

## Juridic Review Filling Membership of the Regional Representative Board of the Republic of Indonesia Post the Decision of the Constitutional Court Number 30/PUU-XIV/2018

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### Abstract

*Positions as functionaries of Political Parties with DPD membership are not common before the 2019 General Election as a political practice that is prohibited by Law Number 7 of 2017 concerning General Elections jo. KPU Regulation Number 21 of 2018. However, with the Constitutional Court Decision Number 30/PUU-XVI/2018 jo. KPU Regulation Number 26 of 2018 states that concurrent positions of political party functionaries in the DPD membership are a violation of the law, so all parties should obey it. In this study, analysis and discussion of the legal aspects of the dual position practice will be carried out after the Constitutional Court's Decision.*

### Keywords

DPD membership, Post-MK decision number 30/PUU-XVI/2018, constitutional law



### I. Introduction

In the history of the development of state institutions in Indonesia, the Regional Representative Council (DPD) is a new state institution formed based on constitutional orders after the amendments to the three laws -The 1945 Constitution of the Republic of Indonesia (the 1945 Constitution of the Republic of Indonesia). The position of the DPD in the constitutional structure in Indonesia then becomes part of the legislative body together with the House of Representatives (DPR). This is formulated in Article 2 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that, "The People's Consultative Assembly consists of members of the People's Representative Council and members of the Regional Representative Council who are elected through general elections and further regulated by law".

According to Saldi Isra, the formulation of Article 2 paragraph (1) of the 1945 Constitution of the Republic of Indonesia has changed the membership structure of the People's Consultative Assembly (MPR), which consists of the DPR and DPD. The amendment implies repositioning the role of the MPR from the highest state institution (*supreme body*) to a *joint session* between the DPR and DPD. While Sri Soemantri stated that although the formation of the DPD had been determined by the MPR on November 10, 2001, through the amendment of Article 2 of the 1945 Constitution of the Republic of Indonesia, the actual birth of the DPD only occurred on October 1, 2004, when 128 DPD members were first elected and sworn in and took their oaths at the MPR Building

As a new state institution, the DPD has the authority as regulated in Article 22D of the 1945 Constitution of the Republic of Indonesia, including the DPD can submit to the DPR a Draft Law (RUU) relating to regional autonomy, participate in discussing bills related to regional autonomy, and can carry out supervision over the implementation of the law on regional autonomy. According to Bagir Manan, from the authority contained in Article 22D of the 1945 Constitution of the Republic of Indonesia above, there are three

kinds of DPD functions, namely the legislative function, the consideration function and the supervisory function.

Furthermore, regarding the membership of the DPD, based on the provisions of Article 22C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it is stated that "DPD members are elected from each province through general elections". According to Sri Soemantri, as the name implies, namely the DPD, the members are the people and residents who live in the represented province. Therefore, it must be prevented and prohibited those who live in Jakarta daily from becoming DPD members representing certain provinces. DPD is a regional representative institution. As his name implies, he represents the interests of the region, namely the province from which its members are elected. However, in essence, what is meant by the area is not the regional government, but the electorate from the province concerned. This means that the DPD and the DPR are essentially people's representative institutions, the only difference is that members of the DPR are elected through the role of political parties, while members of the DPD are elected without involving the role of political parties. Public policy as a government action in achieving the goals or objectives that have been set. In this case the policy carried out by the government is related to whatever the government's choice to continue or not to do (Ellyana and Ismail, 2020). With the presence of the DPD, the Indonesian legislative body consists of the DPR and DPD. In this case, the DPR is supported and strengthened by the DPD. On the one hand, the DPR is a representative institution based on the aspirations and political understanding of the people as the holder of sovereignty, while the DPD is a representative institution that distributes the diversity of regional aspirations. The existence of the DPD is an effort to accommodate the principle of regional representation.

Then based on the provisions of Article 22C paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the DPD represents the region, not the population. The total population is always greater than the total area. Besides that, it is also to avoid the emergence of the dominance of the DPD in the MPR. If there is no such provision, it is feared that the number of MPR members will be dominated by DPD members, most of whom come from small-populated provincial areas so that they will not be able to reflect the real sovereignty of the people. DPD members from each province are set as many as (four) people. Unlike the DPR, which represents the total population, the DPD represents the province. If the number of seats for members of the DPR in each region is determined based on the population, then the number of DPD members in each province is the same. The number of DPD members from each province is determined by four people. Thus, each province regardless of area and population density will get four seats in the DPD.

Further arrangements regarding DPD membership are regulated in Law Number 7 of 2017 concerning General Elections (Pemilu). In the formulation of Article 181 of Law Number 7 of 2017 concerning Elections, it is stated that, "Election participants to elect members of the DPD are individuals". Furthermore, in Article 182 letter l of Law Number 7 of 2017 concerning Elections, it is stated that individuals, as referred to in Article 181, can become Election Contestants after fulfilling the requirements: willing not to practice as public accountants, advocates, notaries, land deed officials, and/or not doing the work of providing goods and services related to state finances as well as other work that may cause a conflict of interest with the duties, authorities, and rights as a member of the DPD by the provisions of the legislation.

In its development, the provisions of Article 182 letter l of Law Number 7 of 2017 concerning Elections, were submitted for judicial review at the Constitutional Court (MK). The Constitutional Court emphasized that the DPD should not be filled by political party officials (parpol). This is the implication of the Constitutional Court's decision on the

judicial review proposed by Muhammad Hafidz, the applicant for the judicial review regarding the requirements to become a member of the DPD as regulated in Article 182 letter I of Law Number 7 of 2017 concerning Elections. The formulation of Article 182 letter I of Law Number 7 of 2017 concerning Elections, states that "Individuals, as referred to in Article 181, can become election participants after fulfilling the requirements (1) willing not to practice as public accountants, advocates, notaries, deed officials. land, and/or not doing the work of providing goods and services related to state finances as well as other work that may cause a conflict of interest with the duties, authorities, and rights as a member of the DPD by the provisions of the legislation. Muhammad Hafidz, who is a member of the DPD for the 2014-2019 period, considered the phrase "other work" to contain a lack of clarity in meaning. He then asked the Court to add the interpretation of "political party functionaries" in the phrase "other jobs". According to Hafidz, the addition of this interpretation can prevent conflicts of interest between a person's position in a political party and his status as a member of the DPD.

The Constitutional Court in its Decision Number 30/PUU-XIV/2018 stated that the Panel of Constitutional Justices in their deliberations acknowledged that the article did not explicitly prohibit political party administrators from running as candidates for DPD members. However, the Constitutional Court's stance based on previous decisions has always emphasized that candidates for DPD members may not come from members of political parties. According to the Constitutional Court that, "the phrase 'other work' in 182 letter I of Law Number 7 of 2017 concerning Elections is contrary to the 1945 Constitution and does not have conditionally binding legal force as long as it is not interpreted to include administrators (functionaries) of political parties a member of a political party who is currently a member of the DPD, the Constitutional Court declares that its membership remains constitutional. The Constitutional Court's decision applies prospectively or forward and does not apply retroactively (retroactive).

The juridical implications of the Constitutional Court's decision above, then members of political parties who run for DPD members on the next election must resign from the management of political parties. This also applies to members of political parties who are currently filling positions in the DPD. Against party administrators who register themselves as candidates for members of the DPD in the 2019 election, the Constitutional Court stated that the KPU could provide opportunities to those concerned as long as they had resigned themselves from the management of political parties the self-report must be accompanied by evidence of a written statement that has legal value. Henceforth, since the 2019 election and subsequent elections, the members of the DPD who have become the administrators of political parties are contrary to the 1945 Constitution.

In practice, the conflict of interest in dual positions between membership in Political Parties and membership as DPD can be observed in the case of Oesman Sapta Odang. Professor of Political Communication at the University of Padjadjaran, Karim Suryadi, said that Oesman Sapta's dual positions, namely as Chairman of the DPD and also Chairman of Hanura, have the potential to cause a subliminal effect, "there is a communication effect where people will see they are impressed, touched by something that is not intended. The community's response to the nature of the DPD must be anticipated. So far, the DPD has been created to represent regional aspirations. If now, for example, the General Chairperson of Hanura (DPD) is holding it like what? Concurrent positions of functionaries of political parties with DPD membership, apart from the potential for conflicts of interest, are also contrary to the initial idea of forming the DPD as part of the legislative body together with the DPR. The urgency of the DPD is that the aspirations and interests of the people in the regions are properly accommodated. A territorial

representation that produces regional representatives in the composition of DPD membership is a necessity because if you only rely on political representation from the DPR, the needs of the people in the regions can be ignored. Centralized political practice in the pre-reform era emphasized this.

## **II. Research Methods**

### **2.1 Objects Research**

On "Juridical Review of Filling in the Membership of the Regional Representatives Council of the Republic of Indonesia After the Decision of the Constitutional Court Number 30/PUU-XIV/2018", is a type of normative legal research that includes research on legal principles and legal systematics, with the object of research chosen by the Constitutional Court Decision Number 30/PUU-XIV/2018. The nature of the research used by the author is descriptive-analytical, intended to provide data that is as accurate as possible about humans, circumstances, or other phenomena.

### **2.2 Data and Sources**

#### **a. Data**

The data used in this research is secondary data obtained from documents, books, research reports, and others.

#### **b. Data Sources**

The data sources used in this study consist of three legal materials, namely:

- 1) Primary legal materials, namely binding legal materials, consist of:
  - a) The 1945 Constitution of the Republic of Indonesia.
  - b) Law Number 17 of 2014 concerning the Structure and Position MPR, DPR, DPD, and DPRD.
  - c) Law Number 7 of 2017 concerning Elections,
  - d) Decisions of the Constitutional Court Number 30/PUU-XIV/2018.
- 2) Secondary legal materials, namely legal materials that support primary legal materials, consist of various books, research results, and scientific journals related to the object of research, including the Minutes of Amendment to the Constitution.
- 3) Tertiary legal materials, namely legal materials that support primary legal materials and secondary legal materials consisting of legal dictionaries and encyclopedias.

### **2.3 Data Collection Techniques**

Data collection techniques are the way researchers obtain or collect data obtained through *library research*. A literature study was conducted on legal materials regarding the Juridical Review of Filling in the Membership of the Regional Representatives Council of the Republic of Indonesia after the Constitutional Court Decision Number 30/PUU-XIV/2018.

### **2.4 Data Analysis**

The data analysis technique used in this research is qualitative analysis. Qualitative data is data in the form of words, sentences, or narratives, which are obtained through observation using deductive thinking, namely a way of thinking that departs from general things to specific things.

## 2.5 How to Draw Conclusions

Conclusions are drawn using deductive logic, which is a method of drawing general conclusions from specific statements. How to conclude is done by analyzing the two main issues raised, namely how the mechanism for filling in the membership of the Regional Representatives Council of the Republic of Indonesia based on the provisions of Law Number 7 of 2017 concerning Elections and how the implications of the Constitutional Court Decision Number 30/PUU-XIV/2018 on the membership of the Regional Representatives Council.

## III. Results and Discussion

### 3.1 The mechanism of charging members of the Regional Representatives Council (DPD) Under the provisions of Law No. 7 of 2017 on Election

Platform constitution regarding memberships DPD regulated in Article 22C paragraph (1) the State Constitution of Republic of Indonesia Year 1945, which states that "Board Member Regional Representatives (DPD) are elected by each province through General Elections. Then Article 22E paragraph (4) of the 1945 Constitution of the Republic of Indonesia, states "General election participants to elect members of the DPD are individuals. Thus the constitution has stipulated that filling in the DPD membership is selected from individual participants through the holding of general elections. Provisions regarding the holding of General Elections for DPD members shall be further regulated by organic laws and regulations, in the form of the General Election Law (Election Law) and General Election Commission Regulation (KPU Regulation).

Concerning the holding of the 2019 General Election, Law Number 7 of 2017 concerning General Elections has been promulgated. In this law, certain mechanisms and conditions are regulated if you want to nominate yourself as a member of the DPD starting from Article 181 to Article 183. The formulation of Article 181 of Law Number 7 of 2017 concerning General Elections, states that "Election participants In general, to elect members of the DPD are individuals". Furthermore, Article 182 of Law Number 7 of 2017 concerning General Elections confirms that "Individuals, as referred to in Article 181, can become Election Contestants after fulfilling the following requirements:

- a. Indonesian citizens who are 21 (twenty-one) years old or more;
- b. Fear God Almighty;
- c. Domiciled in the territory of the Unitary State of the Republic of Indonesia;
- d. Can speak, read, and/or write in Indonesian;
- e. Minimum education graduated from high school, madrasah aliyah, vocational high school, vocational madrasah aliyah, or another equivalent school;
- f. Loyal to Pancasila, the 1945 Constitution of the Republic of Indonesia, the Unitary State of the Republic of Indonesia, and Bhinneka Tunggal Ika;
- g. Has never been sentenced to imprisonment based on a court decision that has permanent legal force for committing a criminal act punishable by imprisonment of 5 (five) years or more unless openly and honestly declare to the public that the person concerned is a former convict;
- h. Physically and mentally healthy, and free from narcotics abuse;
- i. Registered as an Elector;
- j. Willing to work full time;
- k. Resigned as Regional Head, Deputy Regional Head, Village Head and Village Apparatus, Village Consultative Body, State Civil Apparatus, members of the Indonesian National Armed Forces, members of the Indonesian National Police,

Directors, Commissioners, Supervisory Board and employees of State-Owned Enterprises and/or Regional-Owned Enterprises and/or Village-Owned Enterprises, or other entities whose budgets are sourced from state finances, which are stated in an irrevocable letter of resignation;

- l. Willing not to practice as a public accountant, advocate, notary, land deed official, and/or not to do the work of providing goods and services related to state finances as well as other work that may cause a conflict of interest with the duties, authorities, and rights as a member of the DPD under the provisions of the legislation;
- m. Willing not to hold concurrent positions as other State Officials, Directors, Commissioners, Supervisory Boards and employees of State-Owned Enterprises and/or Regional-Owned Enterprises and other agencies whose budget is sourced from state finances;
- n. Nominate only for 1 (one) representative institution;
- o. To nominate only for 1 (one) electoral district, and
- p. Obtain minimal support from voters in the electoral district concerned.

Furthermore, regarding the minimum support requirements of voters in the electoral district concerned regulated in Article 183 of Law Number 7 of 2017 concerning General Elections. Substances regulated in Article 183 include provinces with a population of up to 1,000,000 (one million) people who must have the support of at least 1,000 (one thousand) voters. Provinces with a population of more than 1,000,000 (one million) to 5,000,000 (five million) people must obtain the support of at least 2,000 (two thousand) voters. Provinces with a population of more than 5,000,000 (five million) to 10,000,000 (ten million) people must obtain the support of at least 3,000 (three thousand) voters. Provinces with a population of more than 10,000,000 (ten million) to 15,000,000 (fifteen million) people must obtain the support of at least 4,000 (four thousand) voters. Provinces with a population of more than 15,000,000 (fifteen million) people who are included in the permanent voter list must obtain the support of at least 5,000 (five thousand) voters. Support is spread over at least 50% (fifty percent) of the total regencies/cities in the province concerned. The requirements are evidenced by a list of endorsements affixed with a signature or thumbprint of the hand and accompanied by a photocopy of the identity card of each supporter. A supporter is not allowed to provide support to more than 1 (one) candidate for DPD member and commit fraudulent acts to mislead someone by coercing, promising, or by giving money or other materials to gain support for the nomination of DPD members in the General Election.

Based on the description above, individuals who can fill DPD membership based on the provisions of Article 182 of Law Number 7 of 2017 concerning General Elections must meet certain general requirements (fear of God Almighty, loyal to Pancasila, the State Constitution). Republic of Indonesia Year 1945, the Unitary State of the Republic of Indonesia, and Bhinneka Tunggal Ika), individuals who can fill DPD membership meet certain requirements based on citizenship and certain age limits (minimum age), domicile, minimum level of education, literacy and health requirements. The law also stipulates that individuals as members of the DPD must be registered as voters, nominate only for 1 (one) representative institution, nominate only for 1 (one) electoral district and obtain minimal support from voters in the electoral district concerned. Another requirement for individuals who can fill the DPD membership is a requirement based on certain limitations regarding legal cases that have been carried out, namely never being sentenced to prison based on a court decision that has obtained permanent legal force for committing a crime that is punishable by imprisonment of 5 (five) years. ) years or more, unless it is openly and honestly stated to the public that the person concerned is a former convict.

Article 182 of Law Number 7 of 2017 concerning General Elections, also stipulates that individuals who will fill DPD membership must meet certain conditions related to work status (resignation from work), willingness not to do certain jobs which are indicated to cause conflict interests, as well as the prohibition of concurrent positions of certain types of professions before running as a member of the DPD.

Resignation from certain jobs stated in an irrevocable resignation letter previously applies to Regional Heads, Deputy Regional Heads, Village Heads, and Village Apparatuses, Village Consultative Body, State Civil Apparatus, members of the Indonesian National Armed Forces, members of the Indonesian National Police. , Directors, Commissioners, Supervisory Board, and employees of State-Owned Enterprises and/or Regional-Owned Enterprises and/or Village-Owned Enterprises, or other entities whose budgets are sourced from state finances (Article 182 letter k of Law Number 7 of 2017 ). No longer doing work practices for certain professions that can cause conflicts of interest, namely public accountants, advocates, notaries, land deed officials, and/or not doing the work of providing goods and services related to state finances, as well as other work that can cause conflicts interests (Article 182 letter l of Law Number 7 of 2017). Willing not to hold concurrent positions as other State Officials, Directors, Commissioners, Supervisory Boards and employees of State-Owned Enterprises and/or Regional-Owned Enterprises and other entities whose budget is sourced from state finances (Article 182 letter m of Law Number 7 the Year 2017).

Based on the description above, according to the author, normatively certain types of work or professions that must be left by individual members of the DPD (resignation mechanism), willingness to no longer carry out work practices in certain professions, and do not hold concurrent positions, are jobs and/or professions that are expressly stated in Article 182 of Law Number 7 of 2017 concerning Elections. Thus, for certain types of work and/or professions which in the provisions of Article 182 of Law Number 7 of 2017 concerning Elections do not mention or are not prohibited from holding concurrent positions, the type of work or profession can still be carried out at the same time as their status as members of the DPD.

Individual requirements as candidates for DPD members are further regulated in General Election Commission Regulation (KPU Regulation) Number 21 of 2018 concerning Amendments to KPU Regulation Number 14 of 2018 concerning the Nomination of Individual Election Participants for DPD Members (hereinafter referred to as PKPU Number 21 of 2018). However, in Article 60 of PKPU Number 21 of 2018, as long as it is related to the requirements for certain types of work or professions that are prohibited from being carried out in multiple positions, there is no new regulation. Article 60 of PKPU Number 21 of 2018 only regulates the legal substance regarding the prohibition of concurrent positions which was previously regulated in Article 182 of Law Number 7 of 2017 concerning Elections. Even if there are new things regulated in PKPU Number 21 of 2018 are details of certain criminal acts, namely not former convicts of drug dealers, sexual crimes against children, or corruption.

Based on the description above, the mechanism for filling in DPD membership procedurally must meet the requirements for nominating DPD members as regulated in Article 182 of Law Number 7 of 2017 concerning General Elections jo. Article 60 PKPU Number 21 of 2018. Regarding the controversy regarding concurrent positions of DPD membership with cadres/functionaries of Political Parties, if the legal basis is Article 182 of Law Number 7 of 2017 concerning General Elections jo. Article 60 PKPU Number 21 of 2018, according to the author, is not a violation of the law, the status as a cadre or functionary of a political party is not a type of work that is prohibited so that concurrent

positions are legal to do. In other words, DPD members can hold concurrent positions as political party cadres or functionaries, or conversely Commissioncal party cadres or functionaries can nominate themselves as individual candidates for DPD members in the 2019 General Election.

### **3.2 Implications of Constitutional Court Decision Number 30/PUU-XIV/2018 on Membership Regional Representative Council**

After the Decision of the Constitutional Court Number 30/PUU-XIV/2018 dated July 23, 2018, there was a fundamental change regarding the provision for concurrent positions as part of the individual requirements for DPD members in the 2019 General Election. Previously there was no prohibition against concurrent positions of political party functionaries with nomination status. as a member of the DPD. The requirements for individual candidates for DPD members in Article 182 of Law Number 7 of 2017 concerning General Elections jo. Article 60 of PKPU Number 21 of 2018 does not mention the prohibition of concurrent positions. However, after the Constitutional Court conducted a judicial review of Article 182 letter l of Law Number 7 of 2017 concerning Elections, with the verdict on the phrase "other work" in Article 182 letter l of Law Number 7 of 2017 concerning General Elections (State Gazette of the Republic of Indonesia Year 2017 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 6109) is contrary to the 1945 Constitution and does not have conditionally binding legal force as long as it is not interpreted to include administrators (functionaries) of political parties, so the prohibition of concurrent positions as an individual requirement as a candidate for DPD members in the Election General 2019 applies to political party functionaries.

Strengthening the Decision of the Constitutional Court Number 30/PUU-XIV/2018, the General Election Commission, stipulates PKPU Number 26 of 2018 concerning the Second Amendment to the General Election Commission Regulation Number 14 of 2018 concerning the Nomination of Individual Election Contestants for Members of the Regional Representatives Council, which prohibits concurrent positions candidates for DPD members as functionaries of political parties. In Article 1 point 4 of PKPU Number 26 of 2018 it is stated that between Article 60 and Article 61, 1 (one) Article is inserted, namely Article 60A paragraph (1) which states that, "The fulfillment of individual requirements for election participants to become candidates for DPD Members as referred to in Article 60 paragraph (1) letter p, including not in their positions as administrators of political parties at the central level, administrators of political parties at the provincial level and administrators of political parties at the district/city level". Then in paragraph (2) it is stated, "Prospective candidates for DPD members as referred to in paragraph (1) must resign from their positions as administrators of political parties before the registration period for candidates for DPD members". In paragraph (3) Prospective DPD Member candidates who have met the candidate requirements or have not met the candidate requirements and are in the process of improving the candidate requirements or being verified for candidate requirements, may remain as prospective DPD Members by submitting: (a) a letter of resignation as the administrator of a political party that has legal value and cannot be withdrawn, which is signed by the prospective DPD Member concerned and affixed with sufficient stamp duty; and (b) the decision of the leadership of a political party by his/her authority based on the articles of association and by-laws of the political party, regarding the dismissal of the candidate for the DPD Member concerned as the administrator of a political party. The resignation statement is submitted to the KPU through the Provincial KPU/KIP Aceh no later than 1 (one) day before the determination of the DCS of the DPD Members. The decision of the political party leadership shall be

submitted to the KPU through the Provincial KPU/KIP Aceh no later than 1 (one) day before the determination of the DCT of DPD Members. If the resignation letter and the decision of the political party leaders are not submitted, the candidate for the DPD Member is declared ineligible and his name is not included in the DCS of the DPD Member or the DCT of the DPD Member.

Based on the description above, according to the author, the Constitutional Court Decision Number 30/PUU-XIV/2018 has permanent legal force with three main implications. First, in this decision, the Constitutional Court explained that currently there are still members of the DPD who are the administrators of political parties. Based on general principles, the Act made by forming Act (*positiveLegislature*) applies prospectively or forward and should not be retroactive (*retroactive*). This also applies to the decision of the Constitutional Court as a negative legislator. Therefore, based on the principle of *presumption of constitutionality*, this decision does not apply to members of the DPD who are still members of the current political party, unless the person concerned nominates himself again as a member of the DPD after the decision is made. Second, for the 2019 election, there are candidates for DPD members who happen to be political party administrators who are affected by this decision. Therefore, the KPU can provide an opportunity provided that the candidate has declared his resignation from the management of the political party, as evidenced by a written statement that has legal value. Third, the DPD members from the 2019 election until the future who are the administrators of political parties are contrary to the 1945 Constitution.

Based on the description above, based on the *original intent* of forming the DPD, to fill the DPD members must come from outside the political party. The author agrees with the consideration of the Constitutional Court which emphasizes the nature of the existence of the DPD in the constitutional design of the 1945 Constitution. The DPD as a constitutional organ is a *territorial representation* that carries and fights for regional aspirations and interests within the framework of national interests, as a balance based on the principle of "*checks and balances*" against the DPR which is a *political representation* of the aspirations and political interests of political parties within the framework of the national interest. The existence of the DPD and DPR in the Indonesian administrative system where all members are members of the MPR does not mean that Indonesia's representative system adheres to a bicameral representation system, but rather as an illustration of a representative system that is unique to Indonesia. Although the constitutional authority of the DPD is limited, all of its powers in the fields of legislation, budgeting, supervision, and considerations as regulated in Article 22D of the 1945 Constitution, are all related and oriented to regional interests. As regional representatives from each province, members of the DPD are elected through elections from each province with the same number, based on individual nominations, not through parties, as election participants.

According to the author, the Constitutional Court's decision is not politically charged. The Constitutional Court decided not because it had practical political interests because its considerations had been based on the corridors of law and the constitution. However, the Constitutional Court's decision does have a political impact, namely in the 2019 Simultaneous Elections, political party administrators cannot nominate themselves again to become members of the DPD. Thus, according to the author, the Constitutional Court's decision regarding the prohibition of political party administrators from becoming members of the DPD is correct.

However, the Constitutional Court's decision still provides an opportunity for members of political parties to become members of the DPD, so that members of political

parties have the potential to dominate again the membership of the DPD. Another implication of this is that the MPR will be dominated by people from political parties. Thus, the original intent regarding DPD membership, both in a *das sollen* (current reality), and in a *das sein* (what should have happened) still needs to struggle again to normalize it, this can be done with a judicial review or normalization in the Act.

#### IV. Conclusion

Based on the analysis and discussion conducted on the two main issues above, the following conclusions can be drawn:

1. The mechanism for filling in candidates for DPD members procedurally must meet the requirements for nomination for DPD membership as regulated in Article 182 of Law Number 7 of 2017 concerning General Election jo. Article 60 PKPU Number 21 of 2018. Regarding the controversy regarding concurrent positions of DPD membership with cadres/functionaries of Political Parties, if the legal basis is Article 182 of Law Number 7 of 2017 concerning General Elections jo. Article 60 PKPU Number 21 of 2018, according to the author, is not a violation of the law, the status as a functionary of a political party is not a prohibited type of work so that concurrent positions are legal to do. In other words, DPD members can hold concurrent positions as political party functionaries, or vice versa political party functionaries can nominate themselves as individual candidates for DPD members in the 2019 General Election.
2. Three implications have been identified for the Constitutional Court Decision Number 30/PUU-XIV/2018 on DPD membership. First, in this decision, the Constitutional Court explained that currently there are still members of the DPD who are the administrators of political parties. Based on general principles, the Act made by forming Act(positiveLegislature) applies prospectively or forward and should not be retroactive (retroactive). This also applies to the decision of the Constitutional Court as a negative legislator. Therefore, based on the principle of presumption of constitutionality, this decision does not apply to members of the DPD who are still members of the current political party, unless the person concerned nominates himself again as a member of the DPD after the decision is made. Second, for the 2019 election, there are candidates for DPD members who happen to be political party administrators who are affected by this decision. Therefore, the KPU can provide an opportunity provided that the candidate has declared his resignation from the management of the political party, as evidenced by a written statement that has legal value. Third, the DPD members from the 2019 election until the future who become political party administrators are contrary to the 1945 Constitution.

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