

THE IMPORTANCE AN IMPLEMENTATION OF STRONG BICAMERAL SYSTEM IN THE LEGISLATIVE POWER OF REPUBLIC INDONESIA

Yoyon Mulyana Darusman¹, Elmer Micu Soriano², Susanto³

Email : dosen00040@unpam.ac.id, emsoriano@pup.edu.ph, dosen00992@unpam.ac.id

1Lecturer of Law Magister of Pamulang University, South Tangerang City, Indonesia

2Lecturer of Social Politic of Polytechnic University of Philiphine, Manila Philiphine

3Lecturer of Law Magister of Pamulang University, South Tangerang City, Indonesia

ABSTRACT

In practice, countries in the world generally use a two-chamber system, although there are also countries that use a one-chamber system. Parliamentary institutions in the state administration practice are called legislative powers. The Republic of Indonesia uses a two-chamber system, as stated in Article 2 Section 1 of the original text of the 1945 Constitution, which states that there is a People's Consultative Assembly(MPR) in which there is a House of Representatives (DPR), plus Group and Regional Representatives (DPD). Likewise, the USA also uses a two-chamber system as stated in Article 1 Section 1 Constitution of USA states that there is a Congress of United States which shall consist of a Senate and House of Representatives and the Senate. After the amendments to the 1945 Constitution as mentioned in Article 2 Section 1, there was a change in power in the Indonesian legislative body, which reads: People's Consultative Assembly (MPR), which contains the DPR and the DPD. These two chambers as stated in the amendment text of the 1945 Constitution do not have the same power, where the DPR has the authority to formulate laws while the DPD does not have the authority to form laws only has the authority to submit bills to the DPR. This is very different from the two chambers in the USA, namely the Senate and the House of Resentatives who both have the authority to form laws.

Keywords : Bicameral System. Legislative Power, Indonesia

ABSTRAK

Lembaga parlemen dalam praktek negara-negara di dunia pada umumnya menggunakan sistem dua kamar, walaupun terdapat juga negara-negara yang menggunakan sistem satu kamar. Lembaga parlemen dalam praktek ketatanegaraan disebut dengan kekuasaan legislatif. Republik Indonesia menggunakan sistem dua kamar, sebagaimana yang disebutkan dalam Article 2 Section 1 naskah asli UUD 1945 menyebutkan adanya lembaga Majelis Permusyawaratan Rakyat yang di dalamnya terdapat Dewan Perwakilan Rakyat, ditambah dengan Utusan Golongan dan Daerah. Seperti halnya United States juga menggunakan sistem dua kamar sebagaimana yang disebutkan dalam Article 1 Section 1 Constitution of USA menyebutkan adanya Congress of United States which shall consist of a Senat and House of Representatives dan Senat. Setelah amandement UUD 1945 sebagaimana yang disebutkan pada Article 2 Section 1 terjadi perubahan pada kekuasaan pada lembaga legislative Indonesia, yang berbunyi : Majelis Permusyawaratan Rakyat yang di dalamnya terdapat Dewan Perwakilan Rakyat dan Dewan Perwakilan Daerah. Kedua kamar ini sebagaimana disebutkan dalam UUD 1945 naskah perubahan tidak memiliki kekuasaan yang sama, di mana Dewan Perwakilan Rakyat memiliki kewenangan membentuk UU sedangkan Dewan Perwakilan Daerah tidak memiliki kewenangan membentuk UU hanya memiliki kewenangan untuk mengajukan RUU kepada DPR. Hal ini sangat berbeda dengan dua kamar di United State of America yaitu Senat and House of Resentatives sama-sama memiliki kewenangan membentuk UU.

Key Words : Legislative Power, Bicameral System, Power and Authority.

1. INTRODUCTION

One of the several indications that a country is categorized as a rule of law in” Julius Sthal's view “ is the existence of a division or separation of powers. The separation of powers or what is known as trias politica is a concept of government that is now widely adopted in various countries around the world, which is the result of the thoughts of John Locke and Montesquieu. The Trias Politica is a teaching which holds that power in the state consists of three kinds of power. The first is legislative power or the power to make laws (law-making function); both executive power or law enforcement power (law enforcement function); and third, judicial power or legal supervisory power (legal oversight function). Trias politica is a normative principle in which these powers (functions) should not be delegated to the same person to prevent the abuse of power as regulated by law. Thus the human rights of citizens are more secure. (Gusmansyah, 2019) One of the parts of power in the state which is the subject of study in this research is legislative power. Legislative power in the practice of state administration in various countries is also referred to as a parliamentary institution, namely a people's representative institution which consists of various elements of political power in a country.

John A. Jacobson, stated that in general, the structure of the people's representative institutions consists of two forms, namely a one-chamber people's representative institution (unicameral) and a two-chamber people's representative institution (bicameral). Unicameral and bicameral practices are not related to the foundation of a state, form of state, form of government, or a particular system of government. But both forms are the result of a long process of constitutional practice in various parts of the world. (Triwulan Tutik, 2012). In England, The bicameral system consists of the House of Lord as the upper house and the House of Common as the lower house. In the United States, the legislative power (parliament) is called Congress by adopting a bicameral system consisting of the Senate as the legislature elected to represent the states and the House of Representatives as the legislature elected through political parties. Before the amendment to the 1945 Constitution of the Republic of Indonesia adopted a unicameral system by placing the People's Consultative Assembly as the holder of the highest power in the legislative sector as the holder of people's sovereignty. Even though it consists of two representative institutions called the People's Representative Council and Group/Regional Representatives. The power of the People's Consultative Assembly has a very strong position. (Triwulan Tutik, 2012)

The bicameral system is described by **Simambura** as a system consisting of two different chambers and usually called as the Upper House or Upper House or Lower House. Each chambers politically, territorial and functionally reflects the representation of the public interest from every groups. The distinction of representation basically to avoid the occurrence of double representation. Conceptually, the authorities of each chambers is equal but in the development, there is an effort to reduce the authority of one of the chambers. This is become an effect of growth of strong bicameralism and soft bicameralism concept. Strong bicameral has an equality degree of authorities both two chambers, while there is non-equality degree between two chambers. Strong bicameral with the same strong authority both two chambers aims to create and endorse check and balances mechanism, but the practice in some countries often found their strengthening efforts to one of the chambers of the Upper House (Upper House) even though the Lower House will also have a right to provide feedback or consideration, especially in the context of legislation function. (Alkadri, 2016).

Arend Lipjhart, as quoted by **Simambura** stated that there were three characteristics that distinguish between parliament with a strong bicameral and weak bicameral system, namely: First, the authority granted formally by constitution to two chambers. Second, how the selection method of memberships usually affected to the legitimate of democracy of these chambers. Third, a strong difference between two chambers on legislative bicameral is both two chambers may have a way or a different design also representatives (over represent) a particular minority / special. (Alkadri, 2016) In the practice of state administration in Indonesia, a consequence of this arises inequality of state administration, especially between state institutions, where the superior position of the People's Consultative Assembly can justify all state institutions without exception, so that the existence of three institutional powers (legislative, executive, and judicative) becomes apparent. (Bisariyadi, 2018)

Figure of Strong Bicameral (equality power):

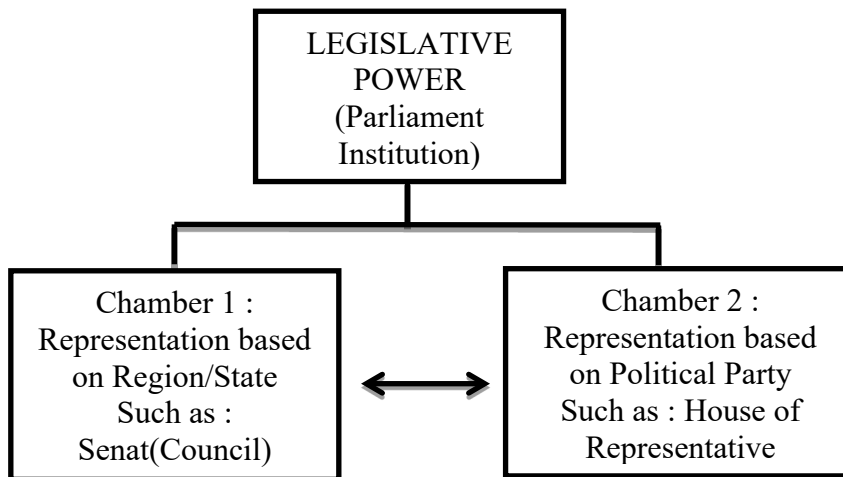
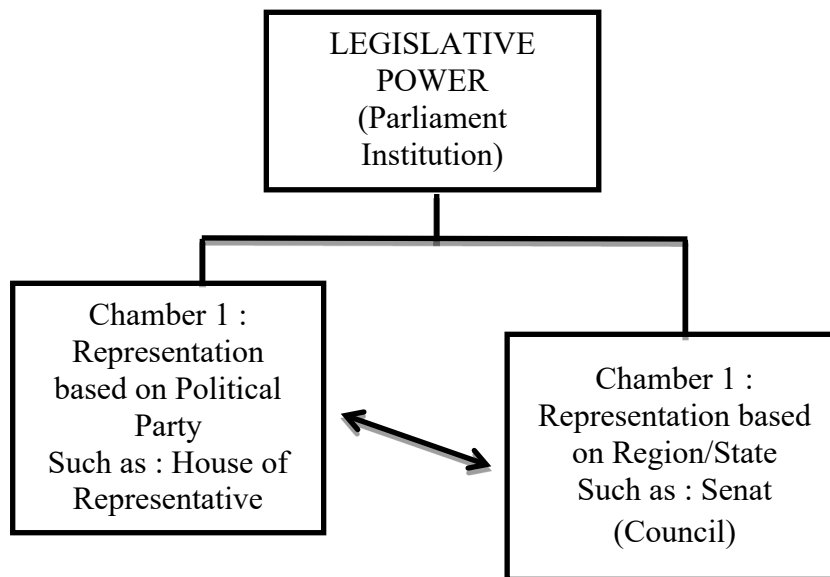


Figure of Soft Bicameral (un-equality power):



Starting in 2000 after the reform movement, the General Assembly of the people Consultative (MPR) succeeded in amending the 1945 Constitution by restoring the constitutional system, especially state institutions, to its proportions, one of which is by returning the existence of the legislature to the bicameral system, which currently exists in the People's Consultative Assembly. This amendment places the People's Consultative Assembly no longer as a supremacy but as a high-ranking state institution whose membership includes the Council House of Representatives (DPR) and the Council of Regional Representatives (DPD). The logical consideration for Indonesia to adopt a bicameral system is because by forming a second room after the Council of House of Representatives (DPR),

namely the presence of another room, namely the Council of Regional Representative (DPD), is to accommodate different representations, namely the central and regional governments. (Isra, S. 2016). In their implementation, the two legislative institutions have different powers with respect to their duties and functions in the legislative field. The House of Representatives as mentioned in Article 20 Paragraph (1) of the 1945 Constitution states that the DPR has the power to form laws and discuss it together with the government, while the DPD as stated in Article 22D Paragraph (1) of the 1945 Constitution states that that the DPD can submit to the DPR a bill relating to regional autonomy, central and regional relations, the formation and expansion and merger of regions and so on. (Bisariyadi, 2018)

Etymologically and the phrase "has the power to form laws" by "being able to submit a bill to the DPR has a different meaning in substance. The phrase "the power to form laws" is the absolute power that the DPR has granted by the Constitution with regard to the formation of laws. Meanwhile, the sentence "can submit a bill" to the DPR is only an authority related to its participation in the formation of the law. The power and the authority have different positions. (Isra, 2003). Therefore with due observance of the phrase in the provisions of the 1945 Constitution concerning the phrase "Power to form a Law" which is owned by the DPR and the phrase "Can submit a Draft Law to the DPR" which is owned by the DPD. The two terms have very different meanings. "Power" is a right inherent in the DPR in the formation of legislation, while "Can submit a Bill to the DPR" is only a very limited authority. Noting the difference in meaning, Indonesian constitutional law experts say that the legislative power exercised in Indonesia is a "Soft Bicameral System" not a "Strong Bicameral System".

Since the amendment to the 1945 Constitution, many people say that we have adopted a bicameral system. What is a bicameral system? Is it merely a system of representation through two chambers? Harjono, said it was not that simple. One of the characteristics of bimameralism is that each institution has its own decision-making mechanism. After the amendment of the 1945 Constitution when the MPR was about to make changes to the 1945 Constitution, did the DPR and the DPD as the constituent elements of the MPR hold separate sessions according to their respective decision-making mechanisms? If indeed the DPR and DPD meet separately, the preconditions for bicameralism will only be fulfilled. Whereas in our system this is not the case. Members of the DPR and members of the DPD are members of the Assembly MPR. So, what is meant is the membership, not the institution. If what is

meant by an institution, then one of the characteristics is that each institution (the DPR and the DPD) has its own decision making mechanism. (Hakim and Mezak, 2013).

There are several legal experts who call that the Indonesian system soft bicameralism. There are people who also mention three cameralism, because there are three institutions; The MPR, the DPR and the DPD. Harjono further stated that this was not quite right. MPR requirements People, has a decision making process (decision making) only once and is subject to the same rules. The third is in the MPR, there is no longer the DPR and the DPD, all of whom are members of the MPR. In the MPR, the DPR and the DPD do not talk about their respective authority anymore. In the United States, while in Congress, both the House of Representation and the Senate make their own decisions. One of the tasks of the MPR is to appoint the President and Vice President. The inauguration was carried out by the MPR not individually, in the sense that the DPR inaugurated and the DPD also installed. If done individually, Harjono agrees that bicameralism is at work. Bicameralism is a category. Therefore, Harjono is not interested in the discourse on bicameral and soft-bicameral in the 1945 Constitution after the amendment. (Muhshi, 2018).

With regard to the exercise of legislative power with a bicameral system, we can see how the practice of the state administration of the Kingdom of Malaysia. How is the bicameral system in Malaysia? The High Majlis or also called the Senate as the State Council, then the Lower Majlis or the House of Representatives is called the People's Council. Malaysia's 14th General Election has decided the new composition of the Malaysian government by forming a governing coalition. The Pakatan Harapan Party has been replaced by the Barisan Nasional Party which dominates or controls all members of parliament. The National Front Party has changed the dominance of parliamentary power which has been running for more than 60 years. In practice the system of representation in which the Prime Minister and Minister is derived from the State Council and the People's Council (Barnett, 1915). The limitations when ministers come from parliament with issues of openness and inclusiveness. They get the task of making policies or drafts of laws, and when draft laws are submitted to parliament, parliamentarians tend to prioritize the proposals of ministers, this is because almost all members of parliament have ties to the same party. In addition, policy implications can be seen consistently over a long period of time from political power. The Malaysian government has the ability to focus strongly on maintaining sound economic growth and social stability of the Malaysian nation. This can be seen when each Prime Minister has his

own agenda in formulating good public policies, for example Vision Malaysia 2020 from Tun Dr. Mahatir Muhammad, Tun Abdullah Ahmad Badawi's approach to developing corridors, and Dato Seri Najib Abdul Razak's Economic Transformation Program. The new era of coalition government seems to have different approaches, how about some of the principles of the western ministry system have been adopted in the country. The Prime Minister will always leave the expansion of power in the executive and be present in every decision in parliament. (Suwandi, Arifianti and Rizal, 2019).

2. RESEARCH METHODOLOGY

In this study, the research model used is a qualitative research model, where the data used is weighted reference data in order to strengthen the object of research. (Mukti Fajar, 2010). Qualitative research is an approach that allows the researcher to examine people's experiences in detail by using a specific set of research method such as in-depth interviews, focus group discussion, observation, content analysis, visual methods, and life histories or biographies. (Monique Hennink, Inge Hutter, 2020). The research approach used is a national and international legal and statutory approach. The object is purely legal normative, so this research is referred to as normative legal research and does not use social research methods in general because the research material targets secondary data, especially primary legal materials (laws that have binding strength), secondary legal materials (materials that are complementary), and tertiary legal materials (in the form of legal information materials) which are then analyzed qualitatively in terms of the formulation of justification through the quality of legal norms themselves, expert opinions / doctrines and supporting legal information. (Mukti Fajar, 2010) The research specification used is descriptive analytical, in which everything related to legal principles and events is examined in depth and well described. The data used in this research are secondary data which includes international conventions, national laws, opinions of experts in the field of international law, related scientific journals and information obtained via the internet. (Marzuki, 2014)

3. RESULTS & DISCUSSION

1. Demography of Indonesia

The Unitary State of the Republic of Indonesia is a country located between two continents, namely the continent of Asia and the continent of Australia, so how important is Indonesia strategically for international traffic and interactions both on land, at sea and in the air. Indonesia is also geographically located on the line across the equator which is an imaginary line that runs in the middle of the earth between the north and south poles. (Hardian *et al.*, 2017). The existence of the Indonesian state is also a very important area in maintaining the balance of interests between the Asian continent and the Australian continent, and even other continents. Indonesia in regional organizations is part of the Associate of South East Asia Nations (ASEAN). Within ASEAN, Indonesia also has a very important role in maintaining political, economic stability and even in the social and social sector.

Indonesia is an island nation with an area of approximately 9 million km², located between two oceans and two continents, with 17,500 islands with a coastline of about 95,181 km. This geographical condition causes Indonesia to become a megabiodiversity country even though it only covers 1.3% of the earth's area, and has an area of about 9 million km². As an archipelagic country, Indonesia has been recognized internationally (UNCLOS 1982) which was subsequently ratified by Indonesia with Law No. 17 of 1985. Based on UNCLOS 1982, the total area of Indonesia's sea area is 5.9 million km², consisting of 3.2 million km² of territorial waters and 2.7 km² of waters of the Exclusive Economic Zone, this area does not include the continental shelf. This makes Indonesia the largest archipelagic country in the world. However, the development of marine and fisheries sector is still far from expectations. In fact, the coastal areas and small islands and oceans of the Indonesian archipelago have huge potentials of natural resources and environmental services which have not been utilized optimally. (Lasabuda, 2013).

From a social perspective, Indonesia has a population of around 267.7 million people (2018), a country with the third largest population after China, India and Indonesia. Indonesia consists of 1,340 ethnic groups, 718 languages, 6 religions recognized by the government (google.com), with the national language being Indonesian. As a democratic country and paying attention to the description above, how important is it for Indonesia to have a strong legislative body and to have representatives from stakeholders in the

Parliament to accommodate all the interests of society, so that the Unitary State of the Republic of Indonesia is maintained in its sustainability.

2. Structure of Legislative Power of Indonesia

In Indonesian constitutional practice, the legislative institutional structure can be seen from the history of the development of the constitution since Indonesia proclaimed its country's independence. Starting with the adoption of the 1945 Constitution on August 18, 1945 by the Preparatory Committee for Indonesian Independence (PPKI). Article 2 Paragraph (1) states that the People's Consultative Assembly (MPR) consists of members of the People's Representative Council (DPR), plus delegates from regions and groups (UGD), according to the rules stipulated by law. Then it can be seen in Article 1 Paragraph (2) of the Constitution of the United Republic of Indonesia of 1949 which was adopted on August 17, 1949, as a result of an agreement at the Round Table Conference in The Hague which states that the sovereign power of the Republic of the United States of Indonesia is exercised by the Government together with the House of Representatives. People and Senate. Even though the existence of the House of Representatives and the Senate does not have a special institution on it, the two institutions are representatives of the legislative bodies in the Republic of the United States of Indonesia.

Furthermore, it can be seen in Article 1 Paragraph (2) of the Provisional Basic Law of 1950 which was established on August 17, 1950, which states that the sovereignty of the Republic of Indonesia is in the hands of the people and exercised by the Government together with the House of Representatives. Taking into account the aforementioned provisions, it is clearly seen in the Provisional Constitution of 1950 that does not recognize a legislative body that has two representative functions as in the bicameral system, it can even be assumed that the Provisional Basic Law of 1950 adopts a unicameral system. However, after the issuance of the Presidential Decree dated July 5, 1959, which restated the original text of the 1945 Constitution stipulated by the PPKI until four changes were made, in Article 2 Paragraph (1) of the 1945 Constitution, it stated that The MPR consists of members of the DPR and members of the DPD who are elected through general elections and further regulated by law.

With "lawmaking" as a legislative function, we understand almost nothing other than the creation of general norms. An organ is a legislative organ, as long as this organ is authorized to make general legal norms. It never happens in political reality that all general

norms of a national legal order must be made exclusively by one organ called the legislature. There is no legal order in a modern state that excludes the judiciary and the government from making general legal norms, namely from making laws and making legal norms not only on the basis of laws and customary law, but also directly on the basis of the constitution. What applies in practice is only an implementation of a legislative function which regulates the making of all legal norms either by the organ called the legislature or by organs of the executive and judicial powers on the basis of the powers given by this legislative organ. (Kelsen, 2007)

3. Effort of Change of Equality

a. Effort to Amend the 1945 Constitution

How the efforts made by the DPD in equalizing its position with the DPR, have been carried out with political approaches to state institutions, including the DPR. Disseminating the importance of the role of the DPD as a representative institution that directly represents the region in discussions with the community in order to ask for political support for this purpose. Including how to make amendments to the fifth constitution of 1945, in particular changing the provisions regarding the provisions regarding the position of the DPD as part of the Bicameral System. However, these efforts are still far from what the people expect, including the expectations of the DPD itself.

In addition, the DPD from October 2004 to October 2014 submitted 57 (fifty seven) Drafts of Law, 237 (two hundred and thirty seven) Views and Opinions, 74 (seventy four) Considerations and 138 (one hundred thirty-eight) results of supervision. The entire Draft Law has been submitted to the DPR, but not all have been followed up. Some of the Draft Laws have become laws, but they are not a Draft Law on the initiative of the DPD and the involvement of the DPD in the discussion of the Draft Law is very limited, only the Draft Law on Maritime Affairs is the initiative proposal of the DPD and finally it became a law which was discussed in 3 (three) parties (tripatrit), namely: the DPR, the Government and the DPD. (Triwulan Tutik, 2012).

b. Effort to Harmonize Laws

In the weaknesses, where the existence of a bicameral system in the Indonesian parliament and with efforts to balance the position and authority of the DPD so that they have at least the same position as the DPR, it has become a long-standing polemic about

how the ideal of the House of Representatives should be. practice of legislative power in Indonesia. These efforts include the one that occurred in 2012 where the DPD has reviewed the law to the Constitutional Court regarding the functions and positions as regulated in Law no. 27 of 2009 concerning the MPR, DPR, DPD and DPRD and Law no. 12 of 2011 concerning the Establishment of Legislation.

Application for judicial review of Law No. 27 of 2009 and Law no. 12 of 2011, which has been decided by the Constitutional Court with decision number: 92 / PUU-X / 2012. The Constitutional Court ruling has interpreted several phrases in the law as follows:

Article 22D before the amendment reads:

- a. The DPD may submit to the DPR draft laws relating to regional autonomy, central and regional relations, the formation and expansion and merger of regions, management of natural resources and other economic resources, as well as those relating to the balance of central and regional finances.
- b. The DPD also discussed draft laws relating to regional autonomy; central and regional relations; the formation, expansion and merger of regions; management of natural resources and other economic resources, as well as the balance of central and regional finances; and gave consideration to the DPR on the draft state revenue and expenditure budget laws and draft laws relating to taxes, education and religion.
- c. The DPD can supervise the implementation of laws regarding: regional autonomy, formation, expansion and merger of regions, central and regional relations, management of natural resources and other economic resources, implementation of the state revenue and expenditure budget, taxes, education and religion. as well as submitting the results of his supervision to the DPR as material for consideration for further action.
- d. Members of the DPD may be dismissed from office, the terms and procedures are regulated in law.

The decision of the Constitutional Court has concluded that there are at least five matters relating to the constitutionality of the functions and positions of the Regional Representatives Council:

- a. First, the authority of the DPD in proposing a draft law as regulated in Article 22D paragraph (1) of the 1945 Constitution, in accordance with the authority of the DPD

- that the proposed draft law from the DPD must be made in a position that the same as the President and the DPR.
- b. Second, the authority of the DPD to participate in discussing draft laws together with the President and the DPR.
 - c. Third, the authority of the DPD to approve draft laws as regulated in Article 22 of the 1945 Constitution.
 - d. Fourth, the involvement of the DPD in the preparation of the national legislation program (Prolegnas), in which the DPD has the same involvement between the President and the DPR.
 - e. Fifth, the authority of the DPD to be able to provide considerations in the draft law as regulated in Article 22D of the 1945 Constitution

The DPD needs to be strengthened because the breath of the formation of the DPD itself has fundamental values in state activities. The position of the DPD, which is currently paradigmatic as a legislative body, has a very important purpose. As can be seen in the theory of the parliamentary structure, namely: (a) Political representation, which means that the DPD must be responsible for the legitimacy given by the people, its function and authority must be as strong as its legitimacy. (b) A territorial representation in which the DPD is indeed a regional representative to 'fight' and 'fight' for the interests of the region, post-amendment and (c) functional representation, post-third amendment to the 1945 Constitution. function is not used in Indonesia, because its function is the same as the DPR (Asshiddiqie, 2009)

4. CONCLUSION

The use of a bicameral system in a legislative body with a strong bicameral system in the practice of countries, whether in the form of a federal state such as the United States and Malaysia or those in the form of a unitary state such as France and the Philippines, has worked well in maintaining national stability and the integrity of the country. This is because the two chambers of the legislature between the Senate and the House of Representatives both have the same authority in the field of legislation. Because it is based on theoretical aspects, philosophical aspects, sociological aspects, political aspects as well as empirical aspects, the state of Indonesia as a large and densely populated country with ethnic, ethnic, religious and group diversity immediately has a legislative body formed with strong

bicameral. system, in which the DPD as the representative directly elected to represent the region has the same position as the DPR in the field of legislation. So that all formulations of national legislation are formed on the basis of equality, so that national stability and the integrity of the unitary state are well maintained.

There are needed to be a desire and awareness from various components of the nation to safeguard the greater interest, namely by maintaining the unitary state by making amendments to the 1945 Constitution in various fields of interest, especially those relating to strengthening the position of the DPD as part of the glue of the nationality so that it has a position. the same, especially in the field of legislation concerning the interests of the people and government in the regions.

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