



## **The concept of power division in the legislative process in Indonesia from the fiqhi siyasah dusturiyah perspective**

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### **ABSTRACT**

The fiqh siyasah dusturiyah does not emphasize rigid formats and mechanisms in formulating laws. Its primary focus lies in state administration's principles and core tenets: justice, equilibrium, consultation, and public welfare. The research aims to find the siyasah dusturiyah perspective in the construction of power division, the dynamics of power division, and the active participation of society in forming laws. The study employs a literature review with a normative legal research approach that examines and assesses normative rules related to the values and principles of siyasah dusturiyah. The research findings indicate that Indonesia is a sovereign state governed by the principle of the people's sovereignty, based on the principle of divinity. The formation of laws follows the model of the division of power known as trias politica. Each branch of power possesses authority concerning this matter. Certain aspects of the legal construction of power division equate to the fundamental principle of siyasah dusturiyah. However, several critical observations highlight the incomplete reflection of the values of popular sovereignty and the divine. The practice of power struggles among political and economic elites continues to influence decision-making processes in the formulation of laws. After the amendments to the 1945 Constitution of the Republic of Indonesia, the House of Representatives (DPR), Regional Representative Council (DPD), and President are responsible for exercising legislative powers. This division of power deviates from the pure theory of trias politica as it grants the President a more significant role in the legislative process, thereby diminishing the essence of the DPR's authority as the holder of legislative functions. Furthermore, an imbalance in authority between the DPD and DPR during the legislative process has made the DPR a "super parliament"

institution. Consequently, the role of the DPD as one chamber within the parliament is subordinate to the superiority and dominance of the DPR in all legislative functions. From a *siyasah dusturiyah* perspective, many aspects still do not fulfill the principles of justice, balance, musyawarah (consultation), and the principle of *maslahat* (benefit). This research implies that it needs to strengthen the roles and functions of institutional bodies among state institutions to ensure equality and equilibrium in the formulation of laws.

**Keywords:** Trias politica; formation of law; power division; *siyasah dusturiyah*

## 1. INTRODUCTION

According to Julius Stahl, one of the indicators for categorizing a country as a rule of law is the existence of a division of powers or separation of powers. This concept was previously established by French philosophers Jean Jacques Rousseau, Voltaire, and Montesquieu in the modern era. They referred to this concept as "*trias politica*," or the separation of powers. This concept represents a modern governance model widely adopted by various governments worldwide. *Trias politica* encompasses the separation of state powers into three distinct branches: the legislative power responsible for law-making functions, the executive power responsible for enforcing laws (rule application function) within the wheels of government, and the judicial power responsible for adjudicating cases related to legal violations (rule adjudication function).

Regarding the concept of the separation of powers, Montesquieu wrote in his book entitled "The Spirit of Law" (1748) that in every government, there should exist three distinct branches of power, namely the legislative power concerning the enactment of legal regulations, the executive power on matters of international law, and the judicial power concerning issues dependent on civil law.<sup>1</sup> In Islamic law, power separation is discussed in the study of *siyasah dusturiyah*. The legislative authority in this context is known as the concept of "*Majlis Syura*" or "*ahl al-halli wa al-aqdi*," as referred to by Abu A'la al-Maududi as the "Advisory Council," and termed by al-Mawardi as *ahl al-ikhtiyar*.<sup>2</sup> According to Abdul Wahab Khallaf, the power (*sultah*) is also divided into three branches, as well as the concept of *trias politica*, namely: The legislative institution (*sultah tasyri'iyah*) is the state institution responsible for enacting laws as the governing rules in the state's affairs. The executive institution (*sultah tanfiziyyah*) is the state institution that executes the governance by the provisions of the law. The judiciary institution (*sultah Qada'iyah*) is the state institution that exercises judicial power and responsibilities in upholding the law by adjudicating cases involving violations of the

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<sup>1</sup> Miriam Budiardjo, *Dasar-Dasar Ilmu Politik...*, h. 283

<sup>2</sup> Moh. Kusnardi dan R. Saragih, *Susunan Pembagian Kekuasaan Menurut Sistem Undang-Undang Dasar 1945*, (Jakarta: PT Gramedia Pustaka Utama, 1994), h. 32.

established laws. These institutions collectively form the framework of power distribution within Islamic governance, reflecting the principles of separation of powers and checks and balances.<sup>3</sup>

Although not identical to the Western concept of *trias politica*, the division of power portrays a distinctive *trias politica* model within the construction of political thought in Islam concerning the system of the state and governance. Indonesia itself is divided into three institutions: (1) the executive institution, with the President as the head of government; (2) the legislative institution, consisting of the People's Consultative Assembly (DPR) and the Regional Representative Council (DPD), and (3) the judicial institution, comprising the judiciary. Each institution has its respective functions and authorities, regulated by the 1945 Constitution of the Republic of Indonesia.

Based on the background mentioned earlier, the researchers are interested in examining the three state institutions, namely the People's Consultative Assembly (DPR), the Regional Representative Council (DPD), and the President, in their role in formulating legislation. Consequently, the researchers address the issue of how the Legal Construction of Power Division in the Legislation Formation in Indonesia is perceived from the perspective of *Fiqh Siyasah Dusturiyah*.

## 2. METHODS

The study is a literature review (library research) that focuses on constitutional law concerning the legislative process carried out by the state's interrelated levels of government within the framework of the doctrine of the separation of powers.<sup>4</sup> Therefore, this study belongs to doctrinal or normative legal research.<sup>5</sup> Given its normative and doctrinal nature, this research's perspective offers a methodical justification of the principles controlling a particular classification of legal standards. Examining and analyzing normative rules and how they are implemented concerning the difficulties this study raises constitutes the operational part of normative legal research. As this study adopts a literature-based approach, the data primarily consist of primary legal materials, which refer to legal sources generally possessing a binding force for the parties involved and concerned.<sup>6</sup> The primary legal materials used as primary data in

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<sup>3</sup> Ahmad Sukardja, *Ensiklopedi Tematis Dunia Islam*, (Jakarta: PT. Ihtiar Baru Van Hoove, 2002), h .197.

<sup>4</sup> See Soerjono Soekanto dan Sri Mamuji, *Penelitian Hukum Normatif*, (Jakarta: Rajagrafindo Persada, 2004), h. 23-24.

<sup>5</sup> Pater Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2011), h. 32.

<sup>6</sup> Soedikno Mertokusumo, *Mengenal Hukum Suatu Pengantar*, (Yogyakarta: Penerbit Liberti, 1998), p. 19.

this research consist of constitutional documents and relevant regulations that govern the division of powers and implementation mechanisms in the legislative process in Indonesia. The subsequent data type is considered secondary and comprises secondary legal materials providing analysis and explanations of the primary legal materials. The secondary legal materials used as data in this study encompass literature data, including books, articles, and academic works. The data analysis is conducted qualitatively, interpreting information derived from the processed legal materials. The method of interpretation aims to decipher the processed legal materials, particularly those of a primary legal nature. The interpretation seeks to conclude the existence of legal norm voids, antinomies between legal norms, or ambiguous legal norms within the legal materials.<sup>7</sup> <sup>8</sup>Qualitative analysis was employed in this research to examine the quality of legal norm substance, which was discussed concerning the formulation of legal norms contained in the examined regulations and the perspectives of legal experts.

### 3. RESULTS AND DISCUSSION

#### Power Division in Forming Law in Indonesia

In the *trias politica* and *siyash dusturiyah*, the division of power into three branches is recognized, each possessing authority in the governance of the state. These three branches of power are known as *sulthah tasyri'iyah* (legislative power), *sulthah tanfiziyah* (executive power), and *sulthah qadha'iyah* (judicial power). Indonesia affirms the concept of distribution of power rather than separation of power. The concept of distribution of power implies that these three branches of power can establish relationships and cooperation in exercising their authority. It signifies that no power exists in isolation. For instance, the executive power holds authority related to the legislative and judicial branches, just as the legislative power also exercises jurisdiction over the other two powers.<sup>9</sup>

In general, the three branches of authority that make up the Indonesian government system, each with its responsibilities and powers, follow the principles of constitutional governance. The concept of power division within the framework of constitutional governance is aligned with the fundamental premise for power division in Indonesia, which is the principle of constitutionalism. Constitutionalism and the idea of constitutional governance rest on the lack of absolute and centralized power. As a result,

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<sup>7</sup> Muhaimin, *Metode Penelitian Hukum...*, p. 68.

<sup>8</sup> Merdy Hendrik Mezak, "Jenis, Metode dan Pendekatan dalam Penelitian Hukum", *Jurnal Law Review*, Vol. 5, No. 4, 2006, h. 89-99.

<sup>9</sup> Edie Toet Hendratno, *Negara Kesatuan, Desentralisasi dan Federalisme*, (Yogyakarta: Graha Ilmu, 2009), h. 92.

the use of authority in governance can be limited and managed.<sup>10</sup> The various branches of power mutually experience interconnectedness as well as mutual intercourse.<sup>11</sup> The interbranch delineation of powers minimizes the potential formation of an authoritarian executive government. As a result, the path to achieving the common welfare as envisioned by the state government's goals within the constitutional governance framework becomes increasingly attainable.

### **The Authority of the Presidential Institution in Legislation Formation**

As a rule-of-law country, Indonesia is based on the ideology of Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD NRI, 1945) as its constitutional foundation. Article 1, paragraph (3) of the 1945 Constitution explicitly states that Indonesia is a rule-of-law country. In paragraph (2), it is declared that sovereignty resides with the people. This article emphasizes that in the Indonesian system of government, the law must be the foundation for the implementation of state policies in order to uphold the mandate of the people's sovereignty. The 1945 Constitution of the Republic of Indonesia is the foundational document guiding the conception of Indonesia as a rule-of-law country. This conception can be observed throughout the 1945 Constitution, from the preamble, main body, to the explanation section. Moreover, it is explicitly stated in the explanation section of the 1945 Constitution that Indonesia is a "*rechtsstaat*," which means a state based on the rule of law rather than "*machsstaat*" or a state based solely on power.<sup>12</sup>

In the preamble of the 1945 Constitution of the Republic of Indonesia, the conception of a state under the rule of law is implicitly reflected through the phrases "fair and civilized humanity" and "social justice." Meanwhile, in the body of the 1945 Constitution, some articles characterize the elements of a state under the rule of law, namely provisions concerning the protection of human rights (HR), articles governing the division of powers and the arrangement of authorities in each branch of power (executive, legislative, and judiciary), as well as an explicit declaration that governance is conducted based on the law. As the highest executive authority, the President is affirmed in Article 4(1) of the 1945 Constitution to hold power according to the Constitution. For Indonesia, as a Muslim-majority country, the state ideology will

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<sup>10</sup> Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2006), h. 23-24.

<sup>11</sup> Andi Dirga Ardana Hidayat, Hamsir, Rahmatiah HL, "Penerapan Prinsip *Check and Balances* dalam Sistem Pemerintahan di Kabupaten Selayar Perspektif Hukum Islam", *Jurnal Siyasatuna*, Vol. 3, No. 1, 2022, h. 40-51.

<sup>12</sup> Dahlan Thalib, *Kedaulatan Rakyat, Negara Hukum dan Konstitusi*, (Yogyakarta: Liberty, 2000), h. 25-26.

position Islam and the Muslim community in a proportional role in accordance with Indonesia's deeply religious national context.<sup>13</sup> As a nation with the largest Muslim population in the world, the principles of Islamic law also play a significant role in the rule of law in Indonesia.

Although accommodating certain aspects of Islamic law as part of the national legal system, it is essential to understand that such recognition does not imply Indonesia being established as an Islamic state. The Indonesian Constitution explicitly declares Indonesia as a state based on the belief in the One Almighty God and upholds the principles of human rights and just and democratic humanity. Consequently, acknowledging Islamic legal principles as a source of national law should always be understood as a part of the constitutional mandate's implementation. The accommodation of the Islamic legal system in Indonesia must consistently adhere to the nation's four fundamental consensuses or pillars, namely Pancasila, the 1945 Constitution, the Unitary State of the Republic of Indonesia, and *Bhinneka Tunggal Ika*.

The President in the Indonesian state system also possesses authority in the legislative and judiciary domains. The President's legislative powers include the authority to propose bills (RUU) and shared authority with the People's Consultative Assembly (DPR) to enact a legislative product into law. Furthermore, the President is entitled to issue Government Regulations instead of Law (*Peraturan Pemerintah Pengganti Undang-Undang or Perpu*) in times of emergency. The President also holds the power to issue Government Regulations (*Peraturan Pemerintah or PP*), Presidential Regulations and Decrees (*Peraturan Presiden and Keputusan Presiden or Perpres and Kepres*) to elaborate on the implementation and technical aspects of a duly enacted law. Suppose the President has not issued PP for further elaboration of a law despite its enactment. In that case, the law cannot be enforced due to the absence of more detailed instructions regarding its implementation.

If analyzed from the perspective of constitutional *siyasah*, the authority and power of a president in the Indonesian state system bear similarities with the authority and power of an *imam or Khalifah* in the *siyasah dusturiyah* perspective. Despite not adopting a centralistic conception of power, the authority and power of a head of state (president or *Khalifah/imam*) remain superior to the authority and power of the other two branches of government. Thus, the presidential leadership system in the Indonesian state system aligns with the concept of *al-sulthah al-tanfidziyah* in *siyasah dusturiyah*. Both hold significant authority and power, yet this does not imply absolute power. Nevertheless, the superiority and domination of presidential power as the highest

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<sup>13</sup> Sabara Nuruddin, "Islam dalam Lanskap Politik NKRI: Tinjauan Politik dan Historis", *Jurnal Pappaseng*, Vol I, No 1, 2013, h. 1-17.

executive authority must be accompanied by more robust control mechanisms to prevent the president from adopting an authoritarian stance and favoring the interests of specific groups, such as those of their political party.

### **The Authority of the DPR and DPD Institutions in Legislation Formation**

In the legislative power system of Indonesia, as stipulated in the 1945 Constitution of the Republic of Indonesia (*UUD NRI, 1945*), a bicameral system is recognized, comprising two chambers or bodies. In the Indonesian parliamentary system, these two parliamentary chambers are the Lower House or the House of Representatives (DPR) and the Upper House, known as the Regional Representative Council (DPD). The first chamber consists of political party members, while the second consists of individual representatives representing specific regions. Members of both parliamentary chambers are automatically part of the People's Consultative Assembly (MPR) and possess constitutive powers to form and amend the Constitution (UUD). Several countries, including the United States, the United Kingdom, and the Netherlands, apply a bicameral system. Despite being termed the Upper House, the second chamber holds less authority than the first chamber, often called the Lower House."

The bicameral legislative system is fundamentally considered ineffective and inefficient. The presence of two legislative chambers with essentially the same authority gives rise to inefficiencies in the legislative process. Similarly, from an efficiency perspective, two parliamentary chambers represent a model that lacks efficiency in decision-making while carrying out legislative tasks. The inefficiency of the bicameral system is also related to the larger budget required to operate both institutions that essentially have the same tasks and functions. One advantage of the bicameral system, particularly with the existence of a Senate or Regional Representative Council (DPD), is that it provides greater assurance of representing regional aspirations and interests as a controlling and balancing force against legislative members who represent political parties. However, in reality, the *DPD* institution, which should ideally represent regional aspirations and interests within the governing rules, holds a position that is unequal or more subordinate than the DPR (The House of Representatives). It can be said that the legislative function held by the DPD is fragile since it is not granted the authority to participate in the decision-making process for draft laws to be enacted into legislation.

### **The Construct of the Division of Power in Legislation Formation from the Perspective of *Fiqh Siyasah***

In the concept of *siyasah dusturiyah*, the division of the legislative body into two chambers is not recognized. The legislative system in *siyasah dusturiyah* tends to lean towards a unicameral system, namely the *Majelis Syura* or the Council of *Ahlul Halli wal*

*Aqdi*. In *fiqh siyasah*, it is required that the individuals sitting in the Council of *Ahlul Halli wal Aqdi* possess just qualifications, broad knowledge, as well as wisdom, and prudent attitudes.<sup>14</sup> However, there are no specific rules or established mechanisms regarding selecting and appointing members to *the Ahlul Halli wal Aqdi*. Due to the lack of a precise mechanism concerning representative institutions (legislative bodies), *siyasah dusturiyah* only emphasizes the essential principles of individuals' qualifications to sit in such institutions. As for the selection mechanism, it is more fluid as long as it adheres to the qualification criteria for the chosen individuals. The political history of Islam also does not recognize the concept of general elections to choose legislative members as found in modern democratic systems. Nevertheless, although there is no explicit mention of elections, in principle, elections as a democratic channel for selecting legislative members do not contradict the concept of *siyasah dusturiyah*. The emphasis lies in conducting fair and just elections to ensure those elected have the appropriate qualifications to represent the people.

In a democratic state, three branches of government hold authority and responsibilities concerning the law. The legislative institution is accountable for the formulation of laws. The executive institution executes laws by formulating policies and development planning. Meanwhile, the judicial institution is empowered to review enacted laws for their conformity with the Constitution. The judicial institution is also responsible for interpreting laws to uphold justice.

In forming legislation, the institution entrusted with authority is the DPR (House of Representatives). However, its mechanism involves other elements within the legislative body, namely the DPD (Regional Representative Council), and also includes the President as a representation of the executive branch. The Constitutional Court (MK) serves as the judiciary institution empowered to examine a legislative product ratified by the DPR and the President to determine its compatibility or inconsistency with the 1945 Constitution of the Republic of Indonesia (UUD NRI, 1945).

Analyzing the distribution of powers in the formation of legislation within Indonesia's state system from the perspective of *siyasah dusturiyah* (constitutional politics), it is necessary to first elaborate on the authorities of the relevant institutions in both the legislative and executive branches throughout the process of lawmaking, from planning to enactment. Furthermore, describing the dynamics and transformations of thought and concepts within *siyasah dusturiyah* and *fiqh siyasah* in the contemporary era is essential. Hence, envisioning *siyasah dusturiyah* in the contemporary era is not always identical to political Islam's concepts and historical facts in the classical era.

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<sup>14</sup> J. Sayuti Pulungan, *Fiqh Siyasah: Ajaran, Sejarah, dan Pemikiran*, (Jakarta: Raja Grafindo Persada, 2004), h. 7



The ideal existence of the Regional Representative Council (DPD) as one of the chambers in Indonesia's parliamentary system is, in fact, far from expectations. Since its establishment and inauguration in 2004, no authority has been granted to the DPD to match the powers held by the House Representatives (DPR). It can be argued that the institutionalization of the DPD lacks any substantial power, particularly in the legislative process. The limitations of the DPD's authority are evident in the delineation of its powers in Article 22D of the 1945 Constitution. Article 22C paragraph (2) stipulates that the *DPD's* membership must not exceed one-third of the total number of DPR members. Consequently, in terms of quantity and quality, the position of the DPD is far from being on par with the position held by the *DPR*.

The institutional relationship between the *DPR* and the *DPD* can be described as subordination rather than coordination. The *DPD* is highly subordinate to the *DPR* in all aspects. The enactment of Law Number 17 of 2014 concerning the *MPR, DPR, DPD, and DPRD* (MD3 Law) significantly reduced the ideal authority that should have been granted to the *DPD* as the second chamber, which is supposed to be positioned as the Senate or Upper House in a bicameral system.<sup>15</sup> Consequently, the *DPD's* authority has weakened since both constitutional (UUD) and regulatory (UU) provisions have not provided sufficient room for the *DPD* to play a significant and ideal role in representing the people's aspirations and advocating for regional interests in parliament. The Constitution seems to depict the *DPD* as a weak and powerless, lacking authority and influence in formulating national policies, particularly in creating laws.<sup>16</sup> This fact undoubtedly reflects the Indonesian parliamentary bicameral system, which still exhibits features of a weak bicameralism, bordering on a very weak bicameralism.<sup>17</sup> In other words, the bicameral parliamentary system in the *DPR* and *DPD* relationship context can be considered a quasi or pseudo-bicameral system.<sup>18</sup> This is due to the considerable disparity in authority between the *DPD* and the dominant and powerful *DPR*, especially concerning legislation, oversight, and budgeting processes.

The legislation of the Regional Representative Council (DPD), as stipulated in Article 22D of the Constitution of the Republic of Indonesia, is limited to the proposal of bills (RUU) related to regional autonomy, central-regional relations, the establishment,

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<sup>15</sup> Yokotani, "Sistem Bikameral di Lembaga Legislatif Berdasarkan Tugas dan Kewenangan Dewan Perwakilan Daerah (Perbandingan dengan Amerika Serikat, Inggris, dan Argentina)...", h. 1851-1861.

<sup>16</sup> Miki Firmansyah, "Eksistensi Dewan Perwakilan Daerah dalam Sistem Bikameral di Indonesia"... h. 165.

<sup>17</sup> Yokotani, "Sistem Bikameral di Lembaga Legislatif Berdasarkan Tugas dan Kewenangan Dewan Perwakilan Daerah (Perbandingan dengan Amerika Serikat, Inggris, dan Argentina)...", h. 1851-1864.

<sup>18</sup> Mahmuzar, *Parlemen Bikameral di Negara Kesatuan (Studi Konstitusional Kehadiran DPD di NKRI)*, (Bandung: Nusamedia, 2019), h. 125.

division, and merger of regions, the management of natural resources and other economic resources, as well as matters about the fiscal balance between the central and regional governments (Article 22D paragraph 1). In the deliberation of bills, the *DPD* is only authorized to participate in the deliberation of the bills mentioned earlier, in addition to bills concerning the State Budget (RUU APBN), taxation, education, and religion-related bills (Article 22D paragraph 2). In terms of its supervisory duties, as mentioned in Article 22D paragraph 3, the *DPD* is only granted the authority to oversee the implementation of laws, as specified in Article 22D paragraph 2. However, it is also noted that the results of the *DPD*'s oversight can only be conveyed to the House of Representatives (DPR) for further consideration. Consequently, the supervisory outcomes of the *DPD* lack enforceability, as they ultimately revert to the authority of the *DPR* for follow-up action. Hence, it is evident that the weakening of the *DPD* has occurred since its constitutional establishment. Therefore, a fifth amendment to the 1945 Constitution of the Republic of Indonesia is deemed necessary to enhance the *DPD*'s authority and power proportionally, ensuring its equal status with the DPR.

The subordination of the position and curtailment of the authority of the Regional Representative Council (DPD) are increasingly evident in the Rules of Procedure of the House of Representatives (DPR). It is stipulated that the *DPD* can only participate in the deliberation of specific bills if invited by the *DPR*. Furthermore, limitations are imposed on the *DPD*'s involvement in joint bill discussions with the *DPR*, where the maximum number of invited DPD members is limited to one-third of the *DPR* institution members involved in the discussion. The pronounced curtailment of the role and authority of the *DPD*, as specified in the DPR's Rules of Procedure, confines the *DPD*'s position merely as a co-legislator in the legislative process. In the constitutional framework of the 1945 Constitution of the Republic of Indonesia (UUD NRI, 1945), the *DPD* is considered only an auxiliary or supporting body of the *DPR*.<sup>19</sup> Its institutional position is merely supplementary, with limited influence in the legislative process. Regarding legislation, oversight, and budgeting functions, the *DPD* is relegated solely as a supporting entity to the DPR, lacking substantial power. In essence, the subordination of the *DPD* occurs in all tasks and functions that should rightfully belong to the legislative institution and throughout all stages of the legislative process.

The weakness and subordinate nature of the institutional structure of the Regional Representative Council (*DPD*) compared to the House of Representatives (*DPR*) in all legislative duties are distressing, considering that the *DPD* is supposed to be the regional representation of all provinces in Indonesia. The *DPD* functions as an electoral

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<sup>19</sup> Adhyatma Wikrama Maheswara, Ikhsan Permana, dan Khairunnisa Andira, "Penerapan Sistem *Strong Bicameralism* di Indonesia sebagai Upaya Optimalisasi Kewenangan MPR", *Jurnal Padjadjaran Law Review*, Vol. 5, No. 1, 2017, h. 1-16.

representative body yet lacks the authority to determine the direction of national policies that pertain to the interests of the regions it represents. As an electoral representative institution, the *DPD* should ideally serve as a voice for the people in the regions, capable of aggregating and articulating their aspirations and interests at the national level. However, due to its various shortcomings, the *DPD* members ultimately cannot fulfill their electoral mandate in transforming regional aspirations into national policies, particularly concerning formulating strategic laws that cater to regional interests.

Several factors weaken the role, function, and authority of the Regional Representative Council (*DPD*). Political groups or factions within the People's Consultative Assembly (MPR) during the amendment of the 1945 Constitution were unwilling to provide a balanced allocation of authority between the House Representatives (*DPR*) and the *DPD* in implementing a bicameral parliamentary system. This reluctance is suspected to stem from concerns that a stronger *DPD* might lead Indonesia toward federalism.<sup>20</sup> Such concerns are essentially unfounded, as a bicameral parliamentary system is not exclusively limited to federal states; it can also be an alternative within a unitary state system. This is especially relevant in a unitary state like Indonesia, formed from the diversity of social and cultural realities from various regions that make up the Republic of Indonesia (*NKRI*).

The following assumption regarding the factors behind the weakening of the Regional Representative Council (*DPD*) is the growing concern that strengthening the *DPD*'s position through an amendment to the 1945 Constitution of the Republic of Indonesia (UUD NRKI 1945) will result in the *DPD* becoming more populist compared to the House of Representatives (*DPR*). To prevent this, efforts have been made to restrain and marginalize the *DPD* from an early stage. Furthermore, there are concerns that the increased power of the *DPD* will lead to excessive autonomy in Indonesia's autonomous regions.<sup>21</sup> If this assumption holds, it depicts that the politicians at the central level sitting in the *DPR* at that time were not entirely receptive to the implementation of regional autonomy in Indonesia, which is, in fact, a mandate of the 1998 reform. The weakening of the *DPD* since its establishment in the constitution and regulations illustrates a pattern of democracy that is still "half-hearted." Similarly, the limited authority of the *DPD* in the process of lawmaking indicates an unfair and imbalanced system of deliberation between the two legislative bodies that should ideally possess equal status, authority, and power

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<sup>20</sup> Valina Singka Subekti, *Menyusun Konstitusi Transisi: Pergulatan Kepentingan dan Pemikiran dalam Proses Perubahan UUD 1945*, (Jakarta: Rajawali Press, 2007), h. 217.

<sup>21</sup> Mahmuzar, *Parlemen Bikameral di Negara Kesatuan (Studi Konstitusional Kehadiran DPD di NKRI)...*, h. 187-188.

Analyzing the perspective of *siyasah dusturiyah*, the issue concerning the division of power in the legislative process of law formation in Indonesia becomes apparent. The problem lies in the status, authority, and power inequality between the two legislative institutions that receive an equal electoral mandate. The DPR (The House of Representatives) and DPD (Regional Representative Council), entities holding electoral mandates from the people, should ideally have equal standing. However, the unequal relationship between the two, leading to the subordination of *DPD* to *DPR*, implies a political injustice towards both institutions responsible for representing the people. Upon examination through the lens of *siyasah dusturiyah* analysis, it becomes evident that this contradicts the principles of *al-adl and al-qisht*, which represent justice and balance as prerequisites for the proper functioning of the state following the principles of sharia to achieve common welfare.

The absence of principles of justice and balance in the distribution of powers for the legislative formation of laws and other legislative functions between The House of Representatives (*DPR*) and the Regional Representative Council (*DPD*) has failed the intended checks and balances. The presence of the *DPD* holds significance, as it is meant to fulfill the principle of checks and balances among institutions within the legislative branch of power. However, the weakening of the *DPD*'s role and functions eventually obstructs the process of checks and balances. The realization of the principle of checks and balances hinges on the non-compromise of institutional functions and the preservation of the independence of their authorities.<sup>22</sup> Consequently, the principle of checks and balances necessitates reinforcing and ensuring equal independence of institutions to achieve a balanced process of checks and balances. If one institution becomes disproportionately superior and dominant, the principle of checks and balances cannot be effectively implemented.

Based on this, in the analysis of constitutional politics (*siyasah dusturiyah*), there has been an early failure to provide a legal basis for the tasks and functions of the Regional Representative Council (*DPD*). This contradicts the principle of popular sovereignty, which is highly regarded in constitutional politics. The *DPD* represents the people in each region, thereby carrying the mandate of popular sovereignty, including the function of checks and balances against other legislative and executive institutions. However, the lack of authority and absence of power vested in the *DPD* hinders its institutional ability to perform these roles. The authority of the *DPD* is limited to giving

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<sup>22</sup> Andi Dirga Ardana Hidayat, Hamsir, Rahmatiah HL, "Penerapan Prinsip *Check and Balances* dalam Sistem Pemerintahan di Kabupaten Selayar Perspektif Hukum Islam"..., h. 43.

proposals and recommendations, while the final decisions rest with the House of Representatives (*DPR*).

The subordinate position of the *DPD* compared to the *DPR* also prevents the *DPD* from effectively carrying out its check and balances function against the *DPR*, as the *DPR* only considers its recommendations but lacks the authority to make decisions. Consequently, in the presence of the *DPR* and the government, the *DPD* holds little value. The position of the *DPD* before the *DPR* is akin to that of other civil society groups, such as NGOs and universities, which can provide recommendations but lack the power to determine and ratify decisions.

Another perspective of the constitutional politics analysis on the relationship between the House of Representatives (*DPR*) and the Regional Representative Council (*DPD*) in legislative authority lies in the aspect of the state's efficient administration using a substantial budget. The intended efficiency pertains to the cost incurred in establishing and maintaining the *DPD* institution, starting from the *DPD* members' selection stage to its operational expenses, which undoubtedly absorb a considerable budget. The annual allocation from the state budget (APBN) for financing the *DPD* institution reaches two trillion Indonesian rupiahs, an enormous figure.<sup>23</sup> This is further compounded by the state budget required for the *DPD* members' election process in each election, which also amounts to trillions of rupiahs.

The utilization of such a substantial budget is not commensurate with the impact factor or benefits gained from the Regional Representative Council (*DPD*). In other words, the consideration lies in the usefulness of allocating such a significant portion of the state budget to finance the existence of an institution that does not bring significant effects to the people. The solution certainly does not involve dissolving the *DPD* if it contradicts the principle of utility. The dissolution of the *DPD* would be tantamount to betraying the mandate of reform, which is to expand and enhance the role of regions in national development. The lack of benefits resulting from the presence of the *DPD* is not due to its poor performance or failure. Instead, it is caused by the weakness and limited authority bestowed upon the *DPD* by the constitution and its governing regulations. The solution lies in amending the rules in the constitution and regulations to strengthen the *DPD*, elevating it to an equal standing in terms of position, authority, and power with the House of Representatives (*DPR*). If this can be achieved, a significant improvement will be made to the bicameral parliamentary system, ultimately transforming the Indonesian bicameral parliament into a strong bicameral system. By implementing a

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<sup>23</sup>Mahmuzar, *Parlemen Bikameral di Negara Kesatuan (Studi Konstitusional Kehadiran DPD di NKRI)*, h. 275.

robust bicameral system, the electoral mandate of the people to their representatives in both institutions can be substantively realized.

From the description provided above, the researcher assesses that the Islamic principles within the concept of *siyasah dustruriyah* do not recognize a bicameral system, as is inherent in the contemporary democratic systems that many nations have adopted to organize their governance. For the researcher, when evaluating the legislative authority in Indonesia by referencing the concept of *siyasah dusturiyah*, there tends to be an inclination towards a unicameral system, namely the *Majelis Syura* or the council of *Ahlul Halli wal Aqdi*. The *Majelis Syura* or council of *Ahlul Halli wal Aqdi*, viewed within the perspective of institutional arrangements in the Indonesian state, corresponds to the institution of the People's Consultative Assembly (*MPR*). The *MPR*, composed of members from The House of Representative (*Dewan Perwakilan Rakyat - DPR*) and the Regional Representative Council (*Dewan Perwakilan Daerah - DPD*), has been vested with legislative authority, thereby underscoring the principles of *al-adl and al-qisht*, signifying justice and equilibrium, as prerequisites for the proper conduct of the state in accordance with the values of sharia, aimed at the realization of collective welfare. Through the conferment of legislative powers upon the *MPR*, comprising members of the *DPR* and *DPD*, parity and justice are upheld, engendering a balanced division of roles between the *DPR* and *DPD* in the legislative process, consequently steering Indonesia's unicameral parliamentary system towards a robust bicameral framework.

#### 4. CONCLUSION

The power division framework in Indonesia shares many similarities with the power division of these institutions within the concept of *siyasah dusturiyah*. An aspect critically noted by researchers in this context is the concept of a bicameral parliament that divides the legislative body into the House of Representatives (*DPR*) and the Regional Representative Council (*DPD*). However, this division does not imply an equivalence between the two institutions, which hold electoral mandates from the people. In reality, the *DPR* and *DPD* are analogous to the Assembly of *Ahlul Halli wal Aqdi*, which possesses authority in forming laws. However, the relationship between these two bodies is imbalanced. The limited authority of the *DPD* contradicts the principles of justice and equilibrium that serve as prerequisites for checks and balances. The quasi-bicameral system results in the dominance of the *DPR* and the subordination of the *DPD*, thus preventing an equitable deliberative process between the two institutions. The subservient existence of the *DPD* ultimately fails to yield benefits for the state's governance. Consequently, there is a need to fortify the status, power, and authority of the *DPD*, enabling it to perform tasks and functions on par with the *DPR*. Reconsidering the allocation of law-making authority to the People's Consultative Assembly (*MPR*),

akin to the *siyasah dusturiyah's*, The Assembly of *Ahlul Halli wal aqdi*, is imperative. Such a reform would eliminate any disparities and injustices between the legislative functions of the *DPR* and the *DPD*. Therefore, in the forthcoming amendments to the 1945 Constitution of the Republic of Indonesia (UUD NRI, 1945), the researcher proposes the following concepts: First, the authority to formulate laws shall be vested in the People's Consultative Assembly, comprised of members from both the *DPR* and the *DPD*. Second, the *DPR*, *DPD*, and President shall have the right to submit legislative drafts to the *MPR* for approval within the National Legislation Program. Third, joint discussions and consensus shall be reached between the *DPR* and *DPD* concerning every legislative draft. Fourth, the *DPR* and *DPD* are permitted to involve the President and the public in the deliberation of legislative drafts to obtain input. Fifth, in cases where the President rejects a legislative draft following *DPR* and *DPD* deliberations, the President shall request a reconsideration, accompanied by reasons for rejection, within thirty days from the acceptance of the legislative draft. Sixth, the *DPR* and *DPD* shall review the legislative draft returned by the President within thirty days from its initial acceptance. Seventh, the President shall enact the legislative draft into law upon approval.

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