

Strengthening the Indonesian Bicameral Parliament: *Siyasah Dusturiyah* Perspective

***Ade Kosasih¹, Sirajuddin M², Fauzan³, Henderi Kusmidi⁴**

Universitas Islam Negeri Fatmawati Sukarno Bengkulu, Indonesia^{1,2,3,4}

Corresponding author: adeindrakosasih@mail.uinfasbengkulu.ac.id

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Abstract

This research aims at finding a strategy to strengthen Indonesia's bicameral parliament. It is a parliamentary system consisting of an Upper House and a Lower House. The Upper House, Regional Representative Council (DPD), represents certain groups or regions, and the Lower House, House of Representatives (DPR), represents national interests. Ideally the position of the DPR and DPD is in an equal position, however the DPD arrangements in the constitution have a power but do not reflect the bicameral principle. If left unchecked, it can trigger regional dissatisfaction which threatens the disintegration of the nation. This research employed normative juridical research methods with a conceptual and statutory approach. The result showed that the DPD has made efforts to strengthen it through *al-sutha al tasyri'iyah* (formal amendments) but failed. Moreover, the DPD has also carried out legal reviews by the Constitutional Court (judicial review) but the results have not been significant. The most realistic way to strengthen the DPD and has never been used before is through a constitutional political strategy (*siyasah dusturiyah*) to create constitutional conventions by vetoing draft laws whose decisions are made without involving the DPD. Therefore, the Indonesian parliamentary system can run in the double check system and check and balance paradigm in maintaining democracy and regional autonomy. Thus, if the DPD has a strong bargaining position in

parliament then the goal of forming a strong bicameral parliament can be established.

Keywords: Parliament; bicameral; *dusturiyah*

Introduction

Regional autonomy is a system that provides space for creativity and innovation for regions to optimize regional potential so that they can develop in accordance with the social, cultural, economic and geographical characteristics of the region concerned.¹ As the delegation of authority from the central government to the regions, the relation of authority between the central government and regional governments needs to be maintained in balance so that it does not become centralized. This was the initial idea of the importance of forming a Regional Representative Council (DPD) which would oversee the implementation of regional autonomy.² The formation of the DPD brought hopes from regional communities that regional problems could be fought for at the central level.³ However, in reality what happens is the opposite. The DPD's authority in carrying out legislative functions, budget functions and control functions is feeble and does not reflect the role of the Second Chamber or Upper House in the parliamentary system.⁴ This condition makes it difficult for the DPD to carry out its functions, duties and authority as a state institution.⁵

Studies on strengthening the position and function of the Upper House in the world have so far only focused on strengthening legal legitimacy through formal constitutional amendments,⁶ including Ahmad Ashiddieqy's research which analyzes the development of Islamic politics in Tunisia which discusses the role of parliament in Islamic democracy after constitutional amendments.⁷

¹ Weni Gusdi Sari and Zainuddin, "Konsep Otonomi Daerah Dalam Hukum Tata Negara Islam," *Jurnal Jisrah* 2, no. 2 (2021): 177–186, <https://doi.org/10.31958/jisrah.v2i2.4348>.

² Raden Siti Rachmah Wardani, "Regional Representatives Council in the Indonesian State Governance System: A Study of Bicameral System," *SIGn Law Journal* 5, no. 1 (2023): 1–16, <https://doi.org/10.37276/sjh.v5i1.228>.

³ Wahyu Widodo, "Peran Dan Fungsi DPD RI Dalam Menuju Sistem Parlemen Bikameral Yang Efektif Melalui Amandemen," *Jurnal Pembaharuan Hukum* 1, no. 2 (2014): 121–131, <https://doi.org/10.26532/jph.v1i2.1462>.

⁴ Ade Kosasih, "Hubungan Kewenangan Antara DPD Dan DPR Dalam Sistem Parlemen Bikameral," *Jurnal Mizani* 3, no. 2 (2016), <https://doi.org/10.29300/mzn.v3i2.1023>.

⁵ Khamami Zada, "Kewenangan Legislasi Dewan Perwakilan Daerah Dalam Reformasi Kelembagaan Pasca Putusan Mahkamah Konstitusi," *Jurnal Cita Hukum* 3, no. 1 (2015): 25–38, <https://doi.org/10.15408/jch.v2i1.1839>.

⁶ Samuel C Patterson and Anthony Mughan, "Fundamentals of Institutional Design: The Functions and Powers of Parliamentary Second Chambers," *The Journal of Legislative Studies* 7, no. 1 (2001): 39–60, <https://doi.org/10.1080/714003851>.

⁷ Ahmad Ash Shidieqy, Padlan Padil Simamora and Dinda Difia Madina, "Contemporary Islamic Politics In Tunisia: The Journey of Islamic Democracy Post-Arab Spring," *MilRev: Metro Islamic Review* 3, no. 1 (2024): 119–140, <https://doi.org/10.32332/milrev.v3i1.8976>

Besides, there is Mahmuzar's research with a focus on bicameral parliaments in unitary states.⁸ Meanwhile, this research was carried out to find alternatives for strengthening the Upper House through a study of *siyasah dusturiyah* (Islamic constitutional law) in the implementation of bicameralism in Islamic countries which could be adopted by the DPD. So that the DPD's contribution to the region can be implemented to provide benefits for the development of democracy and the effectiveness of implementing regional autonomy. Based on this background, the problem is formulated, what is the constitutional strategy for strengthening the position and function of the DPD from a *siyasah dusturiyah* perspective?

To answer this problem, research was conducted using normative legal research methods to search for and discover sources, principles, theories, legal regulations and legal doctrine to analyze the problems.⁹ This research employs a comparative and prescriptive conceptual approach. Legal materials are processed and analyzed using methods of legal interpretation, construction, and argumentation. This research is important to carry out in order to find a strategy to strengthen Indonesia's bicameral parliament. The aim of the research is that the plan of establishing a DPD in parliament is able to maintain regional autonomy policies and prevent a democratic crisis in the Indonesian parliament caused by the domination and arrogance of the DPR.

Discussion

Parliament in Islamic Countries

In the Islamic state, a parliament (*Majlis Shura*) does not recognize a standard form following a certain model. The general benchmark for state administration in the context of *siyasah* is adhering firmly to the *shari'ah* because the *shari'ah* contains justice, mercy, wisdom and benefit.¹⁰ The *Sharia* of state administration is regulated in constitutional law or *siyasah dusturiyah*.¹¹

Siyasah dusturiyah is political legislation that lays down the basic principles of state administration.¹² *Dusturi* can be interpreted as a document containing the basic rules for state administration, which in the study of constitutional law

⁸ Mahmuzar, *Parlemen Bikameral Di Negara Kesatuan* (Bandung: Nusa Media, 2019).

⁹ Mahmud Marzuki and Peter, *Penelitian Hukum* (Jakarta: Prenada Media Group, 2022).

¹⁰ Rosdalina Bukido, et.al, "Ilmu dan Kepentingan Politik Kajian Islam", *Al Istimbath* 4, no. 1 (2019): 69-78, <http://dx.doi.org/10.29240/jhi.v4i1.780>

¹¹ Ali Trigiyatno and Sutrisno, "Dharar as a Reason for Divorce Lawsuit in Fiqh and Legislation of Some Muslim Countries: Study on Indonesia, Bahrain, Sudan, Qatar, and Morocco", *Al Istimbath* 7, no. 1 (2022): 203-222, <http://dx.doi.org/10.29240/jhi.v7i1.3368>

¹² Khamami Zada, et.al, "Constitutionalizing Sharia: Identity and Independence of Islamic Politics Among Students", *Juris Jurnal Ilmiah Syari'ah* 21, no. 2 (2022): 137-159 <http://dx.doi.org/10.31958/juris.v21i2.6954>

is called a constitution.¹³ The scope of *siyasah dusturiyah* studies includes the formation and change of legislation through the legislative process, judicial review, as well as constitutional practices or conventions. Abul A'la Al Maududi defined *dusturiyah* as the principles of state administration based on religion and public benefit. Therefore, in the administration of the state, anything that ignores benefit and wisdom for the sake of tyranny is not *sharia*.¹⁴

In the *siyasah dusturiyah* perspective, constitutional organs such as the *Majlis Shura* or *Majlis Umat* or *Majlis Niyabah* and their members are called *Ahl al-Hall wa al 'Aqd* are regulated in the constitution.¹⁵ According to Yusuf Qaradawi, the position of *shura* is a basic element of the political and social system of Muslim society in organizing Islamic life.¹⁶ *Syura* serves as a place for the President to ask for opinions from the people or people's representatives regarding issues relating to the public interest.¹⁷ Besides, *Shura* is also a place for people to express their opinions.¹⁸ Within the *shura* institution there must be a deliberation and decision-making function.¹⁹ What the concept of *shura* has in common with the idea of democracy is that they both recognize and respect the right of every individual to express opinions. On the contrary, both have the principles of equality, freedom and justice in deliberations.²⁰

According to Ibnu Taymiyah, it is impossible to achieve optimal benefits in a state if there is no association of deliberative forums that are binding in solving problems.²¹ Thus, the existence of the *Shura* Council is a necessity. Even Khalid Ibrahim Jindan said that deliberation is not just a political procedure but a religious duty.²² *Majlis Syura* becomes a determinant of collective agreement in

¹³ A. Djazuli, *Fiqh Siyasah: Implementasi Kemaslabatan Umat dalam Rambu-Rambu Syari'ah* (Jakarta: Prenada Media, 2015).

¹⁴ A. Djazuli, *Fiqh Siyasah: Implementasi Kemaslabatan Umat dalam Rambu-Rambu Syari'ah* (Jakarta: Prenada Media, 2015).

¹⁵ Ija Sutana, *Model Kekuasaan Legislatif Dalam Sistem Ketatanegaraan Islam* (Bandung: Renika Aditama, 2017).

¹⁶ Yusuf Qaradhawi, *Al Islam Wa Al-'Almaniyyah Wajban Li Wajbin* (Kairo: Dar Al-Shahhawah, 2019).

¹⁷ Abdurrahman Abdulkhalik, *Al-Syura Fi Zbilal Al-Hukm Al-Islam* (Kairo: Dar Al Syuruq, 2012).

¹⁸ Muhammad Amarah, *Hal Al-Islam Huwa Al-Hall? Limadza Wa Kaif?* (Kairo: Dar Al Syuruq, 2015).

¹⁹ Ahmad Sukardja, *Hukum Tata Negara Dan Hukum Administrasi Negara Dalam Perspektif Fiqh Siyasah* (Jakarta: Sinar Grafika, 2012).

²⁰ Irhamdi Nasda, "Comparison of the Concepts of Democratic and Shura Systems of Government", *MILRev Metro Islamic Law Review* 2, no. 1 (2023): 52-64 <https://doi.org/10.32332/milrev.v2i1.6862>

²¹ Ibnu Taimiyah, *Siyaasah Syar'iyah* (Surabaya: Risalah Gusti, 1995).

²² Khalid Ibrahim Jindan, "Etika Politik Islam: Telaah Kritis Ibnu Taimiyah Tentang Pemerintahan Islam," in .." (Surabaya: Risalah Gusti, 1995), 82.

decision making to establish laws in the administration of Islamic government.²³ Thus, the position of the *Shura Majlis* is the same as that of parliament which carries out legislative functions.

As a legislative institution (*Majlis Shura*) it must truly represent all groups and interests of the people, both men and women.²⁴ Rasulullah Muhammad SAW once said in front of the Muhajirin and Ansar, "Send me twelve representatives from among you to represent the affairs of their people."²⁵ They are the people who are then consulted by him in making decisions.²⁶ Therefore, if it is impossible for the interests of the people to be represented by one chamber of the *Shura Majlis*, then there is no prohibition on forming another chamber in the *Shura Majlis* for the benefit of the people. According to Al-Maududi, forming a *Shura Majlis* is a necessity, whatever form and system is used.²⁷ This is because deliberation is the central point of Islamic legislation, not only a normative necessity, but also a theological necessity.²⁸ The DPD's position as the *Shura Council* is a forum for deliberation to make decisions on social issues.²⁹

The *Majlis Shura* institution can consist of one assembly (unicameral) or two chambers (bicameral), according to the needs of the country. Egypt and Syria adhere to a unicameral system called the *Majlis Asy-Sya'ab* (People's Council) which functions as a representative institution for the people. In Yemen and Lebanon it is called *Majlis An-Nuwwab* (Representative Council), in Palestine it is called *Majlis At-Tasyri'i* (Legislation Council) whose main function is as a law-forming institution, while in Qatar it remains called *Majlis As-Shura* (Council Deliberation) which functions as the highest institution in decision making.³⁰

In countries that adhere to a bicameral *Majlis Shura* such as Sudan, it consists of *Al-Majlis Al-Wathani* (National Council) which functions as the people's representative for national interests and *Majlis Al-Wilayat* (Regional Council) which functions as representative of the provinces. Meanwhile, the combination of the two is called *Al-Hai'ah At-Tayiri'iyah Al-Qaumiyah*

²³ Muhibuddin Zaini, "Hukum Syuro Dalam Sistem Pemerintahan Islam," *Jurnal Kajian Ilmu Hukum* 1, no. 1 (2022): 62–76, <https://doi.org/10.55583/jkih.v1i1.203>.

²⁴ Abdul Hamid Isma'il Al-Anshari, *Nizham Al-Hukm Fi Al-Islam* (Kairo: Dar al-Qathar al Fujaah, 1995).

²⁵ Muhammad Fuad Abdul Baqi, *Shahih Al-Bukhori* (Jakarta: Pustaka As-Sunnah, 2021).

²⁶ Taqi Al-Din Al-Nabhani, *Muqadimat Al-Dustur* (Lebanon: Da al-Ummah, 1990).

²⁷ Abu A.'la Al-Maududi, *Islamic Law and Constitutional* (Lahore: Islamic Publication, 1997).

²⁸ Sutana, *Model Kekuasaan Legislatif Dalam Sistem Ketatanegaraan Islam*.

²⁹ Muhammad Imran, "Sistem Syuro Dalam Penyelenggaraan Pemerintahan Islam," *Jurnal Kajian Hukum Dan Keadilan* 3, no. 7 (2015): 129–138, <https://doi.org/10.12345/ius.v3i7.203>.

³⁰ Ali Muhammad Ash-Shallabi, *Parlemen Di Negara Islam Modern* (Jakarta: Pustaka Al-Kautsar, 2016).

(National Legislative Institute) as a law-forming institution. In Jordan, the *Shura Majlis* consists of the *Majlis An-Numwab* (Representative Council) which functions as the people's representative and the *Majlis Al-A'yan* (Honorary Council) which functions to supervise government administration, while the combined forum is called the *Majlis Al-Ummah* (National Council). In Morocco, the *Shura Majlis* consists of the *Majlis An-Numwab* (Representative Council) which functions as the people's representative institution and the *Majlis Musytasyarin* (Advisory Council) which functions to provide advice and considerations to the Government. The combination of the two is called Parliament. In Algeria, it consists of the *Majlis Asy-Sya'bi Al-Wathani* (Legislation Council) which functions as a law-forming institution and the *Majlis Al-Ummah* (National Council) which functions as a people's representative institution. Meanwhile, the combination of these two institutions is called Parliament.³¹

Of the parliaments in this modern Islamic country, the Indonesian parliamentary system is similar to the Sudanese bicameral parliament which consists of *Al-Majlis Al-Wathani* (National Council) which reflects the interests of the people and *Majlis Al-Wilayat* (Regional Council) which represents regional interests. Meanwhile, in Indonesia it consists of the DPR which represents national interests and the DPD which represents regional interests.³² However, in Sudan the *Majlis Al-Wilayat* (Regional Council) has the same position and function as *Al-Majlis Al-Wathani* (National Council) in the field of law formation, so that it can minimize errors that occur.

In contrast to Indonesia, the DPR and DPD have unequal functions. The DPR has strong legislative, supervisory and budgetary functions, because the DPR is equipped with the right of initiative in the field of legislation, the right of interpellation, the right of inquiry and the right to express opinions in the field of supervision. Meanwhile, the DPD only has the right of initiative. In the field of supervision, the DPD does not have the right to interpellation, the right to inquiry and the right to express opinions like the DPR. Therefore, the position of the DPR in the Indonesian parliament is superior to the DPD.

Under such feeble authority, there is not much that can be expected from the DPD. It should be in the hands of DPD members to formulate various strategic policies involving regional interests. Therefore, it is an obligation for the DPD to act in accordance with the aspirations of regional communities.³³ The regulation regarding the functions and authority of the

³¹ Ali Muhammad Ash-Shallabi, *Parlemen Di Negara Islam Modern* (Jakarta: Pustaka Al-Kautsar, 2016).

³² Elkhairati, "Piagam Madinah dan Spiritnya dalam Undang-Undang Dasar (UUD) 1945", *Al Istinbath* 4, no. 1 (2019): 51-68, <http://dx.doi.org/10.29240/jhi.v4i1.776>

³³ Tulus Santoso and Teguh Kurniawan, "Analisis Kinerja Bagian Pengaduan Sekretariat Jendral DPR RI," *Jurnal Mimbar* 31, 1 (2015): 167-176, <https://doi.org/10.29313/mimbar.v31i1.1305>.

DPD has clearly deviated from the status and position desired at the beginning of its formation.³⁴ As a result of the weakness of the DPD's authority, centralization occurs. Thus, it is clear that the current implementation of decentralization is still far from the expected decentralization criteria.³⁵

The DPD as a high state institution needs to clarify its position and function as practiced by *Al-Majlis Al-Wathani* and *Majlis Al-Wilayat* in Sudan as well as bicameral parliaments in other countries, namely as a partner of the DPR and not as a subordination of the DPR. The DPD must be able to eliminate the DPR's dominance in decision making through a double check system mechanism to ensure that the aspirations of the people are channeled. This is to emphasize that the two chambers (in this case the DPR and DPD) truly represent the different aspirations of the people and reflect the combined interests of the people.³⁶

The results of the amendments to the 1945 Constitution left academic debate, one of which was in terms of the substance of the constitution which still had weaknesses and needed to be improved³⁷ namely towards the spirit of the DPD. As the guardian of regional autonomy, the scope of DPD's authority is equivalent to the authority of Regional Government which is implemented in the fields of legislation, supervision and budgeting related to regional interests. Unfortunately, this authority is very weak.³⁸ In the field of legislation, the DPD only has the right to submit draft laws and participate in discussions without being involved in decision making.³⁹ The DPD does not have strong supervisory authority, because it does not have the authority to make decisions and follow up on the results of its supervision. The DPD can only convey the results of its

³⁴ Ahmad Rosidi, "Kewenangan Dewan Perwakilan Daerah Dalam Sistem Ketatanegaraan Republik Indonesia Berdasarkan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," *Jurnal Ius Kajian Hukum Dan Keadilan* 3, no. 2 (2015): 282–298, <https://doi.org/10.12345/ius.v3i8.213>.

³⁵ Camden Kelliher and Etal, "Unconstitutional Authority of Indonesia's Constitutional Court: The Resolution of Pilkada Result Dispute," *Election Law Journal: Rules, Politics, and Policy* 18, no. ue 3 (2019).

³⁶ Hezron Sabar Rotua Tinambunan and Dicky Eko Prasetyo, "Rekonstruksi Konstitusi Dalam Regional Representative Dewan Perwakilan Daerah Terhadap Fungsi Legislatif," *Jurnal Masalah-Masalah Hukum* 48, no. 3 (2019): 266–274, <https://doi.org/10.14710/mmh.48.3.2019.266-274>.

³⁷ Novendri Mohamad Nggilu, Lisnawaty W Badu, and Suwitno Yutye Imran, "Alienation Changes In Formation Commission of Indonesian Constitution of 1945 (Contemplation Towards The Fifth Amendment)," *Jurnal Pembaharuan Hukum* 5, no. 1 (2018): 74–82, <https://doi.org/10.26532/jph.v5i1.1975>.

³⁸ Muchtar Herman Putra, "Functions and Roles of the Regional Representative Councils (DPD) of the Republic of Indonesia in Strengthening Regional Autonomy in the Bicameral Government System," 2020.

³⁹ Muhammad Nadzir and Suhartini, "Kewenangan Dewan Perwakilan Daerah Dalam Pembentukan Peraturan Perundang-Undangan Dikaitkan Dengan Sistem Bicameral," *Hang Tuah Law Journal*, 2021.

supervision to the DPR as material for consideration for follow-up.⁴⁰ Institutionally, the bicameral design does not make the legislative process effective, because the DPD has small influence.⁴¹

The absence of DPD involvement in decision making on important issues has deviated from the essence of the representative institution (*Majlis Shura*) which functions as the *Shura* Council as a forum for deliberation in decision making. Realizing this weakness, the DPD has attempted to push for the fifth amendment to the 1945 Constitution.⁴² In various seminars, symposiums and focus group discussions, the discourse on the fifth amendment to the 1945 Constitution has always been campaigned for, but in the 20 (twenty) years of the DPD's existence it has not been able to push for the fifth amendment. Therefore, it is time for the DPD to shift its attention from plans to amend the 1945 Constitution to efforts to optimize the strengthening of its functions.

Strengthening Parliament Through *Judicial Review*

In the perspective of *siyasah dusturiyah*, legal changes can be made through formal procedural legislation or what is called *al-sutha al tasyri'iyah* and through assembly decisions approved by the caliph which are called *qanun*.⁴³ When compared with constitutional law theory, there is no difference with *siyaasah dusturiyah*. Changes to the constitution can be made through amendments, judicial reviews, and changes through constitutional customs or what are known as conventions. The principles that must be maintained in *siyasah dusturiyah* are the guarantee of human rights, the principles of equality and justice, not conflicting with religion and the benefit of.⁴⁴ Therefore, the alternative of strengthening the DPD which is carried out through *al-sutha al tasyri'iyah* and *qanun* from the perspective of *siyasah dusturiyah* is valid according to law.

To strengthen its position and function, the DPD has institutionally attempted to carry out various methods, both *al-sutha al tasyri'iyah* and *qanun*, to encourage the strengthening of the DPD.⁴⁵ In *al-sutha al tasyri'iyah*, the DPD

⁴⁰ Catur Widodo Haruni, "Constitutionality of Monitoring and Evaluation of Regional Regulation Drafts and Regional Regulations by Regional Representative Council," *Legality: Jurnal Ilmiah Hukum* 30, no. 1 (2022), <https://doi.org/10.22219/ljih.v30i1.20532>.

⁴¹ R. Bruce Rich, "Designing the DPD: Indonesia's Regional Representative Council," *Bulletin of Indonesian Economic Studies* 47 (2011): 263 – 273, <https://doi.org/10.1080/00074918.2011.585953>.

⁴² Feith Herbert, "The Decline of Constitutional Democracy in Indonesia," *American Political Science Review* 57, 3 (2007): 719–721.

⁴³ Subhi Mahmarshani, *Falsafah Al Tasyri' Fil Islam*, (Damaskus: Dar Al-Kasysyaf, 2015).

⁴⁴ Abdul Wahhab Kahlaf, *Al-Siyasah Al Syar'iyah*, (Kairo: Darul Anshar, 2017).

⁴⁵ Pan Mohamad Faiz, Saldi Isra, and Oly Viana Agustine, "Strengthening Indonesia's Regional Representative Council Through Judicial Review by the Constitutional Court," *SAGE Open*, 2023, <https://doi.org/10.1177/21582440231204408>.

lobbies the DPR to be willing to support a constitutional amendment. The DPD is campaigning for a constitutional amendment to the community to get support from the people. This political effort received support from the DPR in 2006. Unfortunately, after submitting the amendment proposal file to the MPR, one by one the factions in the DPR and individually withdrew their support, so that the constitutional amendment failed.⁴⁶

The DPD carries out a judicial review of the law. In the judicial review, the Constitutional Court was of the opinion that the law had reduced the power of the DPD as a legislative institution that was equivalent to members, commissions, or a combination of DPR commissions.⁴⁷ The Constitutional Court's decision has restored the position of the DPD in accordance with the constitution.⁴⁸ However, this authority is still not enough to close the many existing gaps.⁴⁹

The failure of efforts to formally amend the constitution or judicial review is not the end of everything. Theoretically, the constitution can not only be changed according to law, but perhaps also with the emergence of a revolution, reception, convention, *putsch*, or other *coup d'état*.⁵⁰ The most realistic effort is to do so through *convention*. Unfortunately, this effort has not been carried out by the DPD.

Non-juridical changes to the constitution can occur due to certain reasons or special circumstances, resulting in changes to the constitution in total or in part according to needs.⁵¹ Political changes to the constitution as a reality are ongoing and can be accepted by all levels of society, so such changes in the context of Constitutional Law are valid so that they have juridical force.⁵² *De facto* constitutional changes are accepted by all its people, then by convention its status changes to *de jure*.⁵³

⁴⁶ La Ode Husen and Husni Thamrin, *Hukum Konstitusi: Kesepakatan (Agreement) Dan Kebiasaan (Custom) Sebagai Pilar Konvensi Ketatanegaraan* (Makassar: Social Politic Genius, 2017).

⁴⁷ Faiz, Isra, and Agustine, "Strengthening Indonesia's Regional Representative Council Through Judicial Review by the Constitutional Court."

⁴⁸ Fajar Laksono and etal, "Implementasi Putusan Mahkamah Konstitusi No. 92/PUU-X/2012 Terkait Kewenangan DPD Dalam Pembentukan Undang-Undang," *Jurnal Konstitusi* 2, no. 3 (2015): 542–568, <https://doi.org/10.31078/jk1236>.

⁴⁹ Mariana Llanos and Detlef Nolte, "Bicameralism in The Americas: Around The Extremes of Symmetry and Incongruence," *The Journal of Legislative Studies* 9, no. 3 (2003): 71, <https://doi.org/10.1080/1357233042000246864>.

⁵⁰ Djokosutono, *Kuliah Hukum Tata Negara* (Jakarta: Ghalia Indonesia, 2013).

⁵¹ Ahmad Siboy, "Pilihan Desain Penyelesaian Sengketa Kewenangan Lembaga Negara," *Jurnal Hukum dan Syariat De Jure* 14, no. 1 (2022): 178-197 <http://doi.org/10.18860/j-fshv14i1.12736>

⁵² Taufiqurrohman Syahuri, *Hukumi Konstitusi* (Jakarta: Ghalia Indonesia, 2015).

⁵³ Hans Kelsen, *General Theory Of Law And State* (New York: Russell & Russell, 1973).

In line with the convention as an alternative to formal amendments to the constitution, in the Islamic *Daulah* anything that is useful for the benefit does not conflict with *sharia* laws, whether *qath'iyat* (dogma) or *musallamat* (axiom). Matters relating to human life and benefit that are not contained in explicit texts in the Al-Quran and Hadith or are *khilafiyah* especially contemporary issues, are the domain of *ijtihad* and *tarjih*,⁵⁴ which gained legitimacy from the Prophet Muhammad SAW who said that: "You know better about world affairs than you."⁵⁵

There is an opportunity for the DPD to strengthen its role and function through changing the constitution in other ways as mentioned by Goerge Jellinek who differentiates between two ways of changing the constitution, namely through the following methods:

1. *Verfassungs andernng*, namely the method of changing the constitution intentionally in a manner determined by the constitution.⁵⁶
2. *Verfassungs wandelung*, namely the way constitutional changes are carried out is not based on formal methods specified in the constitution itself, but rather through special channels such as revolution, coup (*coup d'etat*), and convention.⁵⁷

The two constitutional amendment procedures are further detailed into four types of procedures, namely, Formal Amendment; Some Primary Force; Judicial Interpretation; And Usage and Convention.⁵⁸ Formal amendment is a constitutional amendment procedure carried out in accordance with the provisions contained in the constitution. Some primary force is a constitutional change that occurs as a result of primary forces, such as political factors. Judicial interpretation is a change in the constitution through the interpretation of a judge or court. For example, in the famous case *Marbury vs Madison* in 1803, the United States Supreme Court, chaired by John Marsahll, first exercised the authority to interpret the constitution to cancel laws passed by the United States Congress. Meanwhile, what is meant by usage and convention is changes to the constitution that arise from customary constitutional practices that are not disputed by the people.⁵⁹ The term 'constitutional convention' tends to be attached indiscriminately to any regularity of behavior observed in the process of government.⁶⁰

⁵⁴ Ahmad Ar-Raisuni, *Fiqh At-Tsaurah* (Kairo: Dar al-Kalimah, 2013).

⁵⁵ Baqi, *Shabih Al-Bukhori*.

⁵⁶ Moh Kusnardi and Hermaily Ibrahim, *Pengantar Hukum Tata Negara Indonesia* (Jakarta: UI Press, 2010).

⁵⁷ Ranggawijaya, *Wewenang Menafsirkan UUD* (Bandung: Cita Bakti Akademika, 1996).

⁵⁸ Wheare K.C, *Konstitusi Modern* (Bandung: Nusa Media, 2016).

⁵⁹ Syahuri, *Hukumi Konstitusi*.

⁶⁰ Joseph Jaconelli, "The Nature of Constitutional Convention," *Legal Studies* 19, no. 1 (1999): 24 – 46, <https://doi.org/10.1111/j.1748-121X.1999.tb00084.x>.

In line with this opinion, C.F. Strong expressed his opinion that formal changes to the constitution can be divided into 4 (four) types of change methods or procedures, namely:⁶¹ *By the legislature under special restriction; By the people through a referendum; That methods peculiar to federal state where all or a proportion of the federating units must agree too the change* dan *By a special convention for the purpose.*

Although there are differences of opinion, in principle it is recognized that changes to the constitution can be carried out through habits in constitutional practice which are deliberately carried out to create new constitutional law outside the basic law. If these habits can be implemented and then receive recognition from society, these habits will gradually become constitutional conventions. Compared with constituent legislatures, conventions are better able to reflect citizens' preferences and promote impartial constitutional design.⁶²

The formal amendments in the case of the DPD appears to be only relevant in the transition from DPR dictatorship.⁶³ Without a convention the DPD does not have the power to achieve revolutionary change.⁶⁴ The political strategy that must be carried out by the DPD in encouraging the creation of a convention. Indeed, after the Constitutional Court Decision, the DPD is no longer marginalized, but DPD consideration in the formation of laws is a mandatory requirement. This is in line with the *Shura* concept which requires deliberation on issues involving the public benefit,⁶⁵ although it does not yet reflect the true function of the *Shura* Council, namely as mediator, giver of *fatwas* and formulator of laws.⁶⁶

Considering that the DPD's bargaining position is currently quite strong, the DPD needs to force the DPR together with the President so that the DPD's opinion or at least part of its opinion must be accommodated by the DPR and the President in approving a draft law to become law. If the DPD's wishes are not accepted by the DPR or the President, then the DPD can refuse to give its opinion on another draft law that is being discussed. So, the juridical consequences if a draft law discussed by the DPR together with the President is approved without the DPD's opinion, then the law that has been approved

⁶¹ C F Strong, *Konstitusi-Konstitusi Politik Modern* (Bandung: Nusa Media, 2019).

⁶² Gabriel L Negretto, "Democratic Constitution-Making Bodies: The Perils of a Partisan Convention," *International Journal of Constitutional Law* 16, 1, no. 1 (2018): 254–279, <https://doi.org/10.1093/icon/moy003>.

⁶³ Andrew Arato, "Conventions, Constituent Assemblies, and Round Tables: Models, Principles and Elements of Democratic Constitution-Making," *Global Constitutionalism* 1, no. 1 (2012): 173 – 200, <https://doi.org/10.1017/S2045381711000050>.

⁶⁴ Arato, Andrew. "Conventions, Constituent Assemblies, and Round Tables: Models, Principles and Elements of Democratic Constitution-Making."

⁶⁵ Farid Abdul Khaliq, *Fikih Politik Islam* (Jakarta: AMZAH, 2015).

⁶⁶ Abus A.'la Al-Maududi, *Hukum Dan Konstitusi Sistem Politik Islam* (Bandung: Mizan, 2016).

jointly by the DPR and the President automatically contains formal defects or is more accurately called unconstitutional.

If the DPD dares to take this bold stance, it is believed that the DPD will receive strong moral support from the people, especially from the regional government, as long as what the DPD is fighting for is truly for the benefit of the people and the region as a sociological reality. When the DPD's attitude receives a positive response from the DPR and the President, it means that the DPD's attitude has received political support and ultimately in the future this will become a constitutional tradition or habit called a convention. Thus, gradually there have been non-judicial changes to the constitution, but in the context of Constitutional Law or Constitutional Law this is legally valid.

Strengthening Parliament through Conventions

Bicameral parliament is a form of parliament consisting of two chambers/assemblies, namely the lower house and the upper house. The lower house represents national interests, while the upper house represents certain interests. In Indonesia, the lower house is called the DPR which represents the interests of all Indonesian people and the upper house is called the DPD which represents the interests of the autonomous regions. Ideally, both assemblies have equal functions and positions.

The formation of the DPD was motivated by the current condition that regional aspirations and interests were not channeled effectively through the People's Representative Council (DPR) or Regional Delegates in the People's Consultative Assembly (MPR). This is because political party participation in general elections alone is not a sine quo non for good democracy.⁶⁷ Unfortunately, the presence of the DPD in the Indonesian parliament does not bring significant changes. The DPD's functions are still co-opted in a political system where democratic principles do not operate.⁶⁸

The function of the DPD should be to protect autonomous regions from central government policies which are decentralized through law into the area of regional government authority.⁶⁹ At the same time, the DPD must also carry out strict supervision regarding the distribution of national interests within

⁶⁷ Feri Amsari, "Designing An Intra-Party Democracy in Indonesia," *Journal of Legal, Ethical and Regulatory Issue* 24, no. 4 (2021), <https://www.abacademies.org/articles/designing-an-intraparty-democracy-in-indonesia-10810.html>.

⁶⁸ John Coakley, "The Strange Revival of Bicameralism," *The Journal of Legislative Studies* 20, no. 4 (2014): 542 – 572, <https://doi.org/10.1080/13572334.2014.926168>.

⁶⁹ Arthur Benz, "Shared Rule vs Self-Rule? Bicameralism, Power-Sharing and the Joint Decision Trap," *Perspectives on Federalism* 10, no. 2 (2018): 30 – 48, <https://doi.org/10.2478/pof-2018-0015>.

parliament in the budget sector.⁷⁰ Unfortunately, in the constitution, the function of the DPD is weaker than the function of the DPR.

Even though Indonesia is not an Islamic *daulah*, the principles of representative institutions (*shura* assembly) in the context of *siyasah dusturiyah* which rely on the political system and state administration system on the constitution (*dusturiyah*) have the same principles as Indonesia which is based on "people led by wisdom in representative deliberations". Thus, the existence of parliament as the *Shura* Council is a forum for deliberation to make decisions on social issues.⁷¹

In a bicameral parliament, equal strength of both houses is needed in decision making, at least having the authority to determine laws.⁷² However, in fact the position of the DPD and DPR as legislative institutions is not balanced.⁷³ There is a significant gap and inequality of authority between the DPR and DPD, which is not in line with a bicameral system.⁷⁴

Based on the analysis above, the courage of the DPD not to give its opinions and considerations on a draft law, both the draft law on the APBN and other draft laws which fall under the authority of the DPD, will gradually become a constitutional convention which is not directly change the constitutional legal norms contained in the Constitution. This rejection model is somewhat similar to the veto power that the United States Senate has over bills originating from the House of Representatives or those originating from the President.⁷⁵ The difference is, the veto authority of the United States Senate is regulated and given directly from the American constitution, not born of a convention. In addition, the Senate veto is exercised over bills that have been approved by the House of Representatives over bills proposed by the President, or bills that the President has approved over bills proposed by House of

⁷⁰ Joachim Wehner, "Legislatures, Democratic Control and Budgeting: A Comparative Institutional Analysis," 2007, <https://etheses.lse.ac.uk/2706/1/U615655.pdf>.

⁷¹ Muhammad Imran, "Sistem Syuro Dalam Penyelenggaraan Pemerintahan Islam," *Jurnal Kajian Hukum Dan Keadilan* 3, no. 7 (2015): 129–138, <https://doi.org/10.12345/ius.v3i7.203>.

⁷² Mohammadreza Baharestanfar and Seyed Mohammad Hashemi, "Protecting Human Rights and Constitutional Law in Bicameral Systems," *Journal of Programming Languages* 11, no. 1 (2018): 17, <https://doi.org/10.5539/JPL.V11N1P17>.

⁷³ Imran Imran, Handar Subhandi Bakhtiar, and Dirga Achmad, "Legal Standing and Authority of the Regional Representative Council in the Indonesia Constitutional System," *Amasir Law Journal* 1, no. 2 (2020), <https://doi.org/10.36746/alj.v1i2.23>.

⁷⁴ Moh Ilham A Hamudy and Mohamed Rifky, "Should The DPD Republic of Indonesia Be Preserved?," *Jurnal Studi Pemerintahan* 11, no. 2 (2020): 215–239, <https://doi.org/10.18196/JGP.112118>.

⁷⁵ Patrick Fisher, "Committees and the Budget Process: How Representative Are Congressional Budgeting Committees?," *Southeastern Political Review* 25, no. 2 (2008): 769–779, <https://doi.org/10.1111/j.1747-1346.1997.tb00466.x>.

Representative.⁷⁶ Meanwhile, the idea of the DPD having veto rights in this research comes from a political process that produces constitutional conventions, not given directly by the constitution. Apart from that, the DPD veto is carried out before a bill is approved jointly by the DPR and the President. The nature of this veto is more like an ultimatum to the DPR and the President to accommodate the opinions or considerations of the DPD in the bill that will be approved.

In the field of supervision, the DPD needs to make progressive breakthroughs by creating supervisory instruments like those possessed by the DPR, namely the right to interpellation, the right to inquiry and the right to express opinions. Within the Islamic *Daulah*, the *Shura* Council has a supervisory function⁷⁷ which is as important as the legislative function because both are the main functions as *Majlis Syura*.⁷⁸ The essence of the supervisory function is controlling the leader's actions as was practiced when Abu Bakar Ash-Siddiq was appointed caliph, in his speech he said: "If I do good, then help and support me. If I'm wrong, then tell me and remind me."⁷⁹ Umar bin Khatab did the same thing, who asked the public to monitor officials.⁸⁰ The clearest consequence of supervision is that the President can be fired after the majority of the *ahl al-hall wa al-aqd* oppose it.⁸¹

In the history of the Islamic State, starting from the Umayyad and 'Abasiyyah caliphates, there were 62 caliphs and 1 person who was impeached by the *Shura* Council, namely Caliph Rasyid Billah (1135-1136). The *Shura* Council used the right of inquiry to investigate unjust acts, murder and drinking committed by Caliph Rasyid Billah. As a result of his tyranny and inability to realize the *daulah's* goals, parliament withdrew its support by impeaching and appointing Abu Abdullah Muhammad al-Muktafi Liarmillah.⁸²

The implementation of the DPD's supervisory function is not just to carry out supervision and convey it to the DPR, but must be involved in the impeachment process as practiced in the *Shura* Majlis and bicameral parliaments in general, because supervision by the *Shura* Majlis is to guard the President's morals. In the *Shura* Majlis, the function of appointing and dismissing the caliph is specifically called *Ahl Immamat* within the Islamic *Daulah*. There are two

⁷⁶ William N Eskridge, "Vetogates and American Public Law," *Journal of Law Economics & Organization* 31, no. 4 (2015): 756–781, <https://doi.org/10.1093/jleo/ews009>.

⁷⁷ Jeje Abdul Rojak, *Hukum Tata Negara Islam* (Surabaya: UIN Sunan Ampel Press, 2014).

⁷⁸ Qaradhawi, *Al Islam Wa Al-'Almaniyyah Wajban Li Wajbin*.

⁷⁹ Al-Awa, Muhammad. "Fi An-Nizham As-Siyasi li Ad-Daulah A-Islamiyah". P. 233.

⁸⁰ Ash-Shallabi, *Parlemen Di Negara Islam Modern*.

⁸¹ Fazrul Rahman, "Implementation of the Concept of State in Pakistan Milieu," *Journal Islamic Studies* 6, no. 3 (2013).

⁸² Jalaluddin Abdurrahman Al-Suyuthi, *Tarikh Al Khulafa* (Egypt: Dar al-Maktabah, 1996).

reasons for impeaching a leader, namely disability in terms of justice and physical disability.⁸³

The first step in creating rights in supervision must begin with setting them in the DPD's Rules and Regulations regarding the procedures or procedures for using the right of interpellation, the right to inquiry and the right to express an opinion. When the government attends to the DPD's summons which is conveyed through an invitation letter to the government, the government indirectly recognizes the DPD's rights in the field of supervision. If this can be done by the DPD and gets a response from the government, of course this will turn into a constitutional convention too. Even though it initially seemed unconstitutional, this will automatically become constitutional if it turns into a constitutional convention.

In addition, in order to strengthen the function of forming laws, budgeting and supervising the DPD, it is necessary to restructure the authority relationship between the DPD and the Regional Government. Even though there are no special provisions governing the DPD's obligation to coordinate with the Regional Government or Governor or Regent/Mayor, this is important to regulate because one of the sources of regional aspirations apart from the direct community is the Regional Government. This is because it is actually the Regional Government that carries out development and public service functions, so that the one who knows best the obstacles to development and services is the Regional Government. Therefore, the DPD must also listen to the aspirations of the Regional Government, so that regulatory objects in carrying out legislative functions and objects of supervision by the DPD become more relevant to regional interests and needs.

The regulation of the relationship between the DPD and the Regional Government can be carried out through cooperation between the two institutions which of course must be preceded by an understanding between both parties to commit themselves to cooperation which is outlined in a Memorandum of Understanding between the DPD and the Regional Government and signed by both parties. Furthermore, each institution regulates it in their respective legal products. The DPD follows up by regulating it in the DPD Rules and Regulations, while the Regional Government can regulate it in Regional Regulations or Regional Head Regulations. Thus, the coordination agenda between the DPD and the Regional Government can be carried out intensively, either through hearings, recesses involving elements of the Regional Government or other activities such as seminars and so on. In this way, the synergy of the DPD and Regional Government in developing and prospering regional communities can be built. Both each have important roles in different positions, the DPD fights for regional interests at the national level, while the

⁸³ Imam Al-Mawardi, *Al-Ahkam As-Sulthaniyyah* (Jakarta: Darul Falah, 2020).

Regional Government channels regional aspirations to the DPD and aggregates national interests at the regional level. Thus, there is a structural attachment of the DPD to the regions. So far, what has happened is that the DPD has escaped the supervision of the Regional Government. DPD members feel more like single fighters who were born without the help of other parties, except from the beliefs of their constituents, so that the DPD only feels they have a moral responsibility to their constituents. Meanwhile, legally constituents cannot recall DPD members if there are DPD members who are deemed not to be carrying out their functions properly.

It is in this logic that legal revitalization is carried out. Change is no longer in regulations, but in the creativity of legal actors in the right time and space. Actions for change can be carried out immediately without having to wait for changes in regulations, because progressive legal actors can make progressive meanings of existing regulations. Facing a rule, even if the rule is not aspirational, for example, progressive legal actors do not have to deny the existence of the rule. Every time he can make a new interpretation of the rules to provide benefits, a sense of justice and happiness.⁸⁴

Based on the description above, the progressive legal paradigm has characteristics that differentiate it from other legal paradigms, especially the legalist or positivistic paradigm.⁸⁵ First, the law is for humans, not humans for the law. This optical outlook or basic belief does not see the law as something central in law, but rather humans are at the center of the legal cycle.⁸⁶ If legal actors adhere to the belief that humans are for the law, then these humans will always be tried, perhaps even forced, to fit into the schemes that have been created by law.⁸⁷ Second, progressive law refuses to maintain the status *quo* in law. Maintaining the status quo, gives the same effect, as when people argued, that the law is the benchmark for everything, and humans are for the law.⁸⁸ The law applied using this mechanism is in line with positivistic, normative and legalistic methods. Once the law says or formulates something like that, then no one can do much unless the law is changed first.⁸⁹

Thus, the essence can be drawn from this discussion that changing the constitution through *al-sutha al tasyri'iyah* and *qanun* is not the only way, but there are many other ways to change the constitution in order to strengthen the role and function of the DPD. One of the most logical ways politically and legally is

⁸⁴ Sudjiono Sastroatmojo, "Konfigurasi Hukum Progresif," *Jurnal Ilmu Hukum* 8, no. 2 (2005): 185–201, <https://doi.org/http://hdl.handle.net/11617/720>.

⁸⁵ Satjipto Rahardjo, *Biarkan Hukum Mengalir* (Jakarta: Penerbit Kompas, 2017).

⁸⁶ Mahrus Ali, "Mahkamah Konstitusi Dan Penafsiran Hukum Progresif," *Jurnal Konstitusi* 7, no. 1 (2010): 72, <https://doi.org/10.31078/jk715>.

⁸⁷ Asmaeny Azis and Izlindawati, *Constitutional Complaint & Constitutional Question* (Jakarta: Kencana, 2018).

⁸⁸ Ali, "Mahkamah Konstitusi Dan Penafsiran Hukum Progresif."

⁸⁹ Azis and Izlindawati, *Constitutional Complaint & Constitutional Question*.

through the establishment of a constitutional convention.⁹⁰ Ibnu Qayyim al-Jauziyyah believes that *ijtihad* can develop according to the times, and the law of its time needs to be more relevant in facing and overcoming various situations that bring new and more complicated problems. This thought emerged as a reaction to the opinion among Muslims who thought that the door to *ijtihad* had been closed.⁹¹

However, this constitutional convention would never have been formed without the courage of the DPD to make breakthroughs or progressive political maneuvers. Regardless of whether the efforts to create a constitutional convention are successful or not, everything must start from the political will of DPD members. Without the courage to improvise on the minimal authority that the DPD has, do not expect the 1945 Constitution of the Republic of Indonesia to change by itself. Experience has been enough to teach the DPD that efforts to formally change the constitution that the DPD has been fighting for since 2005 until now have always failed.

Formally changing the constitution is not an easy thing. Even though the procedure for amending the 1945 Constitution before the amendment was very rigid, it cannot be interpreted that the 1945 Constitution of the Republic of Indonesia is now classified as a flexible constitution in terms of amendment procedures, because to be able to submit a proposal to amend the constitution it must be submitted by at least 1/3 of the total number of MPR members.⁹² Meanwhile, the number of DPD members in the MPR currently does not reach 1/3 of the number of MPR members. Likewise, in discussing the material content of the Constitution that will be amended, a quorum of 2/3 of the number of MPR members must be fulfilled.⁹³ Meanwhile, decisions to amend articles of the Constitution must meet the requirements, namely that they are made with the approval of at least fifty percent of the MPR members.⁹⁴ This is clearly considered difficult for the DPD to fulfill without the support of the

⁹⁰ Ahmad Sadzali and Durriyatul Afiqoh Uzma Mudjidah, "Coup Government of Afghanistan From the Perspective of Islamic Constitutional Law", *Jurnal Hukum dan Syar'iah De Jure* 7, no. 2 (2023): 178-197 <http://doi.org/10.18860/j-fsh.v15i2.18988>

⁹¹ Asrul Hamid and Dedisyah Putra, "The Existence of New Direction in Islamic Law Reform Based on the Construction of Ibnu Qoyyim Al-Jauziyah's Thought", *Juris Jurnal Ilmiah Syari'ah* 20, no. 2 (2021): 247-257 <http://dx.doi.org/10.31958/juris.v20i2.3290>

⁹² Muhammad Zulhidayat, "Constitutional Comparison Between Indonesia And Switzerland Constitutions Regarding The Mechanism Of Constitutional Amendment," *Jurnal Activa Yuris* 1, no. 2 (2021): 1-9, <https://doi.org/10.25273/ay.v1i2.9891>.

⁹³ Benyamin Tungga and Cokorde Wife Dian Laksmi Dewi, "Implications of Amending the 1945 Constitution on the Unclear Direction of Constitutional Substance," *Internasional Journal of Artificial Intelligence Research* 6, no. 1.1 (2022), <https://doi.org/10.29099/ijair.v6i1.1.689>.

⁹⁴ Firman Freaddy Busroh, "Institution of the People's Councilative Assembly of the Republic of Indonesia After the Amendment to the 1945 Constitution in State Administration," *Internasional Journal of Artificial Intelligence Research* 6, no. 1.1 (2022), <https://doi.org/10.29099/ijair.v6i1.1.590>.

DPR in the MPR. Thus, the DPD must look for other ways, therefore every DPD member is required to have a progressive legal paradigm, not conservative as seen currently.

Conclusion

Strengthening Indonesia's bicameral parliament through formal amendments to the constitution has failed. As an alternative, strengthening the bicameral parliament needs to be carried out through constitutional politics (*siyasah dusturiyah*) by forming constitutional conventions through the DPD's veto action on draft laws that do not involve the DPD in decision making. Therefore, the DPR and the President cannot ignore the DPD in making decisions on a draft law. In this way, the DPD can be a balanced partner for the strength of the DPR and make Indonesia a strong bicameral parliament. The strong position of the DPD will have an impact on the democratic process in parliament with a better double check system and safeguarding the interests of autonomous regions at the central level.

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