only express the views/opinions, but can not apply for D lists are Inventory ation Problems (DIM) in writing and did not participate in the decisions.

In making the Law, the Regional Representative Council participated in discussing the Draft Law such as giving a role to the DPD which also discussed drafts relating to regional autonomy, central and regional relations, formation, expansion and merger of regions, management of natural and natural resources other economic power, as well as central and regional financial considerations, as well as providing balance to the House of Representatives on the APBN and Draft Laws relating to taxes, education and religion, but they are not. This provision proves that the establishment of the DPD does not have the right of initiative and independence in the formation of laws, even in areas related to regional

autonomy issues. The phrase DPD participates in discussing laws legally means that, only the DPR has the power to form laws.

In carrying out its duties, the Regional Representative Council does not carry out its functions as a whole. This happened because the DPD did not participate in carrying out the legislative function until the final process, namely when the Draft Law was approved to become a Law. In the discussion of the Draft Law into Law, the DPD only participated in the Level I discussions, while for the Level II discussions, which would lead to the approval of the Draft Law into Law, only involved the DPR and the President.

Based on the flow of the formation of the Law as described above, it can be seen that the DPD does not carry out its legislative function completely. The DPD only carries out a legislative function at the beginning of the law-making process, namely up to the Level I talks.

Thus, the flow of communication between DPD members and their constituents should run smoothly. In order to capture the aspirations of constituents, the DPD plans to build DPD representative offices in every province in Indonesia. Apart from budget issues, the procurement of representative offices can be an alternative solution for the DPD to communicate with its constituents, including performing the function of articulating the interests of the people in their respective regions by accepting the aspirations of the people. In addition, representative offices can be a means of socializing the existence of the DPD in the regions. It must be admitted, until now there are still many people who do not know clearly what functions are carried out by the DPD.

The formation of the DPD is an enhancement of the Regional Representative as an additional member in the MPR, as stipulated in the previous provision. The idea of forming the DPD-RI aims to increase the degree of regional representation so that it is hoped that the DPD-RI will be able to aggregate and articulate regional interests in policies and regulations at the national level. This means that the presence of the DPD-RI as the second chamber in the parliament is very important and strategic in the development of the Indonesian constitutional system in order to realize the principle of mutual monitoring and balancing in the discussion process, there is a strong view of the need for an institution that can represent regional interests, and to maintain balance between regions. and between the center and the regions, in a fair and harmonious manner.

The basic idea for the formation of the DPD-RI is the desire to better accommodate regional aspirations and at the same time give a greater role to the regions in the political decision-making process for matters especially those directly related to regional interests. This desire departs from a clear indication that centralized decision-making in the past has resulted in inequality and a sense of injustice, and among other things, it also gives an indication of a threat to the territorial integrity of the state and national unity. The existence of a regional delegation element in the MPR-RI membership has so far been deemed inadequate to answer these challenges (Fatwa, 2009).

The authority of the Regional Representative Council is submitted to the Board Perwa span of the People and participate in the discussion of R Definition Act relating to regional autonomy, central and local relations, management of natural resources and economic resources, and financial balance between central and local (Amin, 2019). In addition to giving consideration to the House of Representatives on the State Budget Bill, taxes, education and religion, as well as supervising the implementation of laws relating

to regional autonomy, the formation and expansion and merger of regions, and submitting the results of this supervision to the House of Representatives. as material for consideration to be followed up, receive the results of the state financial audit from the Supreme Audit Agency, and provide consideration to the House of Representatives in the selection of members of the Audit Board.

It is explicitly stated that the Regional Representative Council has authority in all areas of government except for the authority of the central government (foreign, monetary, defense, justice, religion). This authority is considered based on the needs of the region. In regional governance it is very clear that there is already a clear function between the Regional Head and the Regional Representative Council. However, in reality the authority possessed by the DPD Regional Representative Council is still very limited. The Regional Representative Council only has the authority to propose and be involved in discussions, but does not have the authority up to the decision-making stage. In other words, the Regional Representative Council only functions as a mediator between the central and regional governments, or vice versa, and becomes a facilitator in absorbing the aspirations of the community.

With the role as a facilitator for the absorption of community aspirations, the implementation of the functions of the Regional Representative Council will automatically become less effective in channeling the aspirations of the community, because they have to channel them again to state institutions that are obliged to pay attention to and or actualize the aspirations of the community.

The Regional Representative Council should absorb the aspirations of the people in the regions and then continue the absorption of these aspirations to the House of Representatives to be used as material for consideration in drafting laws or formulating state policies. However, the reality shows that the results of the uptake of aspirations by members of the Regional Representative Council carried out on constituents in each region have not been coordinated effectively as expected.

Strengthening the Role of the DPD through Proactive Actions to the Community Increasing the role that can be developed and is expected to obtain sustainable support from the regions. Acting as a facilitator between the interests and needs of the region and decision-making (policy) at the central level. The Regional Representative Council appears proactive in exploring various problems in the regions that must be resolved and handled in order to create policies at the central level. Furthermore, facilitating sufficient information between local and central governments with the aim of empowering the region.

The not yet coordinated absorption of public aspirations between the Regional Representative Council and the House of Representatives indicates a conflict of interest between the two state institutions. As a result of this conflict of interest, regions that already have representatives in the Regional Representative Council do not have the same opportunity to discuss the Draft Law (RUU) that concerns regional interests, and therefore the regions may feel disadvantaged, because their aspirations are not properly channeled. . There should be, among state institutions that are obliged to absorb and actualize people's aspirations, a constructive cooperation should be established.

The DPD is a representative institution in Indonesia that was initiated to become the second chamber in the bicameral representation system, the DPD ideally carries out various functions in order to exercise its authority. There have been several evaluations of the DPD's authority and the functions it has carried out so far in the administration of the government in

Indonesia. The DPD's authority is very small, even the DPD actually does not have its own authority (*original power*) so that it cannot carry out its functions optimally.

In general, Islamic State Law is a rule of *grace* and flexibility in the development of the state. Based on the explanation in the previous chapter and it can be seen from the Law that the functions between regional representative council institutions such as the *Ahlul al-Halli wa al-Aqdi* institution in terms of functions, both have the same function to carry out the aspirations of the people and carry out *amar ma'rufanhiymungkar* for the people (Kh a liq, 2005). The general concept of both is that the institution in it consists of people who have power, power, views and arrangements in a country (Jie, 1996).

Assessment in terms of authority. In the *siyasah* study, authority is the task of *sulthahtasri'iyah*, which is the most important power in government because the provisions and provisions issued by this legislative body will be implemented epectively by the executive and defended by the judiciary or judiciary. Meanwhile, the duties of the Regional Representative Council, from the point of view of filing a Draft Law (RUU) in *syar'i*, give rights to people who have the mandate to make this part of the benefit of the people.

In Islamic constitutional law, the *Triaspolitica* which initiated the separation of powers is in line with the Islamic Constitutional Law. Although at the time of Rasulullah Saw this was not known because Rasulullah Saw performed all three functions at once, namely *sultah tashri'iyah* (legislative function), *sultah tanfidziyah* (executive), and *sultah qadla'iyah* (judicative).

In strengthening these interests, the institution becomes a place of deliberation to build a *maslahah* for the people. Therefore, negotiation activities are carried out by exchanging opinions from various parties regarding an issue to be considered and decided upon and the best taken is for the benefit of all (Surah Ali 'Imran 3: 159). Teachings about *musyawarah* direction to determine the collective decisions and is responsible anwerdecision y ang been made gracefully also expressed so clearly in a y at the 159. In explaining the word of Allah SWT about *musyawarah* direction, an example of which is associated with the presence of the Regional Representatives Council as mus y a w direction y ang done by Rasullullah with companions, between ; in the Uhud war, he S A W mused y ara w ah with his friends, whether to stay in Medina or go to face the enemy.

The existence of the relationship of the Regional Representative Council and the *Ahlul Halli Wa Al-'Aq* in place more emphasis on institutional aspects. Regional representative councils are an example of representative institutions in modern statehood. While *Ahlul Halli wal Aqdi* is a representative institution in the Islamic state, at least there are no other records that mention the existence of a representative institution in Islam other than *Ahlul Halli wal Aqdi*.

The views *siyasah* of the position of senator in *sistemketatanegaraan* specifically Islam can not be disebu t with *Ahlul Halli Waal-'Aqdi*, because the agency has a broader position, the Islamic government of the caliphate and the *Ahlul Halli Waal-'Aqdi*, cooperated in organizing governance good for the benefit of the people. The position of *Ahlul Halli Waal-'Aqdi* in government is as a representative of the people, one of whose duties is to elect the caliph and to escort the caliph to the benefit of the people.

In the concept of the Islamic state legislative power is also called the term *al sulthah al-tashri'iyah* which means the government authority of Islam to create and establish the law. *Al-sulthah al-tashri'iyah* is used to show one of the authorities or powers of the Islamic

government in regulating state affairs in addition to executive power (*al-sulthah al-tanfidh'iyah*) and judicial power (*al-sulthah al qadhabiyah*). In this context *al-sulthah al-tashri'iyah* means the power or authority of the Islamic government to settle laws that will be enforced and implemented by the community based on the provisions that have been revealed by Allah SWT in Islamic law. *Siyasahtashri'iyah* discusses issues related to *Ahlul Halli Waal-'Aqdi*, representatives of people's problems, Muslim and non-Muslim relations in one country, such as the Constitution, Laws, implementing regulations, regional regulations and so on. The Word of Allah QS An-Nisa 'verses 58-59 reads:

Meaning: *"Indeed, Allah instructs you to convey a message to those who have the right to receive it, and (instructs you) when establishing a law among humans so that you determine it fairly. Indeed, Allah gives the best teaching to you. Allah is All-Hearing, All-Seeing. O you who believe, obey Allah and obey the Prophet (Him), and ulilamri among you. Then if you have different opinions about something, then return it to Allah (Al Quran) and Rasul (Sunnah), if you really believe in Allah and the day after. This is more important (for you) and better as a result."*

Based on these two verses, that a person who holds power must be obeyed by his people if the government has made laws and regulations for the common good, but the regulations per Invitation must refer to and not deviate from what has been stipulated in the Qur'an and Sunnah. *Ahlul Halli Waal-'Aqdi*, is a representative institution authorized to channel the aspirations or voices of the people. Where the members of *Ahlul Halli Waal-'Aqdi*, consisted of people from various backgrounds and professions. Al-mawardi (2005) mentions that *Ahlul Halli Waal-'Aqdi*, as *ahlal-ikhtiyar* (the group entitled to vote).

According to Al-Mawardi (2005) states s e cara fungsional are the equations nantara institute legislative applied in Indonesia with the legislature (*Ahlul Halli Waal-'Aqdi*). The equation is that the legislative body can remove the head of state from his position, if he commits an act that allows him to be removed from the position of head of state. In addition, the legislature also be an institution supervisors and pengotrol against the policy of the head of state in the running of the State. Differences institution legislature are implemented in Indonesia with the legislature (*Ahlul Halli Waal-'Aqdi*) as presented by Al-Mawardi, if *Ahlul Halli Waal-'Aqdi* gathered to pick them examine the state of those who are entitled to become a leader who had entered criteria, then they ask people the best and most perfect criteria for sworn and invite people to obey him and do not restrain themselves from his inistration.

According to Al-Mawardi (2005), Imamat was institutionalized to replace prophethood (*nubuwwah*) in order to protect religion and regulate the life of the world. According to him, institutionalization of Imamat is fardhukifayah based on ijma'ulama. The position of *Ahlul Halli Waal-'Aqdi* in government is an institution that has the duty of its own authority without intervention from the Caliph. The similarity of the duties of the DPD with *Ahlul Halli Waal-'Aqdi* is as a regional representative, who has the authority to make a draft law or legal rules for the benefit, but as a people's representative institution *Ahlul Halli Waal-'Aqdi* has an unlimited position in making a draft

law . Invite. Meanwhile, the Regional Representative Council of the Republic of Indonesia has a limited position in making the Draft Law.

In several respects the Regional Representative Council, the similarity with *Ahlul Halliwal Aqdi* is a general characteristic of representative institutions. Both of these institutions have their own advantages and disadvantages. *Ahlul Halli wal Aqdi* him self has shortcomings by not clearly regulating how the normative mechanism of existence is. The representative institution of *Ahlul Halli wal Aqdi* has a dynamic nature which needs to be further regulated through the *ijtihad* of Muslim scholars. So that this institution can be run well normatively and does not seem too flexible so that the noble values of the teachings of the Prophet Muhammad are maintained. The advantage of this system is that decisions are reached by consensus. With this, differences in opinion can be minimized so that it has a social impact on society. The result that comes out of the forum is mutual agreement. *Ahlul Halli wal Aqdi* can be utilized by incorporating Indonesian elements into it. Although it does not use the name of *Ahlul Halliwal Aqdi* , the concept of Pancasila up to the formation of the Regional Representative Council as the concept of *Ahlul Halli wal Aqdi* .

## Conclusion

The results of the research discussed in this study concluded as follows: 1) existence Kewenangan Dewan Regional Representative Republic of Indonesia In Parliamentary System In Indonesia after the Amendment 3 1945 Article 22 has not been assertive and still invite multiple interpretations on the Constitution of the Republic of Indonesia Year 1945 Article 22 concerning the position and authority of the Regional Representative Council. . As a result of this, the Regional Representative Council has not received a *bargaining position* at the time of making decisions relating to its representatives. In this Article the Regional Representative Council can only submit a Draft Law regarding regional autonomy, but does not participate in making decisions on the Draft Law. So it is necessary to do the fifth amendment. 2) Study Siyasah has given the Regional Representative for Dewan to rules could be like *Ahlul Halli Wal l-'Aqdi* which has jurisdiction as the board of trustees in the process to arrive at supervising and implementing to be beneficial for nation. This means that the disconnection of the authority of the Regional Representative Council in the government system in Indonesia is not in line with the concept of constitutional law in the Islamic perspective of the running of government based on the values in Nash so that members of the Regional Representative Council or other DPR can actually carry out what is mandated by the people.

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