

Reviving House of National Representatives Power: A Normative Analysis Through the Lens of *Fiqh Siyasa Dusturiyah*

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Abstract

This research aims to strengthen the institution of the House of National Representatives (DPD) in the national legislation programme, to be more representative in accommodating national aspirations. Through a normative juridical approach and analysis of *Siyasa dusturiyah*, this research examines the principles of justice, deliberation, and participation under the values of Sharia in public policy making. This research is normative juridical research by collecting primary and secondary legal materials relevant to the research utilizing a statutory approach and conceptual approach in both positive law and *siyasa dusturiyah*. The results found that to strengthen the control and development of DPD in the national legislation, it is necessary to amend the 1945 Fundamental law of the Republic of Indonesia, revise the Law No. 17/2014, revise the Law No. 27/2009, separate arrangements regarding the assignment and functions of DPD, adopt a strong bicameral system and likely bicameral. The impact is hoped to enrich the study in the field of *Fiqh Siyasa* and Fundamental law, especially in the context of developing a more inclusive legislative system under the framework of the Unitary Republic of Indonesia.

1. Introduction

Indonesia is a state of law. As a state of law, it also adheres to the *rule of law*¹, that is the principle of placing written law as the main guideline in the state.² In a state of law, it is known as the limitation of power. These restrictions later became the notion of Fundamental lawalism or Fundamental law state.³ One of them is the amendment of the 1945 Fundamental law. This is embodied by the first to the fourth amendment.⁴ The first focuses on the *separation* of powers and the principle of distribution of powers. Second, the broadest possible national autonomy. Third, the mechanism of direct election of the President and Vice President, and finally Fourth, the idea of establishing a new institution, namely the National Representative Council (DPD)

¹ Jimly Asshiddiqie, *Introduction to Fundamental lawal Law Volume II* (Jakarta: Sekretariat General and Registrar of the Fundamental lawal Court, 2006), 11.

² Ias Muhlashin, "The Rule of Law, Democracy and Law Enforcement in Indonesia," *Al-Qadau Journal: Islamic Judiciary and Family Law* 8, no. 1 (June 29, 2021): 88, <https://doi.org/10.24252/al-qadau.v8i1.18114>.

³ Urwatul Wutsqah and Erham Erham, "The Discourse of Limitation of Power in Indonesia in the Perspective of Fundamental law and Fundamental lawalism," *Journal of Citizenship Virtues* 4, no. 2 (October 2, 2024): 774, <https://doi.org/10.37640/jcv.v4i2.2015>.

⁴ Baharuddin Riqiey and Syofyan Hadi, "Fundamental lawal Imperatives: Examining the Urgency of Term Limits for Members of the House of Representatives," *Mimbar Keadilan* 17, no. 1 (November 16, 2023): 4–5, <https://doi.org/10.30996/mk.v17i2.9635>.

that will accompany the existence of the House of Representatives (DPR) as a legislative body.⁵ These changes, it will certainly belong implications for the institutional system of the Republic of Indonesia, namely before the amendment to the 1945 Fundamental Law of the Republic of Indonesia, the previous norm of Article 2 Paragraph (1) of *the* 1945 Fundamental Law of the Republic of Indonesia reads "The People's Consultative Assembly consists of members of the House of Representatives, plus delegates by the nations and groups according to the rules stipulated by law". Then by the amendment to the 1945 Fundamental law of the Republic of Indonesia, Article 2 clause (1) reads "The People's Consultative Assembly consists of members of the House of Representatives and the House of National Representatives elected through general elections and further regulated by law".⁶ DPD is an institution that has functions like the DPR.⁷ The birth of this institution certainly refers to the spirit of reform that wants an institution that can represent the interests of each nation and minimise the gap between the centre and the nation.⁸ The initial idea of the establishment of DPD is to consolidate every policy formulation procedure, especially about the nation.⁹

If we look at the institutional context of the presence of DPD as an attempt to create a double-check system in the concept of a bicameral system. DPR is a picture of political representation,¹⁰ while DPD illustrates territorial or national representation (national representation).¹¹ If we read the minutes of the amendment of the 1945 Fundamental law of the Republic of Indonesia, actually what the framers wanted was the creation of a check and balance mechanism among DPR and the nations, although it was initiated at the stage of making legislation not in such a way. The control of DPD that exists at this time also seems to be formulated disproportionately because of the weakness of DPD compared to DPR, it is seen in many ways, especially in the procedure of forming the Act. Problems regarding the control of DPD in the field of legislation are seen in Law Number 12 of 2011 concerning the establishment of legislation (Law No. 12/2011) as well as Law Number 27 of 2009 concerning the People's Consultative Assembly, the House of Representatives, and the House of national Representatives or legislation (Law No. 27/2009). If we look carefully that this case specifically

⁵ Jimly Asshiddiqie, *Fundamental lawal Law and the Pillars of Democracy; Thoughts on Law, Media and Human Rights*, Jakarta, Konstitusi Press, 2005. pp. 19-20.

⁶ Ofis Rikardo, "The Application of Popular Sovereignty in Indonesian General Elections Based on the 1945 Fundamental law of the Republic of Indonesia," *Sasana Law Journal* 6, no. 1 (July 27, 2020): 62, <https://doi.org/10.31599/sasana.v6i1.228>.

⁷ Din Muhammad Akbar, Amiruddin, and Andi Arfan Sahabuddin, "The Fundamental lawal Relationship among the House of Representatives (DPR) and the national Representatives Council (DPD) in the 1945 Fundamental law of the Republic of Indonesia," *KEMILAW: Indonesian Madani Execution Studies Journal* 1, no. 2 (August 11, 2024): 3.

⁸ Sultoni Fikri and Rizky Bangun Wibisono, "Principle of Original control in Territorial Decentralisation," *Jurnal Mengkaji Indonesia* 2, no. 1 (July 17, 2023): 138, <https://doi.org/10.59066/jmi.v2i1.387>.

⁹ Zainal Arifin Mochtar, *The Politics of Law shape* (Yogyakarta: Buku Mojok, 2022), 135.

¹⁰ Muhammad Mutawalli Mukhlis et al., "Ius Constituendum Regulates the Cadre-Based Recruitment of Candidates for Members of the House of Representatives Through Political Parties," *Volksggeist: Journal of Legal and Fundamental lawal Sciences*, June 24, 2024, 140, <https://doi.org/10.24090/volksggeist.v7i1.10830>.

¹¹ Sunardi Sunardi, "Reconstruction of the national Representative Council as an Effort to Strengthen Cheks and Balances in the Legislative Sphere," *Fundamental lawal Law Review* 2, no. 2 (August 2, 2024): 81, <https://doi.org/10.30863/clr.v2i2.5590>.

concerns the phrase "proposed bill" or "can collect a bill" (that relates to the right to collect a bill among DPD, DPR, and the President), the control of DPD that relates to the phrase to discuss as well as the participation of DPD in the preparation of national legislation among DPR and the president then this has been done *judicial review* to the Fundamental Law court on the two laws by the aim of creating a *check and balance* among the legislative executive and judiciary.¹²

Despite decision number 92/PUU-X/2012 by the Fundamental Lawal Court, ironically many laws were passed that restore the location of DPD before the *judicial review*. One example is Law Number 23 of 2014 concerning Local Government (Law No. 23/2014). Then in 2014 Law No. 27/2009 which has been done *judicial review* was declared revoked and replaced by the new Law No. 27/2009, namely Law Number 17 of 2014 (Law No. 17/2014) regulates is not much different from the previous Law No. 27/2009.¹³ If we analyse that the current Law No. 27/2009 has closed the space for DPD to carry out the legislative function, while Law No. 17/2014 actually locations the DPD as a subordinate body of DPR, whose location is equivalent to DPR organs.¹⁴

The weak role of DPD in the national legislation can be observed through the clauses in Article 21 Paragraph 3 of Law No. 12/2011 that states "the preparation of national legislation inside of the DPR as referred to in clause 2 is done by considering proposals by factions, commissions, members of DPR, DPD and/or the community". If we look carefully, there are at least two problems in the clauses of this clause, namely the superior nature owned by DPR and the location of DPD that is equated by DPR organs. In addition, the article has also negated the existence of DPD which is equal to the organs of DPR. The failure also led to the weakening of national political ability to be represented in every decision-making. Thus it is difficult to stem the stigma of DPD only as a complement in the structure of people's representative institutions.¹⁵ If we look deeper, this has interpreted the clauses of Article 22D clause (1) and clause (2) of the 1945 Fundamental law of the NRI Year 1945 where the Government and DPR betrayed the intent and purpose of the establishment of DPD according to the 1945 Fundamental law of the NRI Year 1945 as a high state institution that has the role to delegate checks and balances in the context of democracy decentralized to give birth to a moral government that is a spirit of change in the 1945 Fundamental law of the NRI Year 1945.¹⁶

Then if we look at *fiqh siyasah dusturiyah*, the legislative body is also called *al-sulthah al-*

¹² Adfin Rochmad Baidhowah, "Defender of Democracy: The Role of the Indonesian Fundamental lawal Court in Preventing Rapid Democratic Backsliding," *Fundamental lawal Review* 7, no. 1 (May 31, 2021): 128, <https://doi.org/10.31078/consrev715>.

¹³ Pan Mohamad Faiz, Saldi Isra, and Oly Viana Agustine, "Strengthening Indonesia's national Representative Council Through Judicial Review by the Fundamental lawal Court," *Sage Open* 13, no. 4 (October 1, 2023): 5, <https://doi.org/10.1177/21582440231204408>.

¹⁴ Enny Nurbaningsih, "Implications of the Fundamental lawal Court Decision Number 92/PUU-X/2012 and Alternative Models of Institutional Relations concerned to the shape of Laws," *Jurnal Mimbar Hukum* 27, no. 1 (2015): 2, <https://doi.org/10.22146/jmh.15906>.

¹⁵ Kiki Wulandari et al., "Deparpolisation of the Membership of the House of national Representatives (Tela'ah on the Desire of Political Parties in Occupying the DPD)," *Al-Adalah: Journal of Islamic Law and Politics* 5, no. 1 (April 12, 2020): 54.

¹⁶ Joko Riskiyono, *The influence of public participation and supervision in the shape of laws* (Publica Indonesia Utama, 2022), 31.

tasyri'iyah, which is a political study of legislation,¹⁷ in that it also includes discussing the case of *Ahl al-Halli wa al-'Aqdi*, representatives of the people's cases.¹⁸ If we look in relation to the procedure of making a regulation in Indonesia, the authorised institutions are DPR, DPD, and MPR. The DPR and DPD are institutions that are elected by the people to represent their interests. Seeing the urgency to be able to re-establish the control of DPD, this study aims to strengthen DPD in the context of *ius constitudendum* that is analysed in the context of Fundamental Law law and *fiqh siyasah duturiyah* as a new scientific treasure in the field of law. Previously there have also been several relevant studies discussing the strengthening of DPD's control including by. First, Hadi Wuryadanu¹⁹ (2024) discusses the limited role of DPD in strengthening national autonomy due to structural imbalance by DPR that reduces the effectiveness of DPD. Second, Benedict Hestu Cipto Handoyo²⁰ (2024) discusses the function of DPD in the legislative procedure and the *check and balance* mechanism in the Fundamental lawal system. Third, Nadir²¹ (2024) discusses the strengthening of rights and authorities based on the Fundamental law by the logic of political equality among DPR and DPD. Fourth, Refina²² (2023) discusses the problems faced by DPD institutions and analyses the solutions gived for the future. Fifth, Nova Yarsina²³ (2024) discusses the existence of the functions and roles of the national Representatives Council (DPD) in the Indonesian Fundamental lawal system. Sixth, Nadia Elza Irsyada²⁴ (2024) discusses the strengthening of the location of DPD in the Indonesian Fundamental law system as a national representative body. Seventh, Dwi Putri Melati²⁵ (2021) discusses the assessment of 15 years of the establishment of the DPR and

¹⁷ Muhamad Nurul Huda, "The location and Role of Ahl Al-Hall Wa Al-'Aqd and Its Relevance to the Performance of the DPR," *Staatsrecht: Journal of Islamic State and Political Law* 2, no. 1 (November 22, 2022): 147, <https://doi.org/10.14421/staatsrecht.v2i1.2527>.

¹⁸ Yuni Kartika, "The Legislative Institution of the Republic of Indonesia in the Perspective of Siyasah Dusturiyyah (Analysis of the Legislation, Supervision, and Budgetary Functions of the House of Representatives of the Republic of Indonesia)," *Qiyas: Journal of Islamic Law and Justice*, n.d., 28, <https://ejournal.uinfabengkulu.ac.id/index.php/QIYAS/article/view/2983>.

¹⁹ Hadi Wuryadanu, "The control of the national Representative Council in Strengthening national Autonomy According to the 1945 Fundamental law of the Republic of Indonesia," *Sigli Journal of Social Humanities* 7, no. 1 (February 20, 2024): 217–29, <https://doi.org/10.47647/jsh.v7i1.2248>.

²⁰ Benedictus Hestu Cipto Handoyo, "The national Representative Council (DPD RI) and Checks and Balances in Indonesia's Legislative procedure," *Journal of Ius Constituendum* 9, no. 3 (October 30, 2024): 542–63, <https://doi.org/10.26623/jic.v9i3.10633>.

²¹ Nadir Nadir, "Strengthening the Rights and control of the national Representative Council (DPD) Based on the Fundamental law," *Innovative: Journal of Social Science Research* 4, no. 1 (February 4, 2024): 8479–92, <https://doi.org/10.31004/innovative.v4i1.8841>.

²² Refina Seftiani, Emy Hajar Abra, and Seftia Azrianti, "Ius Constituendum of the control and Function of the national Representative Council (DPD) Based on Democracy Theory," *PETITA* 5, no. 1 (June 30, 2023): 76–85, <https://doi.org/10.33373/pta.v5i1.5530>.

²³ Nova Yarsina and Irhamni Irhamni, "The Existence of the Function and Role of the national House of Representatives (DPD) as a State Institution in the Indonesian Fundamental lawal System," *Encyclopedia of Journal* 6, no. 2 (January 30, 2024): 49–55, <https://doi.org/10.33559/eoj.v6i3.2187>.

²⁴ Nadia Elza Irsyada and Dodi Jaya Wardana, "Strengthening of location of the national Representative Council (DPD) in the Indonesian Fundamental lawal System," *USM LAW REVIEW* 7, no. 3 (December 8, 2024): 1690–1704, <https://doi.org/10.26623/julr.v7i3.10651>.

²⁵ Dwi Putri Melati, Nikmah Rosida, and Heni Siswanto, "assessment and Strategy: Strengthening the Indonesian Council of Representatives of the nations," *International Journal of Criminology and Sociology* 10 (November 26, 2021): 1515–22, <https://doi.org/10.6000/1929-4409.2021.10.173>.

its strengthening strategy. Looking at the above description of the relevant previous research, it can be understood that in this study there is a novelty that will analyse more deeply the strengthening of DPD both in terms of institutional and control that is then further analysed by the concept of *siyasaah dusturiyah*. Thus the purpose of this study is to strengthen the institution of the DPD in the national legislation programme that is then analysed by the perspective of *siyasaah dusturiyah*.

2. Methods

The diverse array of research methodologies employed in this study encompasses normative juridical research, which is primarily concerned with the examination of written laws and regulations. This type of research is alternatively referred to as doctrinal legal research and is also known by the terms library research or document study. Consequently, this investigation is categorized as normative juridical research, utilizing both a statutory approach and a conceptual framework.²⁶ The shape utilized in this research comprises secondary shape, specifically in the form of primary legal materials, which include Law No. 12/2011, as well as Law Number 13 of 2019 concerning the People's Consultative Assembly (Law No. 13/2019), the DPR, and the DPD. Secondary legal materials encompass a range of resources, including research reports, academic journals, theses, dissertations, and various other scholarly papers, whereas tertiary legal materials are represented by dictionaries. In this research, the technique employed for in shape collection is a literature review, which involves the systematic gathering of documents. The shape amassed will subsequently be subjected to descriptive analysis. In addition, the shape will also be analysed utilizing the perspective of *Siyasaah Dusturiyah*.

3. Results and Discussion

3.1. Problems of DPD's Control in the National Legislation Program

Clashes of control often occur in our Fundamental law system, this cannot be separated by the existence of a clash of control owned by DPR and DPD in the national legislation program. This can happen because of the injustice among the control of both. DPR on the one hand is considered as an institution that is more present than DPD, it is too dominating in the procedure of forming the Act. Then on the other hand, the existence of DPD as a new institution born by the fourth amendment of the 1945 NRI Fundamental law also has a legislative function where the control is considered smaller than the control possessed by DPR in the procedure of forming the Act. This situation causes the delegation of the legislative function of DPD to be less than optimal because it is still in the confinement of DPR's control that is not given proportionally.

The existence of DPD institution is designed as an institution to represent the interests of the nation, based on its geographical location. The existence of DPD is hoped to be able to give articulation of local communities to be delivered at the central stage.²⁷ DPD should ideally be two chambers of parliament in Indonesia because DPD was born on the will and control

²⁶ Dr Muhaimin, S.H., M.Hum, *Legal Research Methods* (Mataram University Press, 2020).

²⁷M. Yasin Al Arif and Hasanuddin Muhammad, "Purification of Members of the national Representative Council after the Fundamental lawal Court Decision No. 30/PUU-XVI/2018," *Fundamental lawal Journal* 17, no. 2 (August 19, 2020): 245, <https://doi.org/10.31078/jk1721>.

possessed under the 1945 Fundamental law of the Republic of Indonesia.²⁸ However, in the *status quo*, the control given by the Fundamental law is still reduced by the control of DPR through various political regulations. The implication is quite deep that DPD can not perform its function proportionally as a two-chamber parliamentary institution.²⁹ Whereas the legislature is a reflection of the value of Pancasila.

Article 43 of Law No. 12/2011 that DPD participates in discussing the draft law relating to national autonomy. In the discussion of the bill, DPD is given the control to discuss by DPR, DPD also does not have the control to be able to collect directly from the government. Furthermore, in article 43 clause (4) that the views and opinions of DPD are only used as further input among DPR and the Government.³⁰ It can be understood that the views and opinions of DPD are not binding to DPR and the Government. With the clause, it can reduce the role of DPD as a regional representative especially to fight for regional aspirations. Including proposing various bills related to regional autonomy, or which have an impact on the interests of the region in managing its household affairs. But in some cases, the central government tends to be reluctant to involve DPD in discussing together a law as in the case of Health Act No. 17 Year 2023. This is in line with the legal politics of decentralization or de-autonomisation that is being implemented.

Problems of DPD's control in the national legislation can be seen in Article 21 Paragraph 3 of Law No. 12/2011 which states that "the preparation of national legislation inside of the DPR as referred to in clause 2 is done by considering the proposals of the DPR, DPD and or the community". In the control of DPD in the National Legislation, there are at least four problems concerned with the control of DPD in the National Legislation. First, if we look at it grammatically the word "consider" is a non-binding verb. The word comes from the word "consideration" which means good or bad opinion. This gives a subjective meaning that good or bad will be returned to the institution that is given consideration. In this context, it is the organs of the DPR. Therefore, the parameters of good or bad are highly dependent on the perception of the organs of the DPR. Herein lies the absence of binding force from the word "consider". This means that the lack of binding force depends on the organs of the DPR in the field of legislation as stipulated in Article (2).³¹

Second, the submission of bills in Article 43 Paragraph (1) regulates that bills can originate by the DPR or the President. Article 43 Paragraph (2) stipulates that the bill originating by DPR can originate by DPD. The existing legal construction in Article 43 clause (2) places DPD not as an independent institution to be able to collect a bill that will be discussed by the government. So the location of DPD in collecting the bill is equal to DPR

²⁸ Fahmi Ramadhan Firdaus, "Prevention of Legislative Corruption through Strengthening Public Participation in the Law shape procedure," *Indonesian Legislation Journal* 17, no. 3 (29 September, 2020): 284, <https://doi.org/10.54629/jli.v17i3.679>.

²⁹ Bagir Manan, "Performance of the DPR, DPD, and MPR after the 1945 Fundamental lawal Amendment" (Indonesian Judges Association, n.d.).

³⁰ Muh Risnain, "Implications of the Fundamental lawal Court Decision Number 92 / PUU-X / 2012 on the Legislative control of DPD RI Associated by the Legal Politics of Law shape," *Unizar Law Review (ULR)* 4, no. 1 (June 23, 2021): 79, <https://e-journal.unizar.ac.id/index.php/ulr/article/view/402>.

³¹ Benekditus Hestu Cipto Handoyo, *Decentralised Democracy in a Pseudo-Bicameral Shackle* (Yogyakarta: Cahaya Atma Pustaka, 2020), 438.

organs. The legislative authority of DPD can be implemented through the legislative power of DPR. Thus the DPD can not submit a bill to be discussed together but must go through DPR. If we compare Article I, Section 7 of the Constitution of the United States, the Senate is given the space to propose or approve a bill. This is very undoubted for Indonesia when the legislative function can be implemented equally. Third, the submission of the bill and academic text to the leadership of DPR. Fourth, concerned with DPD's involvement in the discussion of the bill up to stage one. Thus, DPD does not belong to the legislative control to pass the Act as DPR and the President.

3.2. *Ius Constituendum* of DPD's Control in the National Legislation Program

The basis for the establishment of DPD through the third amendment of the 1945 Fundamental law of the Republic of Indonesia. The original intent of the amendment of the 1945 Fundamental law of the NRI was that the purpose of the establishment of DPD institutions was to create a check and balance mechanism between DPR and the region to better accommodate the aspirations of the region and at the same time give a greater role to the region in the political decision-making process for matters primarily related to the interests of the region. This desire stems from real decision-making in the past that resulted in inequalities of justice. In addition, the formation of DPD prevented the operation of legislative power through the formation of two parliamentary chambers (bicameral), consisting of DPR and DPD. In addition, the current regulation of the legislative control of DPD is inconsistent because it is not under the original intent of the amendment of the 1945 Fundamental law of the Republic of Indonesia and the spirit of reform in 1998 that is hoped to reduce the centralized power of DPD.³²

However in the dynamics of Indonesian state administration, the hope for the shape of DPD institutions is not accompanied by strong rules concerned with its assignment, principal, and function. So this raises a sharp dichotomy among DPR and DPD. This can be seen in Article 21 Paragraphs (1), (2), and (3) of the 1945 NRI Fundamental law.³³ From the article we can see the limited authority of DPD in a bicameral system can weaken the checks and balances, although DPD has the right to propose and give consideration, the main legislative power remains in the hands of DPR, which creates clear boundaries in legislative decision-making and reflects the limited authority of DPD. This inability decreases accountability and representation, so that the check and balance function in the bicameral system becomes less optimal.

According to Mahfud MD, a professor of legal politics explained that the legislation control of DPD in Article 21 Paragraphs (1), (2), and (3) of the 1945 Fundamental law of the NRI does not have a meaningful role, because DPD's control is limited in the shape of the Act.³⁴ Departing the various problems faced by DPD in fighting for national aspirations, then rearranging the control of DPD in the legislative function is very important, because it can maximise national aspirations. The rearrangement can be achieved if there is a strong legal umbrella (Umbrella Act) for DPD in carrying out its main assignment and functions. The

³² Fajlurrahman Jurdi, *State Theory of Law* (Malang: Setara press, 2016).

³³ See Article 22D clauses (1), (2) and (3) of the 1945 Fundamental law of the Republic of Indonesia.

³⁴ Moh Mahfud, *Fundamental lawal Law Debates: Post-Fundamental lawal Amendment* (Jakarta: Rajawali Pers, 2007), 60.

umbrella act is contained in the *ius constituendum* which is the law that aspires to strengthen DPD with the application of progressive law that has a correlation with responsive law, where responsive law looks at whether the lawmaking process involves the participation of the community, and progressive law looks at how law enforcement attitudes see the law. To build a legal system that is more just and adaptive to the needs of society.

First, through the amendment of the 1945 Fundamental law of the Republic of Indonesia, the amendment is done in Article 21 Paragraph (1), (2), and (3) of the 1945 Fundamental law of the Republic of Indonesia. The article originally limits the control of DPD which will belong implications for the legislative procedure. Therefore, there is a need for strengthening in order to create a *check and balance*, one of that is by adding control to the DPD, that can be in the form of attribution by DPR to DPD devoid of reducing the control of DPR itself.³⁵ Second, the amendment of Law No. 11/2012 that has placed DPD on par with DPR organs. Thus DPD lost its privileges in the national legislation. In addition to prolegnas, there is also a list of open cumulative path and non-prolegnas, there is also no arrangement involving DPD. Third, the amendment of Law No. 17/2014, especially about the control of DPD and the delegation of the discussion not only at stage I. The aim is to, first, formulate the legal problems associated with the control of DPD in the 1945 Fundamental law of the NRI that is then delegated to the delegating legislation, namely Law No. 17/2014. Second, the main challenges faced by the DPD as a national representation institution lie in its role in the legislative procedure, especially in carrying out the vision and mission to represent national interests in determining national policy. Fourth, to strengthen the assignment, functions, and authorities of DPD institutions must be regulated separately. This is in line with Article 22 C Paragraph (4) Jo Article 19 clause (2) of the 1945 Constitutional of the NRI. Fifth, adopting a strong bicameral system and likely bicameralism. By a variety of problems that occur DPD institutions formulated in the norm tend to be disproportionate. In this case, it is very clear that the bicameral concept adopted by Indonesia is soft bicameral not strong bicameral.³⁶ If we look at a federal state like the United States, or a unitary state like the Philippines, the legislative procedure runs effectively. This is because the concept of control among legislative institutions is formulated proportionally.³⁷ Therefore, to achieve ideal bicameralism, it must be integrated among strong bicameralism and likely bicameralism. Thus the concept of *ius constituendum* can strengthen the location of DPD in the legislative function. This will also have an impact on the politics of law in the future, by the complexity of the Indonesian state, it is a necessity for the presence of DPD to accommodate the interests of local communities.

3.3. Analysis of Fiqh Siyasa Duturiyah: Exploring DPD's Role in Shaping the National Legislation Program

³⁵ Nessa Fajriyana Farda et al, *Law of State Institutions* (Padang: CV Gita Lentera, 2024), 27.

³⁶ Yoyon Mulyana Darusman, "The Importance of delegating a Strong Bicameral System in the Legislative Power of the Republic of Indonesia," *ADIL: Journal of Law* 14, no. 1 (July 11, 2023): 82, <https://doi.org/10.33476/ajl.v14i1.3226>.

³⁷ Lawrence Ezrow, Michele Fenzl, and Timothy Hellwig, "Bicameralism and Policy Responsiveness to Public Opinion," *American Journal of Political Science* 68, no. 3 (2024): 1092, <https://doi.org/10.1111/ajps.12773>.

Fiqh Siyasa is one of the branches of *fiqh* science that discusses governance by holding the principles of Islamic law.³⁸ In the development of modern democracy, *siyasa dusturiyah* plays a role in giving perspective and assessment concerned the course of government, in order to realize justice and the advantage of the people.³⁹ About the control possessed by two state institutions, namely the DPR and DPD, many questions arise because they do not reflect the principles of justice. In the context of *fiqh siyasa* studies on the concept of DPD's control are included in the study of *Ahl al-Halli wa al-'Aqdi* or representatives of the people's cases. The control possessed by *Ahl al-Halli wa al-'Aqdi* one of that is to form the Act. Regulations are here as a legal umbrella so that the government runs well, it is in the field of legislation and in the field of government policy when carrying out its assignment and control.⁴⁰ In substance and the advantage of the people, the existence of DPD institutions has not been able to be said as a strong legislative body. In the field of legislation, DPD is only placed as a co-legislator and the nature of its assignment is only as a supporter (auxiliary) Fundamental law assignment of DPR. Regard to the idea of *ius constituendum* control of DPD in the national legislation in *siyasa dusturiyah*, it is a good thing to maintain the balance of state administration in the field of legislation so that there is justice as in the fiman of God in Surah Al Maidah verse 8.

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ وَلَا يَجْرِمَنَّكُمْ شَنَا نُ قَوْمٍ عَلَىٰ أَلَّا تَعْدِلُوا أَعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ خَبِيرٌ بِمَا

Meaning: "O you who believe, be ye upholders for the sake of Allah (and) witnesses (who act) justly. Do not let your hatred of a people encourage you to be unjust. Be just, for that is nearer to piety. Fear Allah. Verily, Allah is exacting in what you do."

In the verse, God explains that we must be fair. The concept of justice in *fiqh siyasa* in this context is to give equal authority to the DPD such as proposing a bill independently, considering and deciding on a bill relating to; regional autonomy, central and regional relations, establishment and expansion and merging of regions, management of natural resources and other economic resources, financial balance between central and regional. Because in the theory of trias politica, they have the same position as the legislature. But in the norming of DPD institutions tend to be limited in authority, so this violates the principle of justice in the Qur'an letter al maidah verse 8. In addition to the principle of justice, *fiqh siyasa* also emphasises the principle of advantage, in this case, the unbalanced control of DPR and DPD will have an impact on hindering the legislative procedure that upholds inclusiveness and equality to represent national interests. This is also in line with the *fiqihyyah* rule that reads "*Tasarruf Al-Imam Manutun Bil Maslahah*" which means that the imam's policy must be oriented towards the advantage because a leader is a person who has power over the led.⁴¹

If we look at the rules in the modern context, this concept is relevant to the concept of

³⁸ Muhammad Iqbal, *Fiqh Siyasa Contextualisation of Islamic Political Doctrine* (Jakarta: Prenadamedia Group, 2014), 6.

³⁹ Prof.H.A Dzajuli, *Fiqh Siyasa delegation of the People's Welfare in Sharia Signs* (Jakarta: Prenadamedia Group, 2003), 26.

⁴⁰ Abdul Hamid Marzuki, "Legal Politics of DPD in Monitoring and assessment of Raperda and Perda Perspective of Fiqh Siyasa," 2023, 91, <https://jurnal.uinbanten.ac.id/index.php/alqisthas/article/view/5637>.

⁴¹ Achmad Musyahid Idrus, "State Leader's Policy in Perspective of Jurisprudence: Tasarruf Al-Imam Manutun Bil Maslahah," *Al-Daulah : Journal of Criminal Law and State Administration* 10, no. 2 (December 29, 2021): 129, <https://doi.org/10.24252/ad.v1i1.26278>.

good governance, namely the government that is transparent, accountable, and in favour of the people. This can be achieved by the way that all bills that affect the region must involve DPD actively, not just as an institution that provides consideration. If this principle is not implemented properly it will hamper the interests of the region, a concrete example of this occurs in Law No. 23/2014 where the role of DPD is not explicitly mentioned in the decision-making process related to regional expansion. The decision of regional expansion is highly dependent on the approval of DPR and the central government, while DPD only serves to voice the aspirations without substantive authority to approve or reject the expansion, it should be the core competence of DPD. If the role and control of DPD are reorganized and strengthened, the aspirations of the local community can be better represented in the shape of the law, so that the policies are under the needs of the community. It has also applied the principle of deliberation (shura) in Islam as in Surah As Shura verse 38.

وَالَّذِينَ اسْتَجَابُوا لِرَبِّهِمْ وَأَقَامُوا الصَّلَاةَ وَأَمْرُهُمْ شُورَى بَيْنَهُمْ وَمِمَّا رَزَقْنَاهُمْ

He said: "(It is also better and more lasting for) those who accept (obey) the call of God and perform the prayer, while their affairs (are decided) by deliberation among them. They spend some of the sustenance We bestow upon them."

This is in line with what Ibn Taymiyyah said that it will not achieve a country's advantage if there is no binding forum to resolve problems.⁴² Therefore, the institution of *shura* is a solution and not only a political procedure but also a religious obligation.⁴³ In the study of *fiqh siyasah*, the concept of check and balance is also important to avoid the abuse of power in government.⁴⁴ The imbalance of the control of DPR and DPD in the national legislation will reduce this principle because the dominance between one institution and another will result in co-opting in the field of legislation. In the modern legislative system in Indonesia nowadays the principle (shura) of deliberation is adopted as a principle for decision-making. According to him, deliberation should involve individuals or groups that have *ahlul ilmi wa ar-ra'yi* (people of knowledge and wisdom). Therefore, Ibn Taymiyyah recommends that the shura forum should have the purpose of public benefit and justice, not just a mere formality as it is today DPD only follows the discussion at level I and only provides consideration and does not give the authority to decide which is fair and good for the region.

Then this will have implications theoretically and practically. Theoretically, this will strengthen the philosophical basis to be aligned with the interests of the centre without any imbalance with one another, while the practical implication is to strengthen the DPD institution so that regional aspirations do not only become a formality. With this approach, the legislative process is more representative and benefit-oriented. Then further Imam Al-

⁴² Khalid Ibrahim; Masrohin; Jindan, *Islamic political theory : a critical study of Ibn Taymiyyah on Islamic governance / Khalid Ibrahim Jindan; translator Masrohin* (Risalah Gusti, 1995), 82, //10.170.10.3%2Findex.php%3Fp%3Dshow_detail%26id%3D8008.

⁴³ Ade Kosasih et al., "Strengthening the Indonesian Bicameral Parliament: Siyasah Dusturiyah Perspective," *Al-Istinbath: Journal of Islamic Law* 9, no. 1 (May 30, 2024): 338, <https://doi.org/10.29240/jhi.v9i1.10047>.

⁴⁴ King Faisal Sulaiman, "Legislative Corruption: Criticism of the Omnibus Law Policy in the Mineral and Mining Sector in Indonesia," *E3S Web of Conferences* 440 (2023): 4, <https://doi.org/10.1051/e3sconf/202344004008>.

Mawardi in *Al-Ahkam al-Sulthaniyyah* emphasized the importance of equitable distribution of power to avoid imbalance of power.⁴⁵ In Al-Mawardi's view, the distribution of power includes three main functions, namely; *Al-Tanfidz* region (executive), *Al-Qadha* region (judiciary), and *Al-Ijtihad* region (legislative). In the Indonesian context, in the *Al-Ijtihad* region, there is an imbalance between DPR and DPD. With this imbalance, it has contradicted the principles of justice (*al-adalah*), *musyawarah* (*shura*), and trust. In the context of modern state, administration is contrary to the principle of checks and balances, the principle of fair representation, so that the distribution of power between DPR and DPD to be more balanced and realize checks and balances in government.

4. Conclusions

Based on the explanation that has been presented comprehensively, it can be concluded that by the current control of DPD that is disproportionate compared to DPR, it is necessary to belong a rearrangement in the form of *ius constituendum*. Structuring in the form of *ius constituendum* that the author offers accommodates two things, namely in the concept of Fundamental law and *fiqh siyasah*. In the context of Fundamental law in a way. First, through changes to the 1945 Fundamental law of the Republic of Indonesia. Second, the amendment of Law No 11/2012 in Article 21 Paragraph 3. Third, an amendment to Law No. 17/2014. Fourth, there is a separate arrangement concerned with the assignment and functions of DPD. Fifth, adopting a strong bicameral system and likely bicameralism. Then in the context of *fiqh siyasah dusturiyah*, of course in the procedure of formulating a policy in this case the law must be under Islamic principles, namely, the principles of justice and deliberation in formulating legislation.

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⁴⁵ Dani Suryaningrat and Abdul Wahab, "Thoughts of Islamic Economic Figures in the Second Period Regarding the Concept of Distribution," *JOURNAL ILMIAH FALSAFAH: Journal of Philosophy, Theology and Humanities Studies* 9, no. 2 (August 7, 2023): 93, <https://doi.org/10.37567/jif.v9i2.2301>.

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