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## **IS THE REPUBLIC OF INDONESIA AS A DEMOCRATIC STATE? (CASE STUDY THE REPUBLIC OF INDONESIA REPRESENTATIVE DEMOCRACY MODEL IN PERSPECTIVE OF LAW MAKING PROCESS)**

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### **Abstract**

*This paper focuses on the phenomenon of The Republic of Indonesia's democracy in perspective of the lawmaking process. Democracy means 'rule by the demos', demos standing for 'the many' or 'the people.' There are two contrasting models of democracy: direct democracy and representative democracy. According to the 1945 Constitution of the Republic of Indonesia, that amended fourth times that is of 1999, 2000, 2001 and 2002, Indonesia used a representative democracy model to make a law. The purpose of research, the theoretically is to know that the Republic of Indonesia is not full as a democratic state, but the practice is that the Republic of Indonesia is the unique democratic state. This study uses the grounded research method, which is based on fact, and inductive analysis. Findings reveal that the Council of Representatives of the Regions (DPD) has limited authority to propose and discuss the bill, and after the decision of the Constitutional Court 92/2012, DPD participated in the discussion level 2 (Second Reading), however, the DPD role does not come to participate in approving a bill. The theoretically, that*

*the Republic of Indonesia is not full as a democratic state, but the practice is that the Republic of Indonesia as the unique democratic state. This research further suggests to amend Article 20 Paragraph (2), Article 22D Paragraph (1) and Article 22D Paragraph (2) Indonesian constitution about first reading, second reading and joint approval of law-making process so that to be more democratic.*

## **Keywords**

The Republic of Indonesia, Democratic State, Democracy Model, Law-Making Process

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## **1. Introduction**

The phenomenon of The Republic of Indonesia's democracy in perspective of the lawmaking process is interesting to search. Especially if it is related to the fact that the state of Indonesia is a country that still makes the process of democratization as a pedestal (Thalhah, 2008). There are many meanings of the word democracy. According to Crick that:

*many meanings attached to the word democracy. If there is one true meaning then it is, indeed, as Plato might have said, stored up in heaven, but unhappily has not yet been communicated to us. The word is what some philosophers have called 'an essentially contested concept', one of those terms we can never all agree to define in the same way because the very definition carries a different social, moral, or political agenda (Crick, 2002).*

According to Deliar Noer, democracy as the foundation of the life of a nation gives the sense that at the last level the people give provision in the main issues concerning their life, including in assessing the policy of the state, because the policy determines the people's wisdom.

Democracy means 'rule by the demos', demos standing for 'the many' or 'the people'. There are two contrasting models of democracy: direct democracy and representative democracy (Heywood, 2004). *Direct Democracy is a form of democratic government whereby citizens have the right to participate in decision making (Sulisworo, Wahyuningsih, & Arif, 2012). A representative democracy is a system where citizens of a country vote for government representatives to handle legislation and ruling the country on their behalf. It is the opposite of direct democracy, where the public gets to vote on laws to be passed and other issues; and autocracy, where a dictator has absolute power and the people have no say in how a country is governed (NET, 2018).*

Representative democracy according to Sulisworo, Wahyuningsih, & Arif:

*Implementing representative democracy due to the increasing number of people and the vast territory that it is impossible to implement a direct democratic system. In the*

*representative democracy, the people channel the will by choosing their representatives to sit in representative institutions that is the People's Representative Council or DPR and the Council of Representatives of the Regions or DPD (Sulisworo, et al., 2012).*

Theoretically, a state can be categorized as a democratic state or as a non-democratic state, but in the democracy implementation, each state has unique differences. Theoretically means 1: according to an ideal or assumed set of facts or principles: in theory, 2: in a theoretical way (Webster, 2018). At the level of implementation of democracy, there is no perfect or ideal democracy. Freedman says that:

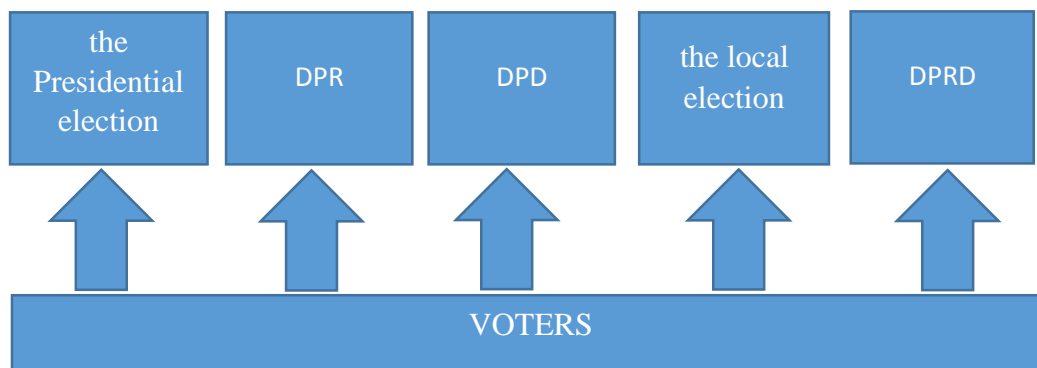
*no democracy is perfect or ideal. Even long-standing democracies such as the United States, Great Britain, and the countries of Western Europe have scholars, politicians, and citizens arguing about the fairness of the system, better ways of conducting elections, improving political representation, and the problems of money politics and patronage. Thailand, South Korea, Indonesia, and Malaysia, have less experience with democracy and arguably have further to go in achieving a more just, fair, and representative political order for their citizens (Freedman, 2006).*

This study uses the *grounded theory method*. The term “*grounded theory*” means the *theory that was derived from data, systematically gathered and analyzed through the research process. In this method, data collection, analysis, and eventual theory stand in close relationship to one another* (Strauss & Corbin, 1998)

Theoretically and practically in perspective of the law-making process, is the Republic of Indonesia as a democratic state?

## **2. Republic of Indonesia Democracy Models**

Republic of Indonesia uses two models of democracy, direct democracy, and representative democracy. In the direct democracy, people decide on policies without any intermediary. There are some direct democracy models such as the Presidential election, the members of *the People's Representative Council (DPR)* election, *the members of The Council of Representatives of the Regions (DPD)* election, the local election (to choose governors, regents, and mayors), and the Regional People's Representative Council (DPRD) election. For more details described in the following figure:



**Figure 1:** Direct Democracy.

Figure 1 shows that the people decide on policies without any intermediary for *the presidential election, the members of the DPR election, the members of the DPD election, the local election and the members of the DPRD election*. The participants in the general election for *the election of the members of the DPR and the members of the DPRD* are political parties. *The members of the DPD* shall be elected from every province through a general election. The participants in the general election for the elect of the President, Governors, regents, mayors, and members of the DPD are individuals.

According to KPU DIY, that the history of direct democracy since 1999 can be described as follows: (KPUDIY, 2016)

#### *Election 1999*

*Although the preparation period was short, the 1999 ballot could be conducted on schedule, on June 7, 1999. Unlike many predicted and feared parties, the 1999 election could be carried out peacefully, without any significant disruption.*

*How to divide the chair of the results of this election is still using a proportional system by following the Roget variant. In this system a party gets a balanced seat with the votes it earns in the electoral district. However, the way in which the elected candidates are determined is different from the previous elections, ie by determining the votes of a party in the electoral district. If since the 1977 election the first candidate in the party list is automatically elected if the party gets a seat. Now the elected candidate is determined by the largest or largest vote of the region in which a person is nominated.*

#### *Election 2004*

*This election is an election that many parties participate in. There are two kinds of elections, the first election to elect a member of parliament whose party meets the parliamentary threshold. Political parties that meet entry thresholds become members of parliament and political parties outside the parliament building. The second held the presidential election, and it turned out that the 2004 presidential candidate was held in two rounds.*

*In the 2004 General Election, there were differences in the system compared to the previous period election, especially in the electoral system of the DPR / DPRD, the DPD*

*election system, and the direct presidential and vice-presidential elections through MPR members like previous elections. The 2004 elections show progress in our democracy.*

*Election 2009*

*The general election held in 2009 is the second general election followed by the direct election of the president and vice president. The provision in the presidential and vice-presidential elections is determined that the elected candidate pair is a couple that votes more than 50% of the vote with at least 20% of the votes in each province spread over more than 50% of the total number of provinces in Indonesia.*

*Election 2014*

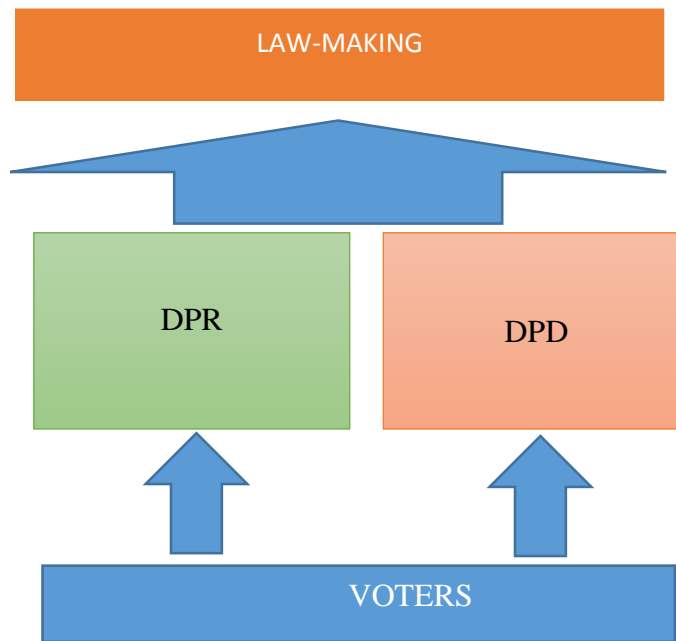
*The 2014 election was held twice on April 9, 2014 which will elect legislators and on 9 July 2014 which will elect the President and Vice President.*

*General Election of Members of the People's Legislative Assembly, Regional House of Representatives, and Regional House of Representatives 2014 (commonly abbreviated Legislative Election 2014) to elect 560 members of the House of Representatives, 132 members of the Regional Representative Council (DPD), and members of the Regional Representative Council (Provincial DPRD and Regency / City DPRD) throughout Indonesia period 2014-2019. The year 2015 becomes a new chapter in the implementation of local elections in Indonesia, namely the start of the implementation of the local elections simultaneously throughout the territory of Indonesia to local elections simultaneously nationwide in 2027.*

*The 2019 election will be held simultaneously for Legislative Election (Pileg 2019) and Presidential Election (Pilpres 2019). The 2019 election as the peak of the 5th annual democracy party will be held on 17 April 2019, which will elect legislative members of DPR, DPD, and DPRD and will elect the president and vice president.*

The year 2015 becomes a new chapter in the implementation of elections in Indonesia, namely the start of the implementation of elections simultaneously throughout the territory of Indonesia to elections simultaneously nationwide in 2027 (Dictio,2017).

Indonesia also uses representative democracy model. One of the implementations of representative democracy model in Indonesia is the making of a law that represented by the DPR and the DPD. For more details described in the following figure:



**Figure 2:** *Representative Democracy.*

Figure 2 shows that people are involved in law-making, not directly but through their representatives, that is the DPR and DPD.

The result of the third amendment of the 1945 Constitution places the DPD as a new body of representation in addition to the DPR. The presence of DPD cannot be said that Indonesia uses a model bicameral system of representative institutions, because Article 2 (1) states that *“The MPR shall consist of the members of the DPR and the members of the DPD who have been elected through general elections, and shall be regulated further by law”*. This is in contrast to the legislature in the United States, for example, which places Congress as a joint session between the House of Representatives and the Senate. The article, I Section 1 of the Constitution of the United States states, *“... Congress of the United States, which shall consist of a Senate and House of Representatives”*. From the formulation of Article, I Section 1, the Congress as a merger of the Senate and House of Representatives as an institution.

The DPR and DPD both have the right to propose bills. Article 21 the 1945 Constitution of the Republic of Indonesia regulate that: *“DPR members shall have the right to propose bills,”* and Article 22D (1) regulate that:

*“the DPD may propose to the DPR Bills related to regional autonomy, the relationship of central and local government, formation, expansion, and merger of regions, management*

*of natural resources and other economic resources, and Bills related to the financial balance between the center and the regions.”*

The big question is do the arguments in favor of greater participation suggest that representative systems are somehow less worthy as systems of democracy? (Weale, 1999). The argument that would obviously deliver the strong conclusion that participation is an ideal (Weale, 1999).

### **3. Democratization of Law-making Process In Indonesia**

The democratization of law-making process in Indonesia after the fourth amendment is still ongoing. This is indicated by the development of the formulation of legislation both in the constitution and the decisions of the Constitutional Court Number 92/PUU-X/2012. The democratization of legislation in Indonesia is shown by shifting the formation of laws in a more democratic direction. To equate perceptions, discuss two important words, democratization and legislation.

#### **3.1 Democratization**

The meaning of democratization is the process of democratization of all the people to participate in the government through their representatives or participate in various fields of society (society / state) either directly or indirectly, by giving equal rights and obligations and equal treatment for the citizens. Understanding democracy can also be said as a process toward democracy called democratization (Artikelsiana, 2018).

According to Ghali democratization is a process that leads to openness, more participative, and less authoritarian (Ghali, 1996). Completely disclosed as follows: *Democratization is a process which leads to a more open, more participatory, less authoritarian society.*

In the perspective of the democratic model, the search for a democratic model suitable for Indonesia is a notion of democratization. According to Madjid (2004) that the sequence of experiences to carry out the state of minds of the founding fathers is a process of democratization. The first model of democracy, the parliamentary democracy that took place between 1950-1959, was a form of graft democracy which was derived from a foreign country, in the face of this democracy a spirit of disunity spurred by the tightness of group subjectivity. The second model of democracy, the guided democracy that lasted between 1959-1965, this monolithic democracy of power derived from the figure of charismatic charm (Soekarno) model

of democracy is a form of reaction to the first model of democracy. The third model of democracy is Pancasila democracy in the New Order era, at this time the democracy produced is more government-centered, which is not conceptualized as a people-centered power relation. The democratic models above are intended to bring the concept of democracy closer to a particular culture of society and partly intended to justify the political system proposed by the government.

On the other hand, shows that the concept of democracy as a universal idea is translated by each country that agrees with democracy in accordance with the needs of local political culture because democracy grows in line with the growth and development of society. The higher the complexity level of community life, the more complicated and not simple the democracy is defined (Fatah, 1994).

The definition of democratization in this paper is a change towards democracy.

### **3.2 Legislation**

In the jurisprudence of law, 'legislation' implies a dichotomous meaning that bis mean (1) the process of forming the law, and can also mean (2) the product of law. According to Sugono, (2008), the definition of legislation is the making of legislation. Legislator is the legislator or legislator who makes the law. The legislature means entitled and authorized to enact legislation, for example, the legislature means an elected council and is authorized to make laws. Garner (1999) defines legislation as law-making.

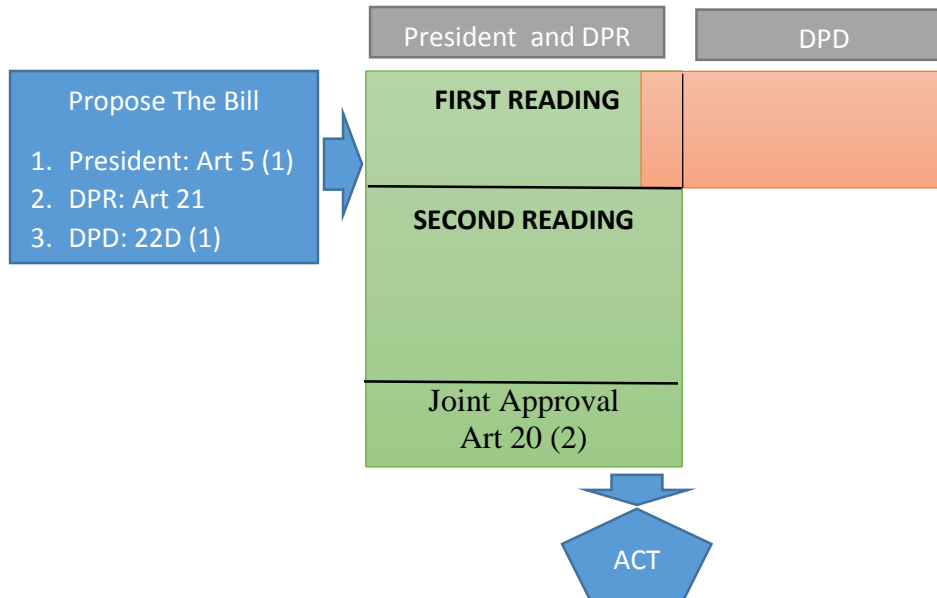
In this paper, 'legislation' is defined as the process of legislation. Involvement of the people's representative institution can be interpreted as the existence of an institution that produces the law. According to Naning, (1982) the institution that has the authority to make laws is called the legislative body. The legislative body is a body based on the constitutional system guaranteed by the constitution, with the main duty to make the law. A representative body of people or parliament is a constitutional institution in a constitutional structure that has a legislative function.

If the two concepts, namely democratization, and legislation, are united, then it becomes a democratization of legislation, which in this paper means the process towards democracy in the enactment of law-making.



### 3.3 Lawmaking Process Base on 1945 Constitution

According to the 1945 Constitution, lawmaking process in Indonesia divided into four-step, that is proposing the Bill, first reading, second and joint approval. For more details described in the following figure:



**Figure 3:** Lawmaking Process According to the 1945 Constitution.

According to the 1945 Constitution that President, DPR, and DPD can propose the Bill. Article 5 Paragraph (1) state that *the President shall be entitled to submit bills to the DPR*, Article 21 state that *DPR members shall have the right to propose bills*, and According to the 1945 Constitution Article 21 Paragraph (1) state that: *The DPD may propose to the DPR Bills related to regional autonomy, the relationship of central and local government, formation, expansion, and merger of regions, management of natural resources and other economic resources, and Bills related to the financial balance between the center and the regions.*

Discussion on the matter of the bill between DPR and President (also with DPD, especially for certain topics) through 2 levels of talks. Level 1 (First Reading) is discussions in commission meetings, joint meetings of commissions, meetings of legislative bodies, meetings of budget bodies or special committee meetings. Level 2 (Second Reading) is the talk in the plenary session.

According to the 1945 Constitution that DPD participate in discussing Bills in the First Reading related to:

- *regional autonomy*

- *the relationship of central and local government,*
- *formation, expansion, and merger of regions,*
- *management of natural resources and other economic resources, and*
- *Bills related to the financial balance between the center and the regions.*

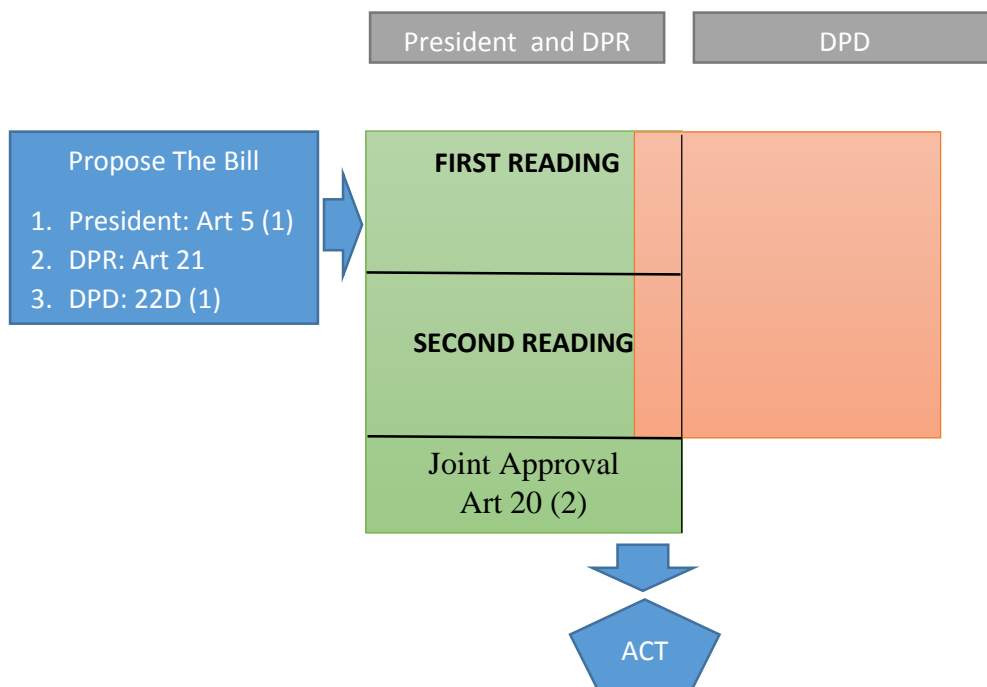
It is shown that according to the 1945 Constitution, limited Bill can discuss by DPD in the First Reading.

Article 20 Paragraph (2) the 1945 constitution state that: *Each bill shall be discussed by the DPR and the President to reach joint approval.* According to the 1945 Constitution Article 20 Paragraph (4) that *The President signs a jointly approved bill to become a law,* and According to the 1945 Constitution Article 20 Paragraph (5) that: *If the President fails to sign a jointly approved bill within 30 days following such approval, that bill shall legally become a law and must be promulgated.*

### **3.4 Constitutional Court Decree**

Indonesia have Constitutional Court. According to Article 24 Paragraph (2) Indonesian constitution of th 1945, Indonesian Constitutional Court is judicial institution of the final and binding. Constitutional court exercising an independent judiciary to uphold law and justice in Indonesia.

On 27 March 2013, the Indonesian Constitutional Court has ruled the petition No. 92/PUU-X/2012. Arrangements before the decision of MK 92/2012 only "allow" DPD to participate in the discussion level 1 (First Reading), but after the decision of the Constitutional Court 92/PUU-X/2012, DPD participated in the discussion level 2 (Second Reading). However, the DPD role does not come to participate in approving a bill. The collective agreement on a bill remains the authority of the President and the DPR.



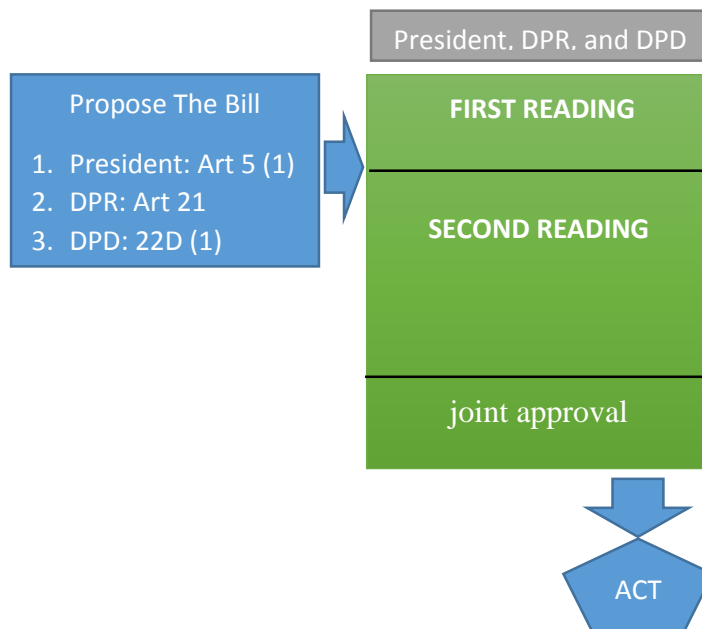
**Figure 4:** Lawmaking Process after Constitutional Court Decree.

After the decision of the Constitutional Court Number 79 / PUU-XII / 2014, the process of making the Indonesian Law is more democratic than before the Constitutional Court's decision, because the DPD participates in the First Reading, and the Second Reading, though, does not participate in mutual consent.

#### 4. Conclusion

Theoretically, the Republic of Indonesia is not as fully as a democratic state, because it is not compatible with the meaning of democracy that democracy means 'rule by the people', but practically that the Republic of Indonesia as the unique democratic state, because the DPD, that representing the people from each province, had the limited authority to discuss the Bill.

Base on the conclusion above, suggested to amending the 1945 Constitution of the Republic of Indonesia so that DPD have the same authority as DPR authority for law-making, especially amending the Article 20 Paragraph (2), Article 22D Paragraph (1) and Article 22D Paragraph (2) Indonesian constitution about first reading, second reading and joint approval of law-making process so that to be more democratic, if the Republic of Indonesia will be a full democratic state. The unfinished democratization. (Erik, 2009).



**Figure 5:** *Aspired Law-making Process.*

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