

# Problems of Fulfilling Members of the Regional Representative Council from the Elements of Political Parties In the Indonesian State Administration System

## (Analysis of Oesman Sapta's Nomination as Candidate Member of Regional Representative Council)

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### ABSTRAK

Masuknya partai politik ke dalam lembaga DPD adalah sebuah pelanggaran konstitusi, sebab setelah semua para politikus masih memegang hirarki partai politik, sehingga hal tersebut tidak sejalan dengan kepentingan daerah. Keputusan lembaga yudikatif seperti Putusan Mahkamah Konstitusi No. 30/PUU-XVI/2018, Putusan Mahkamah Agung No. 65.P/HUM/2018. Putusan Peradilan Tata Usaha Negara Jakarta No. 242/G/SPPU/2018/PTUN-JKT, and Putusan Badan Pengawas Pemilu No. 008/LP//PL/ADM/RI/00.00/XII/2018 adalah sebuah fakta hukum keterlibatan anggota DPD dalam partai politik. Karena itu menjadi sangat penting melakukan penelitian yuridis untuk menemukan permasalahan pengisian anggota DPD dari elemen partai politik, dalam menganalisa pencalonan Osman Sapta Odang sebagai calon DPD dan pengaruhnya terhadap sistem konstitusi Indonesia. Ke depan pengisian anggota DPD dari elemen partai politik sebagai sesuatu paradigma baru, namanya sebagai paradigma positif dari karakter politik masa yang lalu, dalam hal ini, mengembalikan fungsi dari setiap partai politik kedudukan yang tertinggi sampai kepada kedudukan yang terendah.

Kata Kunci : Sistem Konstitusi Indonesia, Partai Politik, Dewan Perwakilan Daerah.

### ABSTRACT

*The inclusion of political parties in DPD institutions is a constitutional distortion, because after all politicians still hold the political party hierarchy so it is feared that it is not in line with the interests of the regions represented. Judicial institutions' decisions such as Constitutional Court Decision Number 30 / PUU-XVI / 2018, Supreme Court Decision Number 65 P / HUM / 2018, Jakarta Administrative Court Decree Number 242 / G / SPPU / 2018 / PTUN-JKT, and Election Supervisory Board Decision Number 008 / LP / PL / ADM / RI / 00.00 / XII / 2018 is a legal fact of the involvement of DPD members in political parties. Therefore, it becomes an urgency for the writer to conduct normative juridical research to find out the problem of filling DPD members from political party elements in the analysis of Oesman Sapta's nomination as DPD candidate and their legal implications in the Indonesian constitutional system. Futuristically, the filling of DPD members from political party elements has a new paradigm, namely the positivistic paradigm from the previous political character, in this case, resigning as a functionary of any political party from the highest office to the lowest office.*

**Keywords :** Indonesian Constitutional System, Political Parties, Regional Representative Council

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## **A. Introduction**

Recently, the existence of the Regional Representative Council institution has become an issue that is continually being discussed both academically and practically in politics in society. Since 2017, the existence of the Regional Representative Council of the Republic of Indonesia (DPD) has been increasingly questioned because it contains elements of a political party, where one of the leaders of this state high institution comes from the leader of a political party in Indonesia. In the history of the DPD, which was formed since October 1, 2004, for the first time this institution was chaired by the general chairman of a political party. Concurrently serving as chairman of the DPD as well as general chairman of a political party is actually unethical because from a constitutional perspective, DPD members may not come from political party elements.

De facto DPD members should manage electoral districts without being disturbed by political affairs, because political affairs have their own mechanism through the House of Representative (DPR) as a representative institution for political parties. So, that with the concurrent position of leadership of the DPD institution, it seems political and is forced for personal gain. Even though it is arguably political that there is no legal norm, the original intent of the meaning of individual DPD members should not be translated as representing certain political interests.

In fact, the above issue also raises pros and cons for a number of parties. On the one hand, like political experts and politicians, approving the inclusion of political party members in the DPD is progress. For politicians, so far the DPD has been in the position of “always being left behind” by the DPR, starting from the authority sector in legislation products as well as the aspiration sector for regional interests. Therefore, with the inclusion of political party elements in the DPD institution, it is hoped that it can close the gap in authority between the DPR and the DPD. Meanwhile, on the other hand, that the inclusion of political parties in the DPD institution is a constitutional distortion, because after all politicians still hold the hierarchy of the political parties from which they originate and therefore it is feared that they are not in line with the interests of the regions they represent. Even the pros and cons have juridically occurred in several judicial decisions, namely in the Decision of the Constitutional Court Number 30 / PUU-XVI / 2018, Decision of the Supreme Court Number 65 P / HUM / 2018, Decision of the Jakarta State Administrative Court Number 242 / G / SPPU / 2018 / PTUN-JKT, and Bawaslu Decision Number 008 / LP / PL / ADM / RI / 00.00 / XII / 2018.

DPD which was born after the reformation which was marked by the third amendment to the 1945 Constitution of the Republic of Indonesia (UUD 1945) has implications for the Indonesian constitutional system. Article 2 paragraph (1) of the 1945 Constitution underwent a significant change where before the amendment stated that “*the People's Consultative Assembly consists of members of the People's Representative Council, plus delegates from regions and groups, according to the rules stipulated by law*”. Then after the amendment to the fourth amendment of the 1945 Constitution, Article 2 paragraph (1) states that “*the People's Consultative Assembly consists of members of the People's Representative Council and members of the Regional Representative Council who are elected through general elections and further regulated by law*”.

This change shows that the members of the People's Consultative Assembly (MPR) who previously came from “delegates from the regions and groups” (other than members of the DPR) were amended in a state institution called the DPD whose members were elected through general elections. If this is the case, then the spirit of legitimacy of DPD institution membership cannot be separated from the necessity of maintaining a continuous (historical) history from the previous one, namely as representatives from regions and groups. So that this institution can be trusted as a purification of elements of independent political parties or free party institutions.

The purification of DPD institutions that are free of political parties by constituents is interpreted as individuals who are elected through general elections. However, according to Jimly Asshiddiqie, “its position is only a supporter or auxiliary to the DPR's function in the field of legislation, so that the DPD can only be called a co- legislator, rather than a full legislator at the most”.<sup>1</sup> Nevertheless, the DPD can concentrate more in the field of supervision, and its effectiveness can be felt by the community in the regions. However, in such circumstances, Ginandjar Kartasasmita said that “this fact makes it difficult for DPD members to be accountable for their accountability to the community and the region, especially when it is related to the obligations of DPD members to absorb, collect, accommodate, and follow up on the aspirations of the community and the region”.<sup>2</sup> Therefore, ideally, in the view of Joko J.

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<sup>1</sup> Jimly Asshiddiqie, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*, (Jakarta : Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia, 2006), p. 139.

<sup>2</sup> John Pieris dan Aryanthi Baramuli Putri, *Dewan Perwakilan Daerah Republik Indonesia : Studi, Analisis, Kritik dan Solusi Kajian Hukum dan Politik*, (Jakarta : Pelangi Cendekia, 2006), p. x.

Prihatmoko, DPD members:

“DPD members are a form of regional representation which has implications for the nomination and election system. The DPD nominating system was already known in the 1955 Election, namely by individuals, not by parties. This is done as an implementation of representation in presence so that DPD members have a big responsibility to the region, not being hampered by parties. And the election of DPD members which is carried out with a multi-representative district system, aims to increase the bond between DPD members and residents of the constituent areas. This means that this system means DPD members have the political and moral responsibility to fight for the region”.<sup>3</sup>

Based on the description above, the question arises, how are the problems in filling DPD members from political party elements in the analysis of Oesman Sapta's candidacy as a candidate for DPD members? What are the legal implications of filling DPD members from political party elements in the Indonesian constitutional system? To answer this question, it is first understood that the formation of a DPD institution is an implication of Article 1 paragraph (3) of the 1945 Constitution, namely “*Indonesia is a constitutional state*”. According to Jimly Asshidiqie, “the affirmation of the Indonesian state as a rule of law includes the notion of recognition of the principle of law and constitutional supremacy, adherence to the principle of separation and limitation of power according to the constitutional system regulated in the Constitution, the existence of human rights guarantees in the Constitution, and the existence of principles. a free and impartial trial that guarantees the equality of every citizen in law, and guarantees justice for everyone, including abuse of authority by the ruling party”.<sup>4</sup> In this case D. Mutiara said that “a rule of law state is a country which is ruled not by people, but by laws (state the not governed by men, but by laws). In a constitutional state, the people's rights are fully guaranteed by the state and, conversely, towards the state, the people are obliged to fulfill all their obligations by submitting and obeying all government regulations and state laws”.<sup>5</sup> Likewise, power must always be limited by dividing power into branches that are checks

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<sup>3</sup> H.R. Daeng Naja, *Dewan Perwakilan Daerah : Bikameral Setengah Hati*, (Yogyakarta : Media Pressindo, 2004), p. 53.

<sup>4</sup> Jimly Asshidiqie, “Struktur Ketatanegaraan Indonesia Setelah Perubahan Keempat UUD 1945”, *Makalah* (Denpasar: Simposium Nasional BPHN Departemen Hukum dan HAM di Denpasar, 14- 18 Juli 2003), p. 2. Jimly Asshidiqie, *Konstitusi dan Konstitusionalisme Indonesia*, (Jakarta : Sinar Grafika, 2010), p. 56-57.

<sup>5</sup> A. Mukhtie Fadjar, *Negara Hukum dan Perkembangan Teori Hukum : Sejarah dan Pergeseran Paradigma*, (Malang : Intrans Publishing, 2008), p. 101.

and balances in an equal position and balance and control one another. The separation of powers is also carried out by dividing the power into several vertically arranged organs. That way, power is not centralized and concentrated in one organ or one hand which allows arbitrariness to occur.

The principle of checks and balances is a constitutional principle which requires that legislative power, executive power, and judicial power are equal and control one another. According to Afan Gaffar, “the mechanism of checks and balances in a democracy is a natural thing, even very necessary. This is to avoid the abuse of power by a person or an institution, or also to avoid concentrating power on a person or an institution, because with a mechanism like this, between institutions will control or supervise each other, and can even complement each other”.<sup>6</sup> In Jimly Asshiddiqie's view, “state power can be regulated, limited, and even controlled as best as possible, so that abuse of power by state administrators or individuals currently occupying positions in state institutions can be prevented and overcome”.<sup>7</sup> So that every decision-making process can be done democratically.

According to Miriam Budiarjo, “a democratic government is a government that has limited powers and is not allowed to act arbitrarily against its citizens. The limitations of government power are regulated in the constitution. A constitutional government means a government that is limited by the constitution”.<sup>8</sup> In that situation, Bachtiar said that “the people who determine the running of government and guarantee human rights and government power must be limited by strict legal rules and regulated in the constitution”.<sup>9</sup> Even in the view of S.M. Lipset, “democracy in a complex society can be limited, meaning as a political system that implements the provisions of the constitution and regularly proposes replacement of government officials and social mechanisms that allow as many people as possible to influence decisions which is important by selecting candidates for political positions”.<sup>10</sup> Thus, through this research, the problem of filling DPD members from political party elements in the analysis of Oesman Sapta's candidacy as a DPD member candidate and the legal implications of filling DPD members from political party elements

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<sup>6</sup> Afan Gaffar, *Politik Indonesia: Transisi Menuju Demokrasi*, (Yogyakarta : Pustaka Pelajar, 2006), p. 89.

<sup>7</sup> Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, (Jakarta : Sinar Grafika, 2010), p. 78.

<sup>8</sup> Bachtiar, *Kekuasaan dan Pertanggungjawaban Presiden Dalam Konstruksi Politik Hukum Konstitusi Negara Republik Indonesia, Disertasi* (Jakarta : Program Doktor Ilmu Hukum Universitas Trisakti, 2017), p. 43.

<sup>9</sup> Bachtiar, *Problematika Implementasi Putusan Mahkamah Konstitusi Pada Pengujian UU Terhadap UUD*, (Jakarta : Raih Asas Sukses, 2015), p. 65.

<sup>10</sup> Muhammad Tamar, *Materi Pokok Filsafat Ilmu Pemerintahan*, (Tangerang Selatan: Universitas Terbuka, 2017), p. 8.3.

on the Indonesian constitutional system can be identified.

## **B. Research Methods**

In accordance with the purpose of this study, the research typology used by the author is normative juridical research, which is research conducted by conducting a search of laws and regulations and literature related to research issues. For this reason, the approach used is a *statuta* approach, because it will discuss the implementation of various laws and regulations related to filling the DPD. Another approach used is the *case* approach, because it will discuss various judicial decisions related to filling DPD members. In addition, it also uses a conceptual approach which will discuss the concept of the rule of law, the concept of separation of powers, the concept of checks and balances and the concept of constitutional democracy. With this approach it is hoped that the ideal construction of filling DPD members from political party elements and its legal implications will be found in the Indonesian constitutional system.

Considering that the type in this research is normative juridical, the data sources used in this study consist of primary data and secondary data. Secondary data is obtained through document studies, while primary data is obtained through studies of court decisions. To ensure the validity, objectivity and reliability of legal materials collected through decision studies and document studies, triangulation examination techniques are used. Triangulation techniques are divided into triangulation of sources, methods, and theories. In this study, the triangulation of sources and methods was used, namely by double-checking between sources of legal materials and methods from one another. The determination of such legal material processing techniques is based on the premise that this research does not only intend to disclose or explain the research results, but also seeks to provide legal arguments against the legal issues under study. Thus, it is hoped that this research can be used as a reference in future research. Therefore, conclusions are drawn with deductive thinking logic, so that a clear and comprehensive picture is obtained regarding the filling of DPD members from political party elements in the analysis of Oesman Sapta's candidacy as a DPD member candidate and its legal implications in the Indonesian constitutional system.

## **C. Finding And Discussion**

1. The Problems of Filling DPD Members from Political Party Elements in the Analysis of Oesman Sapta's Candidacy as a Candidate for DPD Members

The constitutional basis for filling DPD members is Article 22E paragraph (4) of the 1945 Constitution, which states that “*The participants in the general election to elect members of the Regional Representative Council are individuals*”. It is designed in such a way because it is based on the consideration that elected DPD members can focus more on representing the aspirations of their electoral districts independently and independently in deciding every national policy without political factors. However, at the practical level, the filling of DPD members actually experiences a paradigm shift along with the broadest possible meaning of democracy. The Constitutional Court Decision Number 30 / PUU-XVI / 2018 dated 23 July 2018 and the Supreme Court decision Number 65 P / HUM / 2018 dated 25 October 2018 are a juridical fact of political intervention in the rules for filling DPD members. This can happen because according to Mukthie Fajar, that “behind positive law there is always interaction between people which is more decisive than the sound of the formulation of the law”.<sup>11</sup> Because of that the values of the constitution and democracy are often neglected, even the formal and explicit laws and regulations do not necessarily eliminate one's personal interests and socio-political power.

The filling of DPD members from political party elements is not justified because of legal flaws (constitutional defect). However, such an abstract constitution also requires an implementative affirmation in the form of statutory regulations. This affirmation aims to ensure that the implementation of the constitution can be carried out regularly, directed and not confusing in accordance with the spirit and spirit of the constitution, because the filling of DPD members from political party elements can in essence be justified as human rights guaranteed in a rule of law.

The ambiguity of the rules in filling DPD members can be clearly seen in Article 182 of Act Number 7 of 2017 concerning General Elections, General Election Commission Regulation Number 14 of 2018 concerning Individual Candidates for General Election Participants for Members of the Regional Representative Council, and Appendix to the Decree of the General Election Commission Number 883 / PL.01.4-Kpt / 06 / KPU / VII / 2018 concerning Technical Guidelines for Submission and Verification of Individual Candidates for the Election of DPD Members on July 9, 2018. In this regulation, the affirmation that the requirement “candidates for DPD

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<sup>11</sup> A. Mukthie Fadjar, *Negara Hukum Dan Perkembangan Teori Hukum : Sejarah dan Pergeseran Paradigma*, (Malang : Intrans Publishing, 2008), *Op.Cit.*, p. 27.

members cannot come from political parties” is not included which in fact negates (denies) the constitution. This was due to the attitude of the DPR and the President as legislators at that time and the General Election Commission (KPU) as the election organizer who were less firm since the beginning of the process, opening up political space in filling DPD members. In addition, the filling of DPD members from political party elements has also been interpreted by the Constitutional Court in decision Number 10 / PUU-VI / 2008 dated July 1, 2008. The Constitutional Court considered that “the non-political party requirements for candidates for DPD members were not constitutional norms that are implicitly attached to Article 22E paragraph (4) of the 1945 Constitution which reads “participants in the general election to elect members of the Regional Representative Council are individuals”. The content of the norms contained in Article 22E paragraph (4) of the 1945 Constitution is that to nominate themselves as candidates for DPD members, individuals must “nominate” themselves as election participants, not nominated by political parties”.<sup>12</sup> Thus, the filling of DPD members should be explicitly affirmed in the law. Because without a firm technical implementation, members of political parties may nominate themselves as candidates for DPD members not because they do not obey and obey the constitution, but because the rules are not clear.

The political factors that emerged in the dynamics of filling DPD members were also legitimized in the Supreme Court decision Number 65 P / HUM / 2018 dated October 25, 2018, where the legal considerations of the Supreme Court, among others, state that “the main problem that must be answered in the petition for judicial review according to the Court is the conflict between legal norms in the form of a Constitutional Court decision which is placed equal to law with a legal principle in the form of a non-retroactive principle, namely a principle that emphasized that a rule of law should not be applied retroactively”,<sup>13</sup> in fact, it is only an “effort to understand legal norms as the meaning of willful action (behavior or deed)”<sup>14</sup> only that which has the effect of “the dimension of normative meaning, namely the special meaning that arises from material facts (behavior or actions) that are observed, which are not spatially and

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<sup>12</sup> Putusan Mahkamah Konstitusi Nomor 10/PUU-VI/2008 tertanggal 1 Juli 2008, p. 211.

<sup>13</sup> Putusan Mahkamah Agung Nomor 65 P/HUM/2018 tertanggal 25 Oktober 2018, *Op.Cit.*, p. 42.

<sup>14</sup> Khudzaifah Dimiyati & Kelik Wardiono, *Paradigma Rasional Dalam Ilmu Hukum : Basis Epistemologis Pure Theory of Law Hans Kelsen*, (Yogyakarta : Genta Publishing, 2014), p. 10.



temporally determinants (not tied to space and time)".<sup>15</sup> This means that the Supreme Court's consideration seems to have carried out a dichotomy in one reality, namely between the actions of the General Election Commission and the legal principles in the formation of legislation. Even though such legal considerations, *mutatis mutandis*, legitimize political elements in filling DPD members. Even in its decision, the Supreme Court explicitly allowed elements of political parties, namely Oesman Sapta as the General Chair of the People's Conscience Party (Partai Hati Nurani Rakyat) to participate in filling the DPD members in 2019.

Other juridical facts were also found in the decision of the Jakarta State Administrative Court Number 242 / G / SPPU / 2018 / PTUN-JKT dated November 14, 2018. This decision increasingly shows a strong political determination in the nomination of DPD members in 2019. The Jakarta State Administrative Court, which examined, decided, and adjudicated the case actually made a decision legalizing a political event from Oesman Sapta regarding legal events. In fact, this decision seems to adopt and translate the decision of the Supreme Court as the highest court above it. The spirit and spirit of the constitution have been increasingly neglected in the decision of the Jakarta State Administrative Court. The candidacy of Oesman Sapta as a candidate for DPD member is very dominated by political factors rather than the principle of obedience and obedience to the constitution. Because of that, a paradigm shift in the implementation of the constitution related to filling DPD members has occurred in a structured, systematic, and massive manner. This can happen as a logical consequence in a democratic political configuration.

Referring to the problematic filling of DPD members from political party elements, the decision of the General Election Supervisory Agency of the Republic of Indonesia Number 008 / LP / PL / ADM / RI / 00.00 / XII / 2018 dated January 9, 2019, which includes that *"(1)... etc; (4) order the reported party to determine Dr. (HC) Oesman Sapta as the elected candidate in the 2019 general election if he resigns as a political party manager no later than 1 (one) day before the determination of the elected candidate for the Regional Representative Council; (5) ordered the reported party not to assign Dr. (HC) Oesman Sapta as an elected candidate in the 2019 general election if he does not resign as a political party manager no later than 1 (one) day before the determination of the elected candidate for the Regional*

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<sup>15</sup> Ibid., p. 11.

*Representative Council*” can be said to be wise and wise in ending the dichotomous between the political and legal processes as well as the embryo of anew paradigm in filling DPD members from political party elements. The new paradigm in solving the problematic filling of DPD members from political party elements is the positivistic paradigm. This is based on the consideration that the Indonesian state as a rule of law must actualize itself theoretically in a practical level. The model in this theory can be compared with the previous paradigm which does not contain a positivistic paradigm, but a political paradigm that has been practiced for several years in filling DPD members.

## 2. Legal Implications of Filling DPD Members from Political Party Elements in the Indonesian State Administration System

DPD as a legislative body after the third amendment of the 1945 Constitution was formed based on Article 22C, Article 22D, and Article 22E of the 1945 Constitution. Then in the fourth amendment, the DPD institution was included as part of the MPR. Article 2 paragraph (1) of the 1945 Constitution states that “The People's Consultative Assembly consists of members of the People's Representative Council and members of the Regional Representative Council who are elected through general elections and are further regulated by law”. Through this change, delegates from regions and groups that were previously part of the MPR were automatically eliminated from the Indonesian constitutional system. Thus, the MPR has a new membership, namely members of the DPR and members of the DPD.

The filling of DPD members from elements of political parties has actually been practiced since the inception of the DPD institution. The conditions governing the process of filling in DPD members are very political. This is because those in power make laws, namely the DPR, which are the products of political parties which of course carry the interests of the political parties they represent, including even in filling DPD members.

The filling of DPD members from political party elements will have implications for the Indonesian administration system which is explicitly interpreted in the Constitutional Court decision Number 30 / PUU-XVI / 2018 dated July 23, 2018. Substantially, through this decision the Constitutional Court at least expressed 5 important points in responding to the filling of DPD members from political party elements, namely as follows:

- a. DPD is a regional representation that carries and fights for the aspirations and interests of the regions within the framework of the national interest, as a balance based on the principle of “checks and balances” against the DPR, which is a political representation of the aspirations of political interests of political parties in framework of national interests.<sup>16</sup>
- b. In the discussion process that took place at the Ad Hoc I Committee of the MPR Working Body when formulating the institutionalization of the DPD, to fill the positions of DPD members must come from outside the political party. DPD members are designed to come from regional figures who truly understand and fight for regional needs in making national political decisions related to regional needs.<sup>17</sup>
- c. The requirements for DPD members not to become managers or from political party officials prevent political distortions in the form of the birth of double representation of political parties in decision making, especially important political decisions such as amendments to the Constitution. Article 2 paragraph (1) of the 1945 Constitution states that the MPR consists of members of the DPR and members of the DPD. Meanwhile, according to Article 3 paragraph (1) of the 1945 Constitution, the MPR has the authority to amend and enact the Constitution. Thus, if it is possible for DPD members to come from political party administrators, it means that there will be double representation in the MPR membership where political parties that are already represented in the DPR membership are also represented in DPD membership.<sup>18</sup>
- d. Since the first decision of the Constitutional Court relating to DPD membership, namely the Constitutional Court Decision Number 10 / PUU-VI / 2008 dated July 1, 2008, has consistently demonstrated its stance in maintaining the nature of the DPD's existence in accordance with the design of the 1945 Constitution, that if the DPD membership is also possible to come from a political party, in this case the political party management, hence this situation further confirms the phenomenon in which political decisions are directly related to regional interests, especially in the field of legislation, in fact it becomes in the hands of those who

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<sup>16</sup> Putusan Mahkamah Konstitusi Nomor 30/PUU-XVI/2018 tertanggal 23 Juli 2018, *Op.Cit.*, p.8. Putusan Mahkamah Konstitusi Nomor 10/PUU-VI/2008 tertanggal 1 Juli 2008, *Op.Cit.*, p. 205-206.

<sup>17</sup> Putusan Mahkamah Konstitusi Nomor 30/PUU-XVI/2018 tertanggal 23 Juli 2018, *Op.Cit.*, p. 43.

<sup>18</sup> *Ibid.*, p. 45.

are merely political representations.<sup>19</sup>

- e. Article 182 of the Election Law which regulates the requirements for individuals to become candidates for DPD members does not explicitly state that there is a prohibition for political party officials to run for DPD members. Therefore, the Constitutional Court as an institution established with the function of guarding the constitution in a state administration system that adheres to the principle of constitutional supremacy is obliged to guarantee the realization of the spirit contained in Article 22D of the 1945 Constitution, so that the idea that the DPD is a regional representation is truly realized and is not distorted in the practice of state life due to the absence of restrictions with regard to nomination requirements, especially those related to political party management.<sup>20</sup>

Based on the above description, the legal implications of filling DPD members from political party elements to the Indonesian constitutional system are first, the emergence of double representation of political parties in the MPR, where this is contrary to the original intent of MPR membership, namely political representation (DPR) and territorial representation (DPD) in accordance with Article 2 paragraph (1) of the 1945 Constitution. Second, the emergence of politicization in the field of legislation, especially Article 22D of the 1945 Constitution, is related to regional needs or interests which are almost certainly dominated by the interests of political parties in DPD membership. So that the represented regions (including local governments) become victims of the politicization of DPD members. Third, the purification of a DPD institution that is free from political parties will be increasingly obstructed as well as confirming the fact that the DPD institution has political content, where this fact is contrary to the constitutional design of the formation of a DPD institution. Fourth, as long as the

DPD institution is controlled by a political party, the amendments to the NKRI Constitution cannot be implemented.

Meanwhile, considering the DPD institution as an institution that adheres to the principle of “checks and balances” against the DPR and is a member of the MPR which has the authority to amend the 1945 Constitution, the DPD membership needs to be developed (no need to be limited to only 4 (four) people per region), with

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<sup>19</sup> Ibid., p. 46-48.

<sup>20</sup> Ibid., p. 49.

consideration that the aspirations and interests of the regions within the framework of the national interest must be quantitative based in addition to the elements of figures who understand the needs and interests of the regions. The DPD's "checks and balances" principle on the DPR is not always interpreted from a mere perspective of authority, but also in its membership, which quantitatively will be very influential as an integralistic indicator in fighting for regional interests within the framework of national interests, in line with the increasing number of residents or voters in each region. This is also the actualization of the value of the constitution as a means of integration (the constitution as a tool of integration).

#### **D. Conclusions**

The filling of DPD members from political party elements in the analysis of Oesman Sapta's candidacy as a DPD member candidate is contrary to the soul and spirit of the constitution. Ideally filling DPD members is a political manifestation that is free from political parties. Futuristically, the filling of DPD members has a new paradigm, namely a positivistic paradigm from previously political ones. This new paradigm is strengthened by the flow of the Constitutional Court decision Number 30 / PUU-XVI / 2018 dated July 23, 2018. At a practical level, the positivistic paradigm in filling DPD members can be implemented in the general election in 2024 and general elections onwards. In order for this paradigm to be implemented, the General Election Commission must make technical rules that substantially prohibit members of political parties from registering as candidates for DPD members. Nevertheless, the true law does not aim to create differences in treatment for anyone, not least in the democratic political process of filling DPD members, but holistically as a unity of norms that must be obeyed both in terms of equal rights and equal position and in the process of filling DPD members. As for the legal implications of filling DPD members from elements of political parties in the Indonesian constitutional system, first, the emergence of double representation of political parties in the MPR, where this contradicts the original intent of MPR membership, namely Political Representation (DPR) and Territorial Representation (DPD) in accordance with Article 2 paragraph (1) of the 1945 Constitution. Second, the emergence of politicization in the field of legislation, especially Article 22D of the 1945 Constitution, is related to regional needs or interests which are almost certainly dominated by the interests of political parties in DPD membership. So that the represented regions (including local governments) become victims of the politicization of DPD members. Third, the purification of a DPD

institution that is free from political parties will be increasingly obstructed as well as confirming the fact that the DPD institution has political content, where this fact is contrary to the constitutional design of the formation of a DPD institution. Fourth, as long as the DPD institution is controlled by a political party, the amendments to the NKRI Constitution cannot be implemented.

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