

# Resolving the Conflict of Interests Issue within the Laws Concerning the Political Matters: Deliberative Democracy or Empowering *Dewan Perwakilan Daerah*?

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## Abstract

This study examines whether the concept of deliberative democracy could offer a viable solution to the issues surrounding laws on political matters, commonly referred to as *Paket Undang-Undang Politik* in Indonesia. These laws, including general election regulations, have become problematic due to their close association with the drafters. Over the past two decades, presidents and the majority in the House of Representatives have formed coalitions to maintain government stability. However, this success has had a detrimental impact on the system of checks and balances during the drafting of these laws. While the Constitutional Court could potentially intervene by reviewing these laws, it has often not addressed the conflict of interest issues arising from open legal policies, especially in cases related to reviewing election laws. This paper addresses this issue by proposing a solution integrated into the drafting process to mitigate conflicts of interest in political matters legislation. The proposed approach involves incorporating an additional institution in the drafting process not directly influenced by political interests. In other countries, similar issues are tackled through practical implementations of deliberative democracy, which directly involves citizens as the decisive factor, using methods such as citizen assemblies and deliberative polling. We suggest empowering the Regional Representatives Council could offer a more practical solution to this issue.

**Keywords:** conflict of interests, deliberative democracy, political matters legislation.

## A. Introduction

In Indonesia, laws are by hierarchy, under the 1945 Constitution of the Republic of Indonesia and drafted by the House of Representatives of the Republic of Indonesia together with the president.<sup>1</sup> These laws are not always primarily intended to directly address the needs of the Indonesian people. Instead, they are designed to align with the delegation received from the articles within the 1945 Constitution.<sup>2</sup>

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<sup>1</sup> Maria Farida, *Ilmu Perundang-Undangan 2: Proses dan Teknik Penyusunan* (Yogyakarta: PT Kanisius, 2020), 2.

<sup>2</sup> Article 10 of Law Number 12 of 2011 on Making Rules.

For instance, in accordance with Article 22E Paragraph 6, which pertains to election delegates, further provisions related to general elections are established in law(s). Consequently, this led to the passing of Law Number 7 of 2017 on General Elections.<sup>3</sup> Another instance is found in Article 6A Paragraph 5, which concerns the election of the President and Vice President, and delegates the task of regulating further provisions for the election of the President and Vice President through the enactment of a law.<sup>4</sup>

These constitutional articles delegate the authority to create laws related to matters that directly affect and significantly impact the drafters. In Indonesia, these laws are known as *Paket Undang-Undang Politik* or political laws. The concern here lies in the objectivity of the drafters when regulating such matters to prevent conflicts of interest. An illustrative example is the establishment of a parliamentary threshold, which is the minimum percentage of votes that political parties must attain to have their members represented in parliament. In Indonesia, this threshold is set at 4%, as stipulated in Article 414 of Law 7 of 2017 on General Elections.<sup>5</sup> Consequently, this threshold places non-ruling political parties outside the legislative sphere, making it more challenging for them to secure parliamentary representation. This situation may be perceived as a strategy employed by the political parties already within the legislative to create barriers for their competitors.

The question then arises as to whether an existing mechanism can effectively prevent such issues from arising. One such mechanism is the constitutional review conducted by the Constitutional Court. As per Article 24C of the 1945 Constitution, this court is empowered to review whether a law – including those concerning political matters is in compliance with the 1945 Constitution. However, this mechanism comes with certain complications. These include the interpretation and application of open legal policy and the possibility of the legislature reintroducing laws that have been reviewed and invalidated by the Constitutional Court. Furthermore, relying solely on this mechanism does not prevent the laws from taking immediate effect after being passed by the drafters.

The Constitutional Court has encountered instances where it has employed the open legal policy. This approach is frequently used in cases related to the electoral threshold, as demonstrated in Constitutional Court Decisions Number 3/PUU-VII/2009, Number 14/PUU-XI/2013, Number 74/PUU-XVIII/2020, and Number 52/PUU-XX/2022.<sup>6</sup> The first decision pertains to the review of the parliamentary threshold, while the subsequent decisions concern the review of the presidential threshold. However, it's worth noting that the Constitutional Court has also

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<sup>3</sup> Article 22E section 6 of the 1945 Constitution of the Republic of Indonesia.

<sup>4</sup> Article 6A section 5 of the 1945 Constitution of the Republic of Indonesia.

<sup>5</sup> Article 414 section 1 of Law Number 7 of 2017 on General Election.

<sup>6</sup> Constitutional Court of the Republic of Indonesia, Decision Number 3/PUU-VII/2009, Decision Number 14/PUU-XI/2013, Decision Number 74/PUU-XVIII/2020, and Decision Number 52/PUU-XX/2022.

established certain criteria for the application of this policy. To be considered, the application must not be arbitrary, must adhere to morality and rationality, must not perpetuate injustice, and must align with the 1945 Constitution.<sup>7</sup> Nevertheless, these criteria still leave room for multiple interpretations.

This paper explores and evaluates an alternative solution for addressing the conflict of interest issue related to bills before their enactment rather than after. Several countries, including Canada, Ireland, and England, have introduced and endorsed a mechanism known as the "bring-in-the-people" mechanism. This approach serves as a contemporary and tangible embodiment of deliberative democracy aimed at resolving conflicts of interest in laws concerning political matters.<sup>8</sup> It places public participation at the forefront during the drafting of laws. The concept involves external parties or individuals not directly affiliated with the legislative process in reviewing draft bills.

Nevertheless, implementing this concept in Indonesia would not be without its challenges and complexities. This paper thoroughly examined whether the adoption of deliberative democracy could serve as a viable solution to address the challenges posed by laws concerning political matters. This exploration unfolded in three key parts. Initially, the paper delved into an understanding of these laws, shedding light on their nature and why they have become problematic. Subsequently, it expounded upon the concept of deliberative democracy as an alternative solution, revealing that the practices of this concept in other countries might not be readily applicable in the Indonesian context for various reasons. Finally, the paper put forth a proposition to strengthen the Regional Representatives Council as a more feasible solution to the issue at hand.

## **B. The Laws Concerning the Political Matters**

### **1. Definition, Scope, and Issue**

The term *Paket Undang-Undang Politik* in Indonesia refers to a set of five laws enacted during Soeharto's regime in 1985. These five laws are (1) the Law Number 3 of 1985 on Political Parties and Golongan Karya (Golkar);<sup>9</sup> (2) the Law Number 8 of 1985 on Mass Organizations; (3) the Law Number 1 of 1985 on Elections; (4) the Law Number 2 of 1985 on the Structure, Position, Duties, and Authority of the People's Consultative Assembly/People's Representative Council; and (5) the Law Number 5 of 1985 on Referendums.<sup>10</sup> The public perceived these laws as part of Soeharto's

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<sup>7</sup> Constitutional Court of the Republic of Indonesia, Decision Number 26/PUU-VII/2009, Decision Number 7/PUU-XI/2013, and Decision Number 30-74/PUU-XII/2014.

<sup>8</sup> Further elaborations could be seen below in the chapter C with respect to Deliberative Democracy.

<sup>9</sup> In English, *Golongan* can be translated to group while *Karya* can be translated to work.

<sup>10</sup> Basuki Agus Suparno, *Reformasi & Jatuhnya Soeharto*, (Jakarta: PT Kompas Media Nusantara, 2012), 195.

"legal" strategies to maintain his sole power and protect his oligarchic interests during that period.<sup>11</sup>

For example, the Political Parties and Golkar Law of 1985 stipulated that there were only two political parties plus one Golkar (working group) in Indonesia, namely the Indonesian Democratic Party (*Partai Demokrasi Indonesia* - PDI), the Party of Unity and Development (*Partai Persatuan Pembangunan* – PPP), and Golkar. This policy was deemed as an attempt to hinder and limit the political participation of the people trying to group their interests in terms of creating political parties.<sup>12</sup> Moreover, PDI and PPP were seen to have been co-opted by the government's power, keeping them under the shadow of Golkar during the New Order era.<sup>13</sup>

The core issue revolves around conflicts of interest embedded in the content of laws related to political matters. These laws are often drafted by lawmakers to serve their own political interests, and it is crucial to establish a normative approach to address this concern. This paper specifically focuses on four laws: (1) Law Number 7 of 2017 on General Elections; (2) Law Number 6 of 2020 on Regional Leader Elections; (3) Law Number 13 of 2019 on the People's Consultative Assembly, House of Representatives, House of Regional Representatives, and Regional Representatives Council (referred to as MD3); and (4) Law Number 2 of 2008 on Political Parties.

Ensuring that these laws are not influenced by the political interests of the drafters is a challenging task.<sup>14</sup> The example is the parliamentary threshold specified in the Law Number 7 of 2017. According to this law, each political party must attain at least 4% of the total national vote in the election to secure representation in the House of Representatives.<sup>15</sup> In the 2019 elections, some new parties like the Indonesian Solidarity Party (*Partai Solidaritas Indonesia* - PSI) and the Indonesian Unity Party (*Partai Persatuan Indonesia*- Perindo) were unable to secure seats in the House.<sup>16</sup> In contrast, incumbent political parties already in the House managed to have their members elected as parliamentarians. This situation raises concerns about the influence of political interests in the legislative process.<sup>17</sup>

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<sup>11</sup> Basuki Agus Suparno, 196.

<sup>12</sup> Nining, "Reformasi Total yang Dikorupsi," accessed on April 27, 2022, [https://mapcorner.wg.ugm.ac.id/2019/10/reformasi-total-yang-dikorupsi/#\\_ftn2](https://mapcorner.wg.ugm.ac.id/2019/10/reformasi-total-yang-dikorupsi/#_ftn2).

<sup>13</sup> Nining.

<sup>14</sup> Veri Junaidi (et.al.), (eds.) *Politik Hukum Sistem Pemilu: Potret Keterbukaan dan Partisipasi Publik dalam Penyusunan Undang-Undang Nomor 8 Tahun 2012 tentang Pemilihan Umum Anggota DPR, DPD, dan DPRD* (Jakarta:Yayasan Perludem, 2013), 157.

<sup>15</sup> Article 414 section 1 of Law Number 7 of 2017 on General Election.

<sup>16</sup> Measure of "success" referred to here is the ability of a political party to obtain seats in the parliament. As a party cannot surpass the parliamentary threshold for gaining seats in the parliament, it is considered unsuccessful in the election, see I Made Aditya Kusumanata and Ni Luh Gede, "Akibat Hukum Ambang Batas Perolehan Suara Parpol (*Parliamentary Threshold* dalam Pemilu Serentak 2019)," *Jurnal Kertha Negara* 8, no. 10 (2020): 11.

<sup>17</sup> Votes in the 2019 election are dominated by incumbent parties. See I Made Aditya Kusumanata and Ni Luh Gede, 11.

The MD3 Law presents a distinct case, particularly concerning the House's power to summon individuals and conduct examinations. According to Article 73 Paragraphs (3), (4) letters a and c, (5), Article 122 letter k, and Article 245 Paragraph (1) of Law Number 17 of 2014 on MD3, when a House of Representatives member wishes to summon and request information from a particular party, they can involve the Indonesian National Police.<sup>18</sup> In contrast, examinations conducted on House members require prior written permission from the Honorary Council (*Majelis Kehormatan Dewan*-MKD) of the House of Representatives. This implies that individuals who undergo examinations by the House of Representatives can face legal prosecution since the House of Representatives can directly engage the police institution. However, when the examinations involve House of Representatives members themselves, the process becomes more intricate due to the requirement of prior permission from the Honorary Council.<sup>19</sup> According to the Constitutional Court, this policy is considered a reasonable measure related to the immunity rights of House of Representatives members.<sup>20</sup>

The examples provided raise a valid concern regarding the objectivity of lawmakers when it comes to crafting laws that directly or significantly pertain to themselves. Giovanni Sartori defines political parties as any political group participating in elections and capable of securing the election of candidates to public offices,<sup>21</sup> with the primary aim of gaining substantial influence in parliament. Given this context, it becomes crucial to question how the House of Representatives, in conjunction with the president, can ensure that the legislative process for laws related to political matters is designed to genuinely serve the public's best interests.

## 2. Status Quo: Could They Overcome the Issue?

### a. The Dominance of Coalition Framework in Formulating Laws

Scott Mainwaring posits that a presidential system coupled with a multiparty framework could potentially hinder democratic stability, particularly in the legislative process.<sup>22</sup> The greater the support the president garners from the parliament, the more stable the democracy, as it ensures that president's proposals receive majority approval.<sup>23</sup> In essence, Mainwaring argues that the alignment of the

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<sup>18</sup> Article 73 of Law Number 17 of 2014 on the People's Consultative Assembly, the House of Representatives, the Regional Representative Board, and the Regional House of Representatives.

<sup>19</sup> Article 245 of Law Number 17 of 2014.

<sup>20</sup> The Decision of the Constitutional Court Number 16/PUU-XVI/2018.

<sup>21</sup> Giovanni Sartori, *Parties and Party System* (New York: Cambridge University Press, 1984), 64.

<sup>22</sup> Hanta Yuda A.R, *Presidensialisme Setengah Hati - Dari Dilema ke Kompromi* (Jakarta: Gramedia, 2010), 6.

<sup>23</sup> See Paul Chaisty, Nic Cheeseman, and Timothy J. Power, *Coalitional Presidentialism in Comparative Perspective: Minority Presidents in Multiparty Systems* (Oxford: Oxford University Press, 2018), 1-3; Simone Wegmann, *The Power of Opposition: How Legislative Organization Influences Democratic Consolidation* (New York: Routledge, 2023), 9; Marco Bunte and Mark R. Thompson (ed.), *Presidentialism and Democracy in East and Southeast Asia* (New York: Routledge, 2023), 4.

presidential coalition map directly correlates with the president's political agenda, including the introduction of legislation.

The existence of the president's coalition in the Indonesian parliament has been a clear reality since Susilo Bambang Yudhoyono's (SBY) regime from 2004 to 2009.<sup>24</sup> During this period, SBY's minority government necessitated Jusuf Kalla to utilize *Partai Golkar* as a means to secure increased support from the parliament. The political outreach to Golkar and PPP transformed the government into a majority government. The following data illustrates the distribution of support during SBY's regime.

**Table 1.** Political Maps in 2004-2009

Political Maps in 2004-2009		
2004 Presidential Election (Final Round)	39.38%	60.62%
	Megawati-Hasyim Muzadi	Susilo Bambang Yudhoyono- Jusuf Kalla
2004 the House of Representatives Seat Vote (while competing in the presidential election)	PDIP = 109 Seats (19.82)	Democrats = 55 Seats (10%)
	PDS = 13 (2.36)	UN = 11 (2%)
	PPP = 58 (10.55%)	PKPI = 1 (0.18%)
	PBR = 14 (2.55)	PKB = 52 (9.45%)
	Golkar = (23.27%)	PAN = 53 (9.64%)
		PKS = 45 (8.18)
	58.55 % (322 Seats)	39.45 % (217 Seats)
2004 the House of Representatives Seat Vote (after the presidential election)	Total Seats = 539/550	
	After Golkar (128) and PPP (58 Seats) joined SBY-JK	
	Opposition	Coalition
	322 – 186 = 136 Seats ↓	217 + 186 = 403 Seats ↑

**Source:** kpu.go.id and dpr.go.id. 2022.

Joko Widodo (Jokowi) followed a somewhat similar path to his predecessors.<sup>25</sup> In 2014, only five political parties formed a coalition that nominated Jokowi for the presidency. Although Jokowi won the general election, the opposition coalition secured the majority of seats in the House of Representatives with 397 seats (52%). Recognizing the situation, Jokowi sought to secure the support of the majority in the

<sup>24</sup> Stephen Sherlock, "A Balancing Act: Relations Between State Institutions under Yudhoyono", in Edward Aspinall, Marcus Mietzner, and Dirk Tomsa (eds.), *The Yudhoyono Presidency: Indonesia's Decade of Stability and Stagnation* (Singapore: Institute of Southeast Asia Studies, 2015), 97.

<sup>25</sup> Marcus Mietzner, "Coercing Loyalty: Coalitional Presidentialism and Party Politics in Jokowi's Indonesia," *Contemporary Southeast Asia* 38, no. 2 (2016): 211, <https://doi.org/10.1355/cs38-2b>. In this article, Mietzner also explained how the way Jokowi took dominance over the parliament was slightly different than Yudhoyono's way, but still their goals were the same.

House of Representatives. Over three years, three political parties joined Jokowi's coalition, allowing him to secure the majority of seats in the House of Representatives.

One notable outcome of the president's substantial control of the majority of seats in the House is reflected in the Election Law (Law Number 17 of 2017). The 2017 debate on the Election Law mainly centered on the presidential threshold, which was perceived as a crucial article due to its implications for the lawmakers. The positions of each faction are outlined in the following table.<sup>26</sup>

**Table 2.** Political Party Map on Election Law

Party	Refuse	Agree	Coalition	Opposition
Partai Demokrasi Indonesia – Perjuangan (PDI-P)		✓	✓	
Partai Golkar		✓	✓	
Partai Nasdem		✓	✓	
Partai Gerindra	✓			✓
Partai Kebangkitan Bangsa (PKB)		✓	✓	
Partai Amanat Nasional (PAN)			✓	
Partai Persatuan Pembangunan (PPP)		✓	✓	
Partai Keadilan Sejahtera (PKS)	✓			✓
Partai Demokrat	✓			✓
Partai Hanura	Abstain		✓	

**Source:** Detik.com, 2017.

The table above demonstrates that coalition dominance played a pivotal role in securing the approval of the Election Law. Parties within the coalition displayed a unified front in supporting the law, while the opposition group likewise presented a united front in opposition. This underscores how coalition dominance can impede the system of checks and balances within the legislative process. The President tends to align with the coalition's stance in the House of Representatives, leading to a lack of dynamic checks on issues such as the presidential threshold. Consequently, coalition dominance fails to establish an optimal system of checks and balances between the executive and legislative branches of government.

<sup>26</sup> Akhmad Mustaqim, “PPP: Fraksi yang Tolak Presidential Threshold 20% Bisa Gugat di MK,” accessed on July 22, 2023, <https://news.detik.com/berita/d-3567895/ppp-fraksi-yang-tolak-presidential-threshold-20-bisa-gugat-di-mk>.

## **b. The Limit of Constitutional Review**

Pursuant to the constitution, the avenue to challenge problematic laws by citizens is through the Constitutional Court by reviewing the constitutionality of the laws. In reviewing the laws concerning political matters, the Constitutional Court is often confronted with the presence of open legal policy provisions. Open legal policy provides the subjectivity or freedom to lawmakers in formulating legal policies. When the 1945 Constitution does give the delegation to laws to regulate further,<sup>27</sup> the Constitutional Court has also decided that open legal policy is permissible as long as it does not blatantly contradict the 1945 Constitution, not exceed the legislative authority, and is not abusive.<sup>28</sup>

An example of this is the Election Law. In 2017, the legislature passed Law Number 7 of 2017 on Election. One debated article was Article 222 concerning the presidential threshold. A presidential candidate can only be nominated if they are supported by a political party or coalition that has obtained 20% of parliamentary seats or 25% of the total national votes. Most legislators argued that this presidential threshold was to create harmony between the president and the legislature.<sup>29</sup> Furthermore, they contended that it did not violate the constitutional provisions on elections.<sup>30</sup> After being reviewed by the Constitutional Court 14 times, this article still stands and has not been overturned by the Court.

The Constitutional Court, in essence, simply decided that the *Undang-Undang Dasar Negara Kesatuan Republik Indonesia* allows the legislature to set up the threshold due to the principle of open legal policy. The provisions on elections are found in Article 22E. This article comprises five substantial sub-points and delegates further regulation to the legislature, including the principles of elections (Article 22E (1)), the scope of elections (Article 22E (2)), eligible entities (Article 22E (3), (4)), and the commission organizing elections (Article 22E (5)).<sup>31</sup> Meanwhile, Article 22E (6) simply states that further matters concerning elections will be regulated by a Law. From all these articles, the Constitutional Court concluded that there is no prohibition on setting a threshold. Additionally, the final article delegates this task to the legislature without defining the scope of further matters.<sup>32</sup> This means that even if the Presidential Threshold was set by the legislature at 50% or 70%, the Constitutional Court would still consider the article constitutional based on the open

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<sup>27</sup> Mardan Wibowo, *Kebijakan Hukum Terbuka dalam Putusan Mahkamah Konstitusi: Konsep dan Kajian dalam Pembatasan Kebebasan Pembentuk Undang-Undang* (Depok: Rajawali Pers, 2019), 23.

<sup>28</sup> Radita Ajie, "Batasan Pilihan Kebijakan Pembentuk Undang-Undang (Open Legal Policy) dalam Pembentukan Peraturan Perundang-Undangan Berdasarkan Tafsir Putusan Mahkamah Konstitusi," *Jurnal Legislasi Indonesia* 13, No. 02 (2016): 117, <https://doi.org/10.54629/jli.v13i2.105>.

<sup>29</sup> Decision Number 53/PUU-XV/2017 regarding the Examination of Law Number 7 of 2017 on General Elections.

<sup>30</sup> Decision Number 53/PUU-XV/2017 regarding the Examination of Law Number 7 of 2017 on General Elections.

<sup>31</sup> Decision Number 53/PUU-XV/2017 regarding the Examination of Law Number 7 of 2017 on General Elections.

<sup>32</sup> Abdul Ghoffar, "Problematika Presidential Threshold: Putusan Mahkamah Konstitusi dan Pengalaman di Negara Lain," *Jurnal Konstitusi* 15, no. 3 (2018): 485, <https://doi.org/10.31078/jk1532>.



legal policy argument. As a legal consequence, the implication of applying the open legal policy is that even if there are clear constitutional disadvantages experienced by the public, the Constitutional Court still cannot annul such policy.<sup>33</sup>

### C. Can Deliberative Democracy be Applicable in Indonesia?

During the past two decades, modified practices of deliberative democracy concept in respect of law-making process have been offered and even been implemented.<sup>34</sup> Simoe Baglioni argues that practicing this concept is a rational alternative to overcome the weaknesses of representative democracy, run by political parties.<sup>35</sup> Especially, when dealing with the laws concerning political matters, some countries have applied this concept in various practices, such as Canada, Ireland, and England. However, this explanation is not to automatically say that the idea of deliberative democracy can be applied in Indonesia.

#### 1. The Concept and the Concretization of Deliberative Democracy

Etymologically, the word deliberate comes from the Latin *dēlibērātus*, which means considered carefully.<sup>36</sup> Deliberation and political discussion have become essential elements in the concept of democracy.<sup>37</sup> According to Habermas, a testing procedure or discourse by the public (civil society) can acknowledge political compromise's binding power and legitimacy.<sup>38</sup> Habermas explained that the political public sphere (public political space) is a place for communities to form public opinion and public discourse on state activities.<sup>39</sup>

In ancient Greek, Athenians implemented the deliberative democracy concept, known as a deliberative microcosm.<sup>40</sup> Deliberative microcosm is a term for small groups of public deliberation whose members are selected randomly by random sampling. The people of Athens used this method to elect legislative commissions, the Assembly Council, and others. With a deliberative microcosm scheme until the

<sup>33</sup> See the opinion from Judge Maria Farida Indrati in the Constitutional Court Decision Number 51-52-59/PUU-VI/2008, 92.

<sup>34</sup> Andre Bächtiger (et.al.), "Deliberative Democracy: An Introduction," in Andre Bächtiger (et.al.), *The Oxford Handbook of Deliberative Democracy* (Oxford: Oxford University Press, 2018), 1-3. See also Archon Fung and Erik Olin Wright, *Deepening Democracy: Institutional Innovations in Empowered Participatory Governance* (New York: Verso, 2003), 397.

<sup>35</sup> Simone Baglioni, "The Effects of Direct Democracy and City Size on Political Participation: The Swiss Case," in Thomas Zittel and Dieter Fuchs, *Participatory Democracy and Political Participation: Can Participatory Engineering Bring Citizens Back In?* (New York: Routledge, 2007), 91-106.

<sup>36</sup> Word Sense, "Deliberatus," accessed on July 23, 2023, <https://www.wordsense.eu/deliberatus/>.

<sup>37</sup> Kasper M. Hansen, *Deliberative Democracy and Opinion Formation* (Denmark: University of Southern Denmark, 2004), 80.

<sup>38</sup> Jürgen Habermas, "The Public Sphere: An Encyclopedia Article (1964)," *New German Critique*, no. 3 (1974): 55, <https://doi.org/10.2307/487737>.

<sup>39</sup> Jürgen Habermas, 49.

<sup>40</sup> Michael Saward (ed.), *Democratic Innovation: Deliberation, Representation, and Association* (London: Routledge, 2000), 19.

4th century BC, hundreds of Athenians were selected as an elected commission, making final decisions on various public policies.<sup>41</sup>

Countries have innovated the concept of a deliberative microcosm in today's deliberative democratic institutions.<sup>42</sup> One of them is the concept of deliberative mini public carried by Robert Dahl. A mini public (*mini populus*) is a public forum where a thousand randomly selected citizens will deliberate and form opinions on actual political issues. One mini public will decide the agenda of the matters to be addressed, and they will delegate a more detailed discussion related to the case to several different mini publics.<sup>43</sup>

There are 3 (three) countries that successfully apply public forums based on the deliberative mini public to deal with laws concerning political matters.

**a. Canada:**

In several cases, Canada regularly implements the linkage of deliberative and direct democracy. In fact, there were several referenda held throughout Canadian history, which are on conscription (1942), Newfoundland joining the Confederation (1947), Quebec's constitutional status (1980 and 1995), and the Constitutional Charlottetown Accords in 1992.<sup>44</sup> Moreover, Canada also applies deliberative direct democracy as a part of the Canadian political environment.<sup>45</sup> There are separate statutes across Canada which provide opportunity for citizens to participate in legislative process directly at the municipal level.<sup>46</sup> For example, in British Columbia, one of the Canadian provinces, they permit citizens to initiate referenda and recall sitting members of the provincial legislature.<sup>47</sup>

**b. Ireland**

The Irish constitution is amended frequently (up to 2023, there are 32 constitutional amendments).<sup>48</sup> To change the constitution, the amendment proposal must be passed by both houses of the Oireachtas (Parliament), then it will be submitted to

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<sup>41</sup> Michael Saward.

<sup>42</sup> Michael Saward.

<sup>43</sup> Robert A. Dahl, *Democracy and Its Critics* (United States of America: Yale University Press, 1991), 340.

<sup>44</sup> Patrick Boyer, *Direct Democracy in Canada: The History and Future of Referendums* (Toronto: Dundurn Press, 1992), 2-3.

<sup>45</sup> Matthew Mendelsohn, "Introducing Deliberative Direct Democracy in Canada: Learning from the American Experience," *American Review of Canadian Studies* 26, no. 3 (1996): 450, <https://doi.org/10.1080/02722019609481196>.

<sup>46</sup> Patrick Boyer, *Direct Democracy in Canada*, 190.

<sup>47</sup> Mendelsohn, "Introducing Deliberative Direct Democracy in Canada", 449.

<sup>48</sup> Citizens Information, "The Irish Constitution," accessed on July 20, 2023, <https://www.citizensinformation.ie/en/government-in-ireland/irish-constitution-1/constitution-introduction/>.

the people through a referendum.<sup>49</sup> Since Ireland adheres to the Westminster model, the government, as a rule, holds a legislative majority.<sup>50</sup> That is why Ireland uses a deliberative mini public mechanism and a referendum to complete their checks and balances system. Because of that, Ireland has been known for the success of constitutional amendment through the deliberative democratic system.<sup>51</sup> Ireland has two mini public institutions: the Constitutional Convention (2012-2014) and the Citizen's Assembly (2016-2018). Both institutions recommended some political matters: electoral reform (recommendations about the existing proportional representation voting system and citizens who have the right to vote) the presidency (recommendations about the presidential term; age of eligibility for presidential candidacy; and a role for citizens to nominate presidential candidate).<sup>52</sup>

### c. England

In England (deliberative polling), they use a mechanism called deliberative polling which involves citizens discussing political topics related to the UK's role in the European Union (1995), the UK's monarchy (1996); and the May 1997 General Election (April 1997).<sup>53</sup> The deliberative polling is a mechanism consisting of 250-500 participants who will be requested to fill out another questionnaire about the concerned issue. Furthermore, after the deliberation process is completed, participants will be asked to fill out a questionnaire with the same questions as in the initial stage. Later, the administrator will conduct a quantitative assessment by looking at the changes in participants' preferences and opinions before and after the deliberation process. The assessment results will be processed to be considered in preparing the public policy.<sup>54</sup>

According to Fishkin, deliberative polling in England was considered a success due to certain results: a) the representativeness of the participants – because they come from diverse backgrounds; b) the increase the information and knowledge of participants about the policies being drafted by the government; c) the change in policy preferences – many participants change their preferences after gaining

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<sup>49</sup> Oran Doyle and Rachael Walsh, "Deliberation in Constitutional Amendment: Reappraising Ireland's Deliberative Mini-Publics," *European Constitutional Law Review* 16, no. 3 (2020): 441-458, <https://doi.org/10.1017/S1574019620000243>.

<sup>50</sup> Oren Doyle and Rachael Walsh, 444.

<sup>51</sup> S. Hix, "Remaking Democracy: Ireland as a Role Model," *Irish Political Studies* 35, (2020): 1. <https://doi.org/10.1080/07907184.2020.1721085>

<sup>52</sup> Doyle, "Deliberation in Constitutional Amendment," 451 – 453.

<sup>53</sup> Robert C. Luskin, James S. Fishkin and Roger Jowell, "Considered Opinions: Deliberative Polling in Britain," *British Journal of Political Science* 32, no. 3 (2002): 461, <https://doi.org/10.1017/S0007123402000194>.

<sup>54</sup> Oliver Escobar, "Forms of Mini-Public: An Introduction to Deliberative Innovations in Democratic Practice," (Research and Development Note Number 4 New Democracy, 2017), 2.

enough information.<sup>55</sup> Even though it is applied in many countries, a deliberative forum is not an easy concept to execute.<sup>56</sup>

#### **D. Elements of Deliberative Democracy: Implementation Challenges in Indonesia**

Even though those countries applied the modified practices of deliberative democracy to deal with the conflict-of-interest issue of the laws concerning the political matters, there are significant challenges in applying this concept in resolving the issue happening in Indonesia. We formulated these challenges based on the Discourse Quality Index (DQI) – a deliberation quality measurement instrument based on Habermas' discourse theory, developed by Marco R. Steenbergen, Andre Bachtiger, Markus Spornelli, and Jurg Steiner.<sup>57</sup> According to Habermas and other theorists, there are six elements to design the ideal discourse: (1) the existence of open participation (each deliberator has the right to express their thoughts freely); (2) the argument proposed has justification (rational reasoning) and is valid; (3) the discourse is conducted by prioritizing common interests; (4) mutual respect (accepting the needs and counter-arguments between deliberators from different social groups); (5) it achieved mutually acceptable solutions; and (6) the arguments raised are authentic (not based on personal political preferences).<sup>58</sup>

Through the six DQI points above, there are two significant challenges to the implementation of deliberative democracy in Indonesia. The first challenge is the quality of Indonesians' social conditions who have not fulfilled the first and second elements of DQI. According to Sanders, not everyone has an equal and adequate capacity to think and convey arguments rationally in deliberation forums.<sup>59</sup> In fact, according to Cohen and Rogers, an equal level of education between deliberators is one of the prerequisites of a qualified deliberation process.<sup>60</sup>

Based on National Development Planning Agency's data in 2016, education inequality is occurring in Indonesia. For children aged 13 to 15 years, about 96% of students from affluent families completed education in 7 years. Meanwhile, only about 80% of students are from impoverished households. Furthermore, on education accessibility, more than half a million children aged 7 to 15 years have never gone to school, and more than 1.7 million children do not complete the nine-year compulsory education. In addition, according to the Program for International

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<sup>55</sup> Robert C. Luskin, James S. Fishkin and Roger Jowell, "Considered Opinions: Deliberative Polling in Britain," 465-476.

<sup>56</sup> Oliver Escobar, "Forms of Mini-Public: An Introduction to Deliberative Innovations in Democratic Practice," 4 – 5.

<sup>57</sup> Marco R. Steenbergen, et. al., "Measuring Political Deliberation: A Discourse Quality Index," *Comparative European Politics* 1, (2013): 22, <https://doi.org/10.1057/palgrave.cep.6110002>.

<sup>58</sup> Marco R. Steenbergen (et.al.), 25-26.

<sup>59</sup> Lynn M. Sanders, "Against Deliberation," *Political Theory* 25, no. 3 (1997): 354, <https://doi.org/10.1177/0090591797025003002>.

<sup>60</sup> Lynn M. Sanders, 352.

Student Assessment (PISA), 55% of Indonesian students scored below average, 43% scored average, and only 2% scored above average.<sup>61</sup> Indonesia's education deficiencies could imply a drawback in considering and communicating rational and valid arguments in deliberation forums.

Furthermore, the second challenge is that the immense population and Indonesian diversity tend not to be able to execute the third to sixth elements of the DQI. James S. Fishkin once formulated that the problem in implementing deliberative democracy in a large and plural state is how to accommodate diverse views that emerge.<sup>62</sup> Indonesia is a vast archipelago with 34 provinces and a stronghold of nearly 280 million people.<sup>63</sup> Therefore, Indonesia has become the fourth most populous country globally.<sup>64</sup> In addition, Indonesia's diversity is reflected in the assortment of tribes and religions. Based on the 2010 Population Census (SP), there are 1.331 tribal categories, with the Javanese as the largest group (40.5% of the population).<sup>65</sup> In terms of religion, Indonesia recognizes six primary religions: Islam (87.2%), Protestantism (6.9%), Catholicism (2.9%), Hinduism (1.7%), Buddhism (0.7%), and Confucianism (0.05%). Moreover, there are also other customary beliefs that the court decides as recognized religions.<sup>66</sup>

On the contrary, the potential of a large and diverse population could obtain defiance to Indonesia. Jay Van Bavel and Andrea Pereira explain that humans have partisanship brains — brain conditions when people are reluctant to bear different perspectives than what they believe.<sup>67</sup> Neil DeGrasse Tyson also represented this reality as the susceptibility to bias.<sup>68</sup> In other words, not all human beings can be receptive to others' points of view that negate what they believe.

The reality above is visible in a survey conducted by Burhanuddin Muhtadi. The survey exposes an association between one's aversion to a particular tribe or religion towards the political polarization in the 2019 Indonesian Election, using resentment theory — the belief that other parties are considered unworthy of earning privilege at the expense of others.<sup>69</sup> The survey results indicated that the higher dislike of non-

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<sup>61</sup> Tatang Muttaqin, "Determinants of Unequal Access to and Quality of Education in Indonesia," *The Indonesian Journal of Development Planning* 2 (2018): 4, <https://doi.org/10.36574/jpp.v2i1.27>.

<sup>62</sup> Michael Saward (ed.), *Democratic Innovation: Deliberation, Representation, and Association Democratic Innovation*, 19.

<sup>63</sup> United States Census Bureau. "U.S. Census Bureau Current Population," accessed on April 27, 2022, <https://www.census.gov/popclock/print.php?component=counter>.

<sup>64</sup> United States Census Bureau.

<sup>65</sup> Indonesia Central Agency on Statistics, "Mengulik Data Suku di Indonesia," accessed on April 27, 2022, <https://www.bps.go.id/news/2015/11/18/127/mengulik-data-suku-di-indonesia.html>.

<sup>66</sup> Constitutional Court of the Republic of Indonesia, Decision Number 97/PUU-XIV/2016.

<sup>67</sup> Jay Van Bavel and Andrea Pereira, "The Partisan Brain: An Identity-Based Model of Political Belief," *Trends in Cognitive Sciences* 22 (2018): 214, <https://doi.org/10.1016/j.tics.2018.01.004>.

<sup>68</sup> Neil Degrasse Tyson, "Cognitive Bias," accessed on April 27, 2022, <https://www.masterclass.com/classes/neil-degrasse-tyson-teaches-scientific-thinking-and-communication/chapters/cognitive-bias>.

<sup>69</sup> Burhanuddin Muhtadi, "Resentment, Polarisasi, dan Pilihan Politik," accessed on April 27, 2022, <https://mediaindonesia.com/kolom-pakar/430551/resentment-polarisasi-dan-pilihan-politik>.

Muslims, Javanese, and Chinese ethnicity, the higher probability of choosing presidential candidate Prabowo Subianto and the more intention to choose Gerindra Party, Party of Justice and Welfare (*Partai Keadilan Sejahtera*), Party of National Mandate (*Partai Amanat Nasional*), and Demokrat.<sup>70</sup>

The condition usually occurs because voters are more oriented to the similarity of ideology, cultural values, religion, and norms between those embraced by the party and a candidate and what voters believe.<sup>71</sup> The higher similarity between the voters and the values espoused by a party or candidate, the voters tend to cast their votes for that party or candidate.<sup>72</sup>

Thus, Indonesia's social conditions, which are challenging to fulfill the standard elements of deliberation quality, show Indonesia's difficulty in implementing the original concept of deliberative democracy. Moreover, the deliberator is determined by a random sampling mechanism so that the selected people will have a significant difference in the quality of thinking (knowledge gap).

#### **E. Empowering the Regional Representatives Council: Another Alternative?**

Based on the description in the prior section, Indonesia has an immense challenge in applying the concept of deliberative democracy practiced by those countries. However, it does not indicate that Indonesia cannot adopt the elements of deliberative democracy as a resolution of the laws concerning the political matters in Indonesia. As explained earlier, deliberative democracy presents the control of the government through discourse based on the public sphere.<sup>73</sup> In line with Simone Chambers, deliberative democracy presents to answer the political interest conflicts of the people's representatives in parliament.<sup>74</sup> We observed that the Regional Representatives Council could be the right actor to implement crucial elements in deliberative democracy as another institution to be involved in the process of enacting the bills concerning political matters before becoming the laws. Our mechanism is that the bills would be passed if only the Regional Representatives Council agreed.

### **1. The Regional Representatives Council as a Body That Embodies the Public Sphere**

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<sup>70</sup> Burhanuddin Muhtadi, "Resentment, Polarisasi, dan Pilihan Politik."

<sup>71</sup> W. Meliala, "Faktor-Faktor Yang Mempengaruhi Pemilih Dalam Pemilihan Umum Kepala Daerah dan Penerapan Strategi Bertahan Dan Menyerang Untuk Memenangkan Persaingan," *Jurnal Citizen Education* 2, no. 2 (2020): 16, <https://unimuda.e-journal.id/jurnalcitizen/article/view/617>.

<sup>72</sup> W. Meliala, 16.

<sup>73</sup> Budi Hardiman, *Demokrasi Deliberatif: Menimbang Negara Hukum Dan Ruang Publik Dalam Teori Diskursus Jürgen Habermas* (Yogyakarta: Penerbit Kanisius, 2009), 150.

<sup>74</sup> Simone Chambers, "Deliberative Democratic Theory," *Annual Reviews Political Science* 6 (2003): 308, <https://doi.org/10.1146/annurev.polisci.6.121901.085538>.

Allen R. Ball and B. Guy Peters argued that in the modern parliamentary bicameral system, the second chamber is oriented to stem the legislative process's potential monopoly to prevent collusion between the legislative and the executive.<sup>75</sup> Elliot Bulmer also stated that the second chamber would improve the supervisory function of the legislative institution.<sup>76</sup> The chamber will be a forum to examine the bill with additional points of view regardless of the interest in the draft.<sup>77</sup> This point of view is necessary because the second chamber members' election does not come from elections based on the preferences of political parties, but rather closer to the voters as they were voted directly based on meritocracy.<sup>78</sup> The differentiation makes the second room the right actor to embody the public sphere in the concept of deliberation against the laws concerning political matters.

The Regional Representatives Council has a noble role in representing regional ideas from the history of its formation. In addition, Bagir Manan implicitly stated that the difference between the Regional Representatives Council and the House of Representatives lies in the interests they represent. the House of Representatives represents the people through political parties, while the Regional Representatives Council represents regions without depending on political parties.<sup>79</sup> This difference makes the Regional Representatives Council a counterweight in parliament. There are three arguments why the Regional Representatives Council can represent the objective and function of the public sphere to check the laws concerning the political matters.

The first argument is that the Regional Representatives Council is independent of the political party's interests. Normatively, the recruitment process/selection of the Regional Representatives Council members does not involve political parties. Through Decree Number 30/PUU-XVI/2018, the Constitutional Court confirmed that citizens running as members of the Regional Representatives Council should not serve as administrators of political parties.<sup>80</sup> In his consideration, The Deputy Chairman of the Constitutional Court, Aswanto, asserted that political party elements in the Regional Representatives Council institution could only cause conflicts of interest that collide with duties, authorities, and rights as the Regional Representatives Council members. Moreover, the affiliation of the Regional Representatives Council members with political parties can cause a double representation of political representation, specifically in the Regional

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<sup>75</sup> Constitutional Court of the Republic of Indonesia, Decision Number 92/PUU-X/2012, quoted from Adventus Toding, "DPD dalam Struktur Parlemen Indonesia: Wacana Pemusnahan Versus Penguatan," *Jurnal Konstitusi* 14, no. 2 (2017): 306, <https://doi.org/10.31078/jk1423>.

<sup>76</sup> Elliot Bulmer, *Bicameralism: International IDEA Constitution Building* (Sweden: International IDEA, 2017), 6.

<sup>77</sup> Elliot Bulmer.

<sup>78</sup> Elliot Bulmer.

<sup>79</sup> Bagir Manan, *DPR, DPD, DPR, DPD, dan MPR dalam UUD 1945 Baru* (Yogyakarta: UII Press, 2005), 79.

<sup>80</sup> Constitutional Court of the Republic of Indonesia, Decision Number 30/PUU-XVI/2018.

Representatives Council and the House of Representatives.<sup>81</sup> Therefore, the Regional Representatives Council members must be detached from political interests, such as the current status quo.

One of the cases that exemplify the strict requirements of the Regional Representatives Council of the disaffiliation of the Regional Representatives Council from political parties is the loss of Oesman Sapta Odang (OSO) from being involved in the 2019 election. Even though OSO is the chairman of the Regional Representatives Council during the 2014-2019 period, OSO was not on the Permanent Candidate List (DCT) for the 2019 the Regional Representatives Council member election.<sup>82</sup> It happened because, at the same time, OSO served as the chairman of the Hanura Party.<sup>83</sup> Meanwhile, based on the constitutional court's decision, political party administrators cannot become members of the Regional Representatives Council. However, the General Election Supervisory Agency (*Badan Pengawas Pemilu-Bawaslu*) stated that OSO could still participate in the election with a provision that if he were elected, he would have to resign from the political party before being appointed. Hence, the restriction on political parties in the Regional Representatives Council is somewhat strict.

In terms of original intent, the Regional Representatives Council formation and regional interests are also to be a counterweight to the House of Representatives, which is a political representation. However, some consider the balancing disproportionate because the constitution does not provide significant space for the Regional Representatives Council.<sup>84</sup> Therefore, empowering the Regional Representatives Council as one of the important actors in this issue can be an additional significant role owned by the Regional Representatives Council.

Furthermore, the second argument is that the Regional Representatives Council is representative enough to represent the public interest in terms of diversity. Structurally, the composition of the Regional Representatives Council members in Indonesia is regulated by Act Number 22 of 2003 as amended three times, most recently by Act Number 13 of 2019 concerning MD3. Article 33 of the MD3 Law states that the total number of the Regional Representatives Council members is not more than 1/3 of the number of the House of Representatives members consisting of four representatives from each province.<sup>85</sup> Based on Presidential Decree Number 98/P of

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<sup>81</sup> Constitutional Court of the Republic of Indonesia, Decision Number 30/PUU-XVI/2018.

<sup>82</sup> General Elections Commission, "Daftar Calon Tetap Anggota DPD RI 2019," accessed on May 3, 2022, <https://infopemilu.kpu.go.id/pemiludpd2019>.

<sup>83</sup> John Andhi Oktaveri, "Oesman Sapta odang Akhirnya Dicoret Dari DCT Pemilu 2019," accessed on May 3, 2022, <https://kabar24.bisnis.com/read/20181222/15/872250/oesman-sapta-odang-akhirnya-dicoret-dari-dct-pemilu-2019>.

<sup>84</sup> Jamaludin Ghafur, "Penguatan Lembaga DPD Melalui Amandemen Ulang Lembaga MPR," *Jurnal Hukum Ius Quia Iustum* 14, no. 3 (2007): 405, <http://dx.doi.org/10.20885/iustum.vol14.iss3.art2>.

<sup>85</sup> Article 33 of Law Number 22 of 2003 on the Organizational Structure and Position of the People's Consultative Assembly, the House of Representative, the Regional Representative Council and Regional Legislative Councils.



2019, the Regional Representatives Council membership for the period 2019-2024 consists of 136 members.<sup>86</sup>

The requirement of four representatives from each province indicates that each representative is taken into account in the Regional Representatives Council. The nature of the Indonesian nation, which is plural and heterogeneous is linear with the needs of the current people's representative system. The composition above shows the plurality of the regional representative system. With such structure, the Regional Representatives Council is expected to bring the original intent of its formation, namely strengthening regional elements with the characteristics of their respective regions.

The plurality and diversity of regional representatives are also seen from their membership backgrounds. First, the current four the Regional Representatives Council leaders have shown diversity. The Chairman of the Regional Representatives Council period 2019-2024, La Nyalla Mattalitti is the former chairman of the Football Association of Indonesia (*Persatuan Sepak Bola Seluruh Indonesia-PSSI*) and the Former Chairman of the Indonesian Chamber of Commerce & Industry (*Kamar Dagang dan Industri Indonesia-Kadin*), now representing the Western sub-region II.<sup>87</sup> The vice-chairman of the Regional Representatives Council for the period 2019-2024 are Nono Sampono (Retired Lt. Gen. TNI), Mahyudin (former Golkar politician and former deputy chairman of the Indonesian Parliament), and Sultan Bachtiar Najamuddin (former vice-governor of Bengkulu).<sup>88</sup>

In addition, the Regional Representatives Council members also comes from different backgrounds. In 2019-2024, academic figures such as Prof. Jimly Asshiddiqie and Prof. Dr. Hj. Sylviana Murni also became members of the Regional Representatives Council.<sup>89</sup> Besides reflecting the plurality of regions, the diverse figures in the the Regional Representatives Council body also represent a diverse public interest. These conditions are ideal for the implementation of checks on the laws concerning political matters. This ideality is associated with deliberative democratic mechanisms that present a diversity of participants. Thus, with the plurality of its representations, the Regional Representatives Council has demonstrated a representative-deliberative institution related to the public. The deliberation initiates from the process of its registration, including the registration

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<sup>86</sup> Alek Kurniawan. "Sekjen DPD Bacakan Surat Keppres dalam Pelantikan DPD RI," accessed on May 5, 2022, <https://nasional.kompas.com/read/2019/10/01/20584801/sekjen-dpd-bacakan-surat-keppres-in-inauguration-dpd-ri>.

<sup>87</sup> Ihsanuddin. "Profil Singkat Empat Pimpinan DPD 2019-2024," accessed on May 5, 2022, <https://nasional.kompas.com/read/2019/10/02/08430351/ini-profil-singkat-empat-pimpinan-dpd-2019-2024?page=all>.

<sup>88</sup> Dinar Fitra, "Daftar Nama 4 Pimpinan DPD RI dan Profil Singkatnya," accessed on May 5, 2022, <https://www.tribunnewswiki.com/2019/10/02/daftar-nama-4-pimpinan-dpd-ri-2019-2024-dan-profil-singkatnya>.

<sup>89</sup> Dinar Fitra.

process of the Regional Representatives Council member figures and the selection process by the general election.

Finally, the third argument is that the qualifications and competencies of the Regional Representatives Council members will potentially construct an ideal deliberation. Cohen and Rogers have asserted that an equal level of education between deliberators is a prerequisite for a quality deliberation process.<sup>90</sup> The long and formidable deliberation process to provide recommendations or a decision requires a comprehensive understanding and thinking between participants. The equality of education referred to in this context is in terms of proportionality between deliberation actors in discussing a discourse.

The proportionality of the Regional Representatives Council depicts the position and qualifications of each member as a district representative. There are two reasons the proportionality of the Regional Representatives Council members can be justified. First, the nomination process and the election of the Regional Representatives Council members, as it is not through political parties, do not provide a disparity in seat acquisition. The phenomenon of inequality in the lawmakers' position was evident when Golkar centralized political parties during the Suharto regime.<sup>91</sup> The distinction of seat numbers from each the House of Representatives faction gives inherent position and power to its members (see: in the voting process that carries the name of the faction, the coalition has already been mapped). It does not happen with the Regional Representatives Council since the Regional Representatives Council nominees carry their personal names. A balanced number of representatives of each region tends to indicate that the position of each member is considered proportional without external factors such as political parties in the House of Representatives.

Second, the duties, authority, and function of the Regional Representatives Council as a legislative institution are also related to discussing legislation, government supervision, or anything related to legislation. It makes the competence of the Regional Representatives Council member to must be able to perform these legislative activities. Therefore, the qualifications of the Regional Representatives Council members in terms of deliberation of the laws concerning political matters will be equivalent. Empowering the existing institution with qualified members is more effective than carrying out random sampling mechanisms, such as in the citizen's assembly process. In the process, it prioritizes diversity rather than qualifications.

The qualification of the Regional Representatives Council members as institutions that are positionally in the power of legislation also gives rise to deliberation actors with the laws concerning political matters as discourse material.

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<sup>90</sup> Sanders, "Against Deliberation," 352.

<sup>91</sup> Roland Rich, "Designing the DPD: Indonesia's Regional Representative Council," *Bulletin of Indonesian Economic Studies* 47, no. 2 (2011): 266, <https://doi.org/10.1080/00074918.2011.585953>.

Since these laws are about politics, it takes a figure who is indeed involved in the state's political affairs to check on the laws concerning political matters. Proportionality tends to direct the deliberation process to a meritocracy system; namely, the Regional Representatives Council carries out the checking system as one of the balancers in parliament. Thus, it will form an ideal deliberation process as a form of check against the laws concerning political matters.

2. Potential Problems

One of the problems of this mechanism is that the existence of the Regional Representatives Council cannot also be removed from the bill circle because the object of this issue, namely the MD3 Law and the Election Law, also involves the Regional Representatives Council in it. Thus, there is also a need to limit the issues within the laws so that this mechanism could work. These issues are mapped in the following table that the Regional Representatives Council's involvement is relatively minimal, or even non-existent.

Table 3. The Potential Involvement of State Organ in the Laws on Political Matters.

Issues	Law	Related Institution(s)
Parliamentary Threshold which is considered to weaken smaller parties	Election Law	the House of Representatives
The Presidential Threshold caused the great parties to overrule the small parties and give great power to the parliament.	Election Law	the House of Representatives and the President
The terms of the establishment of the political parties are favorable for the old party and complicate the emergence of new parties.	Political Party Law	the House of Representatives
Article of the authority of the Constitutional Court to take legal steps for parties who degrade the honor of the House and members of the House	MD3 Law	the House of Representatives
Permission to summon members of the House who need the Honorary Council approval	MD3 Law	the House of Representatives

Source: Author’s Analysis, 2020.

Finally, it's crucial to highlight that granting the Regional Representatives Council such authority would necessitate an amendment to the 1945 Constitution. As stipulated in Chapter VII A of the 1945 Constitution, the Regional Representatives Council's role in law formulation is currently quite restricted, lacking a decisive role

in passing regional policy bills. Its functions are primarily centered on drafting, proposing drafts, and supervising laws related to regional policies.

The delineation of the Regional Representatives Council's authority within the legislative process is rather limited. I Gede Pasek Suardika, one of the Regional Representatives Council members, noted that the Regional Representatives Council's effectiveness has been hindered because its authority lacks clear regulation.<sup>92</sup> This inequality in the Indonesian bicameral system has led to the diminished political influence and dynamics of the Regional Representatives Council<sup>93</sup>, aligning with Heclo's theory that an institution's political dynamics are contingent on its power and influence. Thus, the presence of a conflict of interest is determined by the extent of influence a governing body possesses.<sup>94</sup>

Nevertheless, if the public deems it necessary to address the problem of laws concerning political matters through the involvement of the Regional Representatives Council, they must pursue the amendment process. It is important to acknowledge that the amendment procedure is not a straightforward path. Consequently, there should be extensive public discussions and deliberations regarding the appropriateness of empowering the Regional Representatives Council to address this issue by integrating key elements of deliberative democracy.

## F. Conclusion

The laws on political matters represents a contemporary constitutional challenge that demands a solution. Political actors within the legislature should not casually draft and approve bills that pertain to or affect themselves without an effective system of oversight. Presently in Indonesia, the existing mechanisms face notable limitations, notably the overwhelming coalition dynamics among legislators and the application of open legal policy by the Constitutional Court.

This study presents a solution by seeking to incorporate essential elements of deliberative democracy practices. This approach is taken because Indonesia cannot meet the ideal prerequisites, mainly due to the quality of its social conditions and its vast population. Therefore, this paper suggests that the Regional Representatives Council could serve as an institution to ensure the checks-and-balances system in the drafting of bills concerning political matters functions appropriately. This proposal aims to grant the Regional Representatives Council a substantial role and asserts that this institution is well-suited to address the issue. It is not influenced by political party interests, sufficiently representative to reflect the diversity of public interests, and possesses the qualifications and competencies to facilitate ideal deliberation.

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<sup>92</sup> Markus Juaninto, "Kinerja DPD Tak Bisa Maksimal, ini Alasannya," accessed on April 28, 2022, <https://www.beritasatu.com/nasional/449808/kinerja-dpd-tak-bisa-maksimal-ini-alasannya>.

<sup>93</sup> Mahmuzar, *Parlemen Bikameral di Negara Kesatuan* (Bandung: Penerbit Nusa Media, 2019), 6.

<sup>94</sup> Jane Mansbridge, *A Deliberative Theory of Interest Representation* (Oxford: Westview, 1992), 40.

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