

Handbook on the Legislative Process

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General Secretariat of the House of Representatives of the Republic of Indonesia (DPR RI)
Jl. Jend Gatot Subroto No. 6
Jakarta 10270
www.dpr.go.id

and

United Nations Development Programme (UNDP)
Menara Thamrin 8th Floor
Jl. MH Thamrin Kav. 3
Jakarta 10250
Tel: +62-21-3141308
Fax: +62-21-39838941
www.undp.or.id

Author: Dr. Febrian, S.H., MS

Secretariat General DPR RI
Dra. Hj. Nining Indra Shaleh, M.Si. (Secretary General DPR RI)
Untung Djumadi, S.H. (National Project Director)

UNDP Parliamentary Support Programme
Pheni Chalid, Ph.D.
Frank Feulner, Ph.D.
Bachtiar Kurniawan
Angelin Sumendap

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Dr. Febrian, S.H., MS

FOREWORD

Secretary General of the House of Representatives of the Republic of Indonesia

The members of the House of Representatives of the Republic of Indonesia (DPR RI) of the 2009-2014 period are the people's representatives elected by the third general election after the Democratic Reform, the advent of democracy in Indonesia. Compared to previous post-Reform elections, we may say that the 2009 election has gone through a more mature democratization process.

The positive development of democracy in Indonesia intensifies the people's demand on their representatives in the DPR to improve their work performance and quality compared to previous periods. In truth the demand must also take account of the fact that the majority of the people's representatives of this period is new to the DPR. They would need relatively more time to study and comprehend their tasks and authorities in performing their functions as the people's representatives.

In addition, it is necessary to immediately familiarize DPR members of this current period with their role, function, tasks, and authorities, because the recently issued Law No. 27/2009 on the People's Consultative Assembly, House of Representatives, House of Regional Representatives, and Regional House of Representatives has changed several regulations on the system and procedures of representative institutions in Indonesia.

We understand that in order to improve work performance, DPR members need to increase their knowledge and understanding of their main tasks and functions according to new developments, including new adjustments to existing laws. To help increase such knowledge and understanding, the General Secretariat of DPR is cooperating with Parliamentary Support Programme of UNDP to compose eight handbooks for DPR members.

To optimally realize the hopes and intentions of this book, we have composed this book: (1) based on regulations according to Law No. 27/2009 on the People's Consultative Assembly, House of Representatives, House of Regional Representatives, and Regional House of Representatives, which is currently the main foundation for the system and procedures of representative institutions in Indonesia; (2) with the goal to fill practical needs; (3) complete with best practices in Indonesia or in other countries.

It is our hope this book will have significant positive impact on the work performance of the DPR.

Secretary General DPR RI,

Dra. Hj. Nining Indra Shaleh, M.Si.

PREFACE

UNDP Parliamentary Support Programme

On this occasion, the United Nations Development Programme (UNDP) would like to congratulate the new members of the House of Representatives (DPR) of the Republic of Indonesia, 2009-2014. We wish you success in your public endeavours. We would like to take this moment to express our gratitude to the Secretariat General of the DPR RI, the Australian Agency for International Development, and The Asia Foundation for their unwavering support in the development of these handbooks. Finally, we also would like to thank the authors themselves for generously sharing their expertise and experience.

Becoming a member of parliament is a great honor, but it also entails great responsibility. Certainly, the House Members are expected to not only listen to the people, but also represent them and respond to their needs in a timely and effective manner. The UNDP Parliamentary Support Programme gives its full support to the Secretariat of DPR RI and all the House Members in the representation of their constituents.

The handbook on the Legislative Process is written to support the work of the DPR members, particularly in legal drafting. The book illustrates the various stages beginning with the planning and drafting stages to the deliberation and passing of a new law. This book also explains the processes of bills initiated by the government, or initiated by the House, including the legislative roles of the various bodies of the DPR. Moreover, the book also describes the roles of the Ministry of Law and Human Rights and the Constitutional Court.

The success of parliamentary democracy in Indonesia depends much on the work of its members. For that reason, the public will have a great interest in overseeing the members' work in parliament. To support the effectiveness of the members' work, this handbook describes best practices from various democratic countries. The UNDP Parliamentary Support Programme is also continuously supporting the work of members with the necessary knowledge and technical assistance.

We hope that members will find this handbook useful, and will refer to it regularly as a source of information in carrying out their duties. We have compiled complicated and complex issues into a simple and easy-to-read format. We wish all the members the best of luck in all their future work.

Yours sincerely,

UNDP Parliamentary Support Programme

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List of Abbreviations and Acronyms

Baleg	: <i>Badan Legislasi</i> /Legislation Council
DIM	: <i>Daftar Inventarisasi Masalah</i> /Inventory List of Issues
DPD	: <i>Dewan Perwakilan Daerah</i> /House of Regional Representatives
DPR	: <i>Dewan Perwakilan Rakyat</i> /House of Representatives
DPRD	: <i>Dewan Perwakilan Rakyat Daerah</i> / Regional House of Representatives
LSM	: <i>Lembaga Swadaya Masyarakat</i> /Non-governmental Organization
MK	: <i>Mahkamah Konstitusi</i> /Constitutional Court
MPR	: <i>Majelis Permusyawaratan Rakyat</i> /People's Consultative Assembly
Prolegnas	: <i>Program Legislasi Nasional</i> /National Legislation Program
PPPDI	: <i>Pusat Pengkajian Pelayanan Data dan Informasi</i> /Center for Research, Data and Information
RUU	: <i>Rancangan Undang-Undang</i> /Draft Legislation, Bill
UU	: <i>Undang-Undang</i> /Law
UUD	: <i>Undang-Undang Dasar</i> /Constitution

The background of the entire page is a repeating geometric pattern of interlocking lines forming stars and polygons, rendered in a light green color against a darker green background. A dark green horizontal bar is positioned at the top, containing the chapter title. A thin white horizontal line is located just below the chapter title.

CHAPTER I

Introduction



The Authority of the DPR to Draft Legislation

The making of Laws¹ is the primary responsibility and authority of the DPR, aside from budgetary authority and oversight. The authority to make Laws is realized in the DPR's legislative function, which derives from the 1945 Constitution.

Article 20 of the 1945 Constitution stipulates the following:

- (1) The DPR has the authority to make Laws.
- (2) Every Bill shall be discussed by the DPR and the President to reach mutual assent.
- (3) If a Bill does not obtain mutual assent, the Bill cannot be resubmitted during the same session of the DPR.
- (4) The President shall sign into Law those Bills that have obtained mutual assent.
- (5) If a Bill has not been signed by the President within 30 days after it achieved mutual consent, the Bill may legitimately become Law and must be enacted as Law.

In France, the function of legislation also constitutes a legislative role for Parliament's lawmaking authority that is distinctly different from the regulative authority of the executive. The authority to formulate legislation (*la lois*) is held by Parliament as a consequence of its legislative power. If there is a difference between legislation (*la loi*, legislation) and regulation (*réglementaire*, regulation), the Constitutional Court and the Supreme Advisory Council have the authority to resolve this conflict of norms

The DPR's Duties and Authority to Formulate Laws

In detail, the DPR's role and authority to formulate Laws (*Undang-Undang*) are further stipulated in Law No. 27 of 2009 on the MPR, DPR, DPD, and DPRD, which states, among other matters, the following:

- a. make Laws that are discussed with the President to reach formal consensus;
- b. grant assent or not grant assent for Government Regulations in Lieu of Law that are proposed by the President to become Laws;
- c. accept draft legislation that has been submitted by the DPD in regard to regional autonomy; relations between the central and regional governments; the creation, partitioning, and merger of administrative regions; management of natural resources and other economic resources; and those relating to financial balance between the center and the regions;
- d. discuss Bills (RUU) submitted by the DPD with the President and the DPD before consensus is reached between the DPR and the President;
- e. discuss Bills submitted by the President or the DPR in relation to regional autonomy; relations between the central and regional governments; creation, partitioning, and merger of administrative regions; management of natural resources and other economic resources; and financial balance between the central and regional governments, with the participation of the DPD, before consensus is reached between the DPR and the President.

In principle, the stipulation of the authority to make Laws from the DPR constitutes an attributive authority bestowed upon the DPR by the 1945 Constitution and other Laws, a power which was previously held by the President (see Article 5 section (1) of the old 1945 Constitution). As a result, the burden for the creation of Laws that is actualized in the DPR's legislative functions has become the sole responsibility of the DPR. In other words, the Amendments to the 1945 Constitution have placed the DPR in a position as the primary formulator of legislation, while the President retains the authority to draft legislation in the form of a "right" to submit draft laws to the DPR, as well as the duty to endorse Bills that have been jointly approved to become Laws.

However, the DPR's legislative role is still nowhere near that of the Government, in terms of either quantity or quality. From 2005 to 2008, out of 172 Bills, only 42 originated from the DPR, while the remaining 130 bills were submitted by the Government.² From the perspective of quality, many Laws have been criticized by the public both with regard to their substance and formulation process, and those considered to conflict with the Constitution have been submitted to the Constitutional Court for judicial review.

The Law Making Process

The Stages of Law Making

The regulation of the law-making process can be found in Law No. 27 of 2009 on the MPR, DPR, DPD and DPRD and Law No. 10 of 2004, which divide the making of Laws into several stages: planning, preparation, drafting techniques, formulation, deliberation, ratification, endorsement, enactment, and dissemination.

The stages in the creation of Laws pursuant to Law No. 10 of 2004 theoretically start with: (1) the methods to prepare a Bill, (2) deliberation of the Bill in the DPR, and 3) the stages of approval and enactment. In other words, the process of forming a Law is a continuously performed activity, which starts with the emergence of an idea or concept regarding the need for regulation addressing a particular problem or issue.

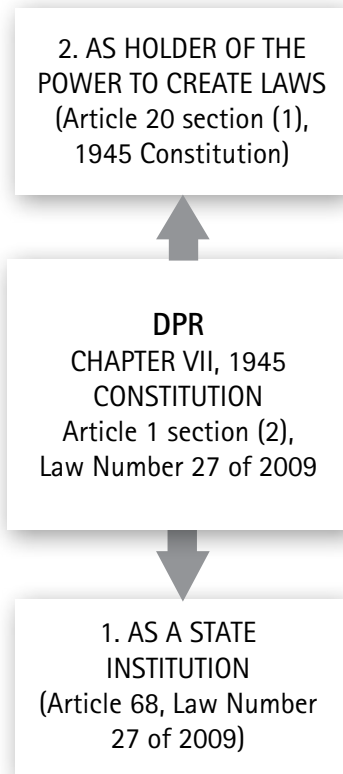
Origins of Proposed Bills

Proposals to establish Laws can originate with Bills proposed by the DPR, Bills from the Government, or Bills proposed by the DPD. This is followed by activities to prepare the Bill, by either the DPR, the DPD, or the Government. After such preparations, deliberations regarding the Bill are conducted in the DPR to achieve consensus, followed by approval, ratification, and finally enactment.³

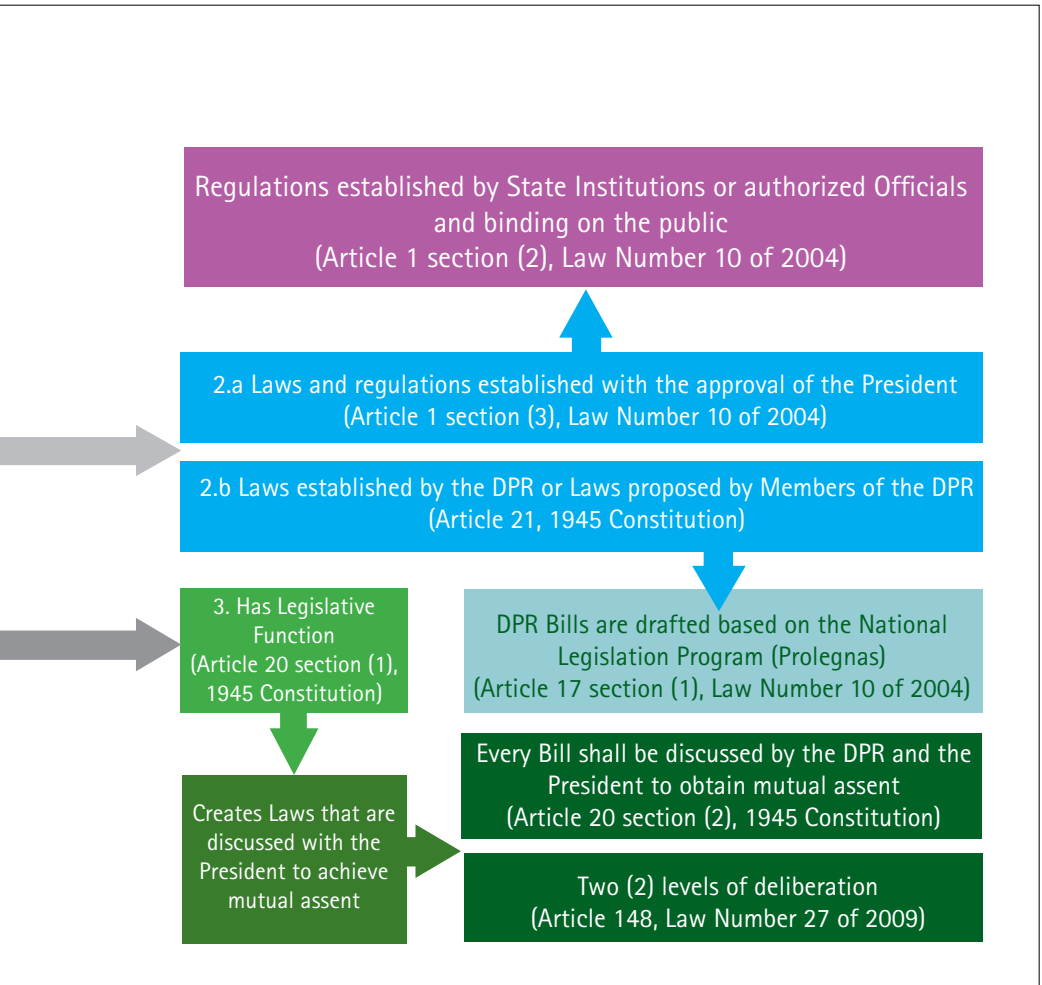
In connection with the DPR's legislative function, there are at least four roles that it bears: a) proposing DPR-initiated Bills, b) deliberating Bills submitted by the Government, c) evaluating existing Laws, and d) evaluating Government policies.⁴ The DPR can improve the quality of Laws that are produced by applying a better process in carrying out these four roles.

As an example, in the process of drafting Bills initiated by the DPR, the DPR needs a system and mechanism that will ensure that the will of the people is a reference in the formulation of the Bill. This system is needed to continuously expand public access in the drafting of Bills, through involvement of social groups such as the mass media, community organizations, NGOs, and other stakeholders. In other words, Initiative Bills must be guided by the common interests of society.⁵

Figure 1
Legal Foundations of Legislation



What is the authority and the legal basis for legislation in the prevailing Laws and regulations? The following figure explains and illustrates the relations between institutions and their legal basis.





CHAPTER II

**Preparation of Bills, Deliberation of
Bills, and Enactment**

The Process and Stages of Bill Preparation

Bills Originating from the DPR

Bills originating from the DPR are drafted in accordance with Law No. 27 of 2009 and the DPR's Standing Orders (*Tata Tertib*).

Bodies that Assist in Preparation of DPR-Initiated Proposals

Before a Bill becomes a DPR-initiated Bill, several other bodies may help to prepare draft Bills for legislation. As an illustration, the Bill on the Corruption Eradication Commission (KPK) was prepared by the PPP Party Group in the DPR, while the Bill on Procedure for Establishing Legislation was prepared by the Legislation Council's Assistance Team.⁶ Several other bodies have the functional authority to prepare Bills that will become DPR Initiative Bills. These bodies are the Center for Research, Data and Information (*Pusat Pengkajian Pelayanan Data dan Informasi/PPDI*), which has the duty of researching the substance of Bills, and the Drafting Team of the DPR Secretariat General, whose research informs the drafting of Bills.

In performing their functions as formulators of Bills, both the Legislation Council (*Badan Legislasi/Baleg*) and the expert teams from the Party Groups have their own particular mechanisms. The Legislation Council, for instance, as well as conducting its own research on certain Bills, also works with various universities throughout Indonesia. To prepare one Bill, the Legislation Council usually requests the assistance of three universities to conduct research and to disseminate the results of such research.

The Legislation Council also receives draft Bills from civil society; for instance the Bill on Freedom of Access to Information came from the Indonesian Center for Environmental Law (ICEL), and the Bill on Citizenship from GANDI (Anti-Discrimination Movement). For civil society, having the Legislation Council as an entry point for a proposal may appear more "neutral" than if it went through a Party Group, as it gives the impression of not being affiliated with any particular party. At the level of the Party Groups, the drafting of a Bill begins with the existence of a mandate from the parties'

respective conventions. The Party Group will then form a team of experts to draft the Bill based on input from society through the party's central or regional leadership.

DPR Initiative Proposals

First Stage

The drafting of a Bill can be accomplished in two ways: 1) Based on the National Legislation Program (Prolegnas) or 2) as an initiative from Members, Standing Committees, Joint Standing Committees, or the Legislation Council. The Prolegnas sets a scale of priorities in accordance with the changing needs of society.

During the first stage, an initiative Bill may be submitted by Members, a Standing Committee, a Combination of Standing Committees, or the Legislation Council. The proposal for the initiative Bill, together with explanatory information and/or a technical paper, is submitted in writing by Members, the Standing Committee Leadership, the Joint Standing Committee Leadership, or the Legislation Council Leadership to the DPR Leadership along with a list of names and signatures of the proponents and the names of their Party Groups, after going through harmonization, unification, and consolidation of the preliminary draft.

Harmonization, unification, and consolidation of the preliminary draft

The body that has the duty of harmonizing, unifying and consolidating the preliminary draft of a Bill submitted by Members, a Standing Committee, Joint Standing Committees, or the DPD before it is forwarded to the DPR Leadership is the Legislation Council.

Second Stage

In the next stage, in a Plenary Session after the Initiative Bill Proposal has been received by the DPR Leadership, the DPR Leadership notifies the Members that the Initiative Bill Proposal has been received and distributes it to all Members. During the Plenary Session it is decided whether the proposed Bill can in principle be accepted as a Bill proposed by the DPR or not, after the various Party Groups of the DPR are given the chance to present their views. The decision in the Plenary Session may take the form of:

- (1) Approval;
- (2) Approval with revisions; or
- (3) Rejection



If the proposal is approved, the DPR assigns the Bill to a Standing Committee, the Legislation Council or a Special Committee for further refinement. If the Bill is approved without revisions or has already been revised, it is forwarded to the President by the DPR Leadership with a request that the President appoint a Minister to represent the President in discussing the Bill with the DPR, and also to the DPD Leadership if the Bill that is proposed deals with matters under the DPD's purview.

Within 60 (sixty) working days after receiving the letter on submission of the Bill from the DPR, the President shall appoint a Minister who is assigned to represent the President in discussing the Bill with the DPR.

In regard to Bills that originate from the DPR, there are several regulations that require attention as prerequisites for validity:

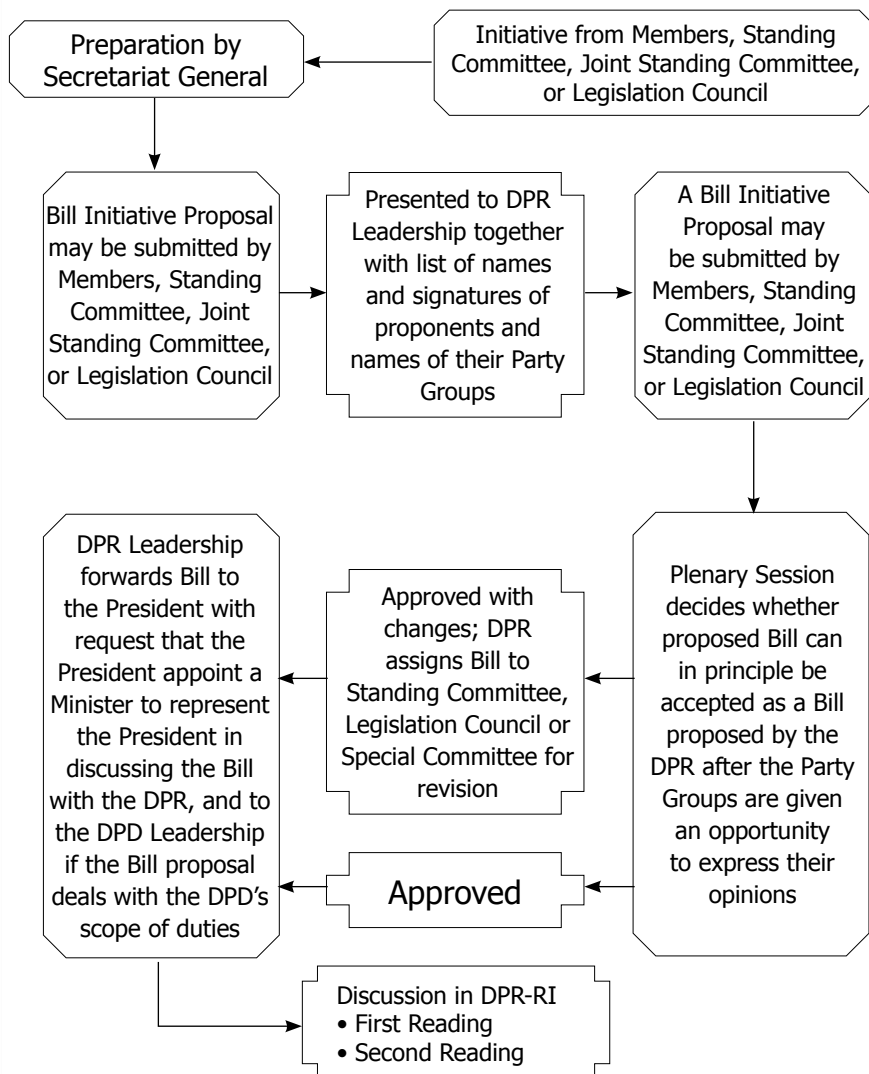
- a. The proponent has the right to propose changes as long as the Bill has not yet been discussed in the Deliberation Council (*Badan Musyawarah*), which determines the time allotted for discussion of the proposed Bill in Plenary Session;
- b. The proponent has the right to withdraw the proposal, as long as the proposed Bill has not been designated as a formal Bill by the Plenary Session;
- c. Notifications regarding changes or withdrawal of a proposal must be signed by all proponents and communicated in writing to the DPR Leadership, and then distributed to all Members of the DPR.

If, before a decision is made in the Plenary Session, the number of signatories of the Bill proposal drops down to below 13 (thirteen) persons, additional signatures must be added to bring the number up to at least 13 signatories. A decision regarding the number of signatures may be made for up to two Sitting Periods, and if the requirement is not met, the proposal fails and such failure is formally announced in the Plenary Session.

A Bill from the DPR that has been sent to the President, but has not yet been supported by the President's Letter of Introduction, may be withdrawn based on a decision of the Plenary Session. Conversely, a Bill that is being formally discussed in the First Reading can only be withdrawn with the joint approval of the DPR and the President. The flow process of drafting and submission of DPR Initiated Bill Proposals is shown in the figure below.

Figure 2

Process of Preparing Bills from the DPR



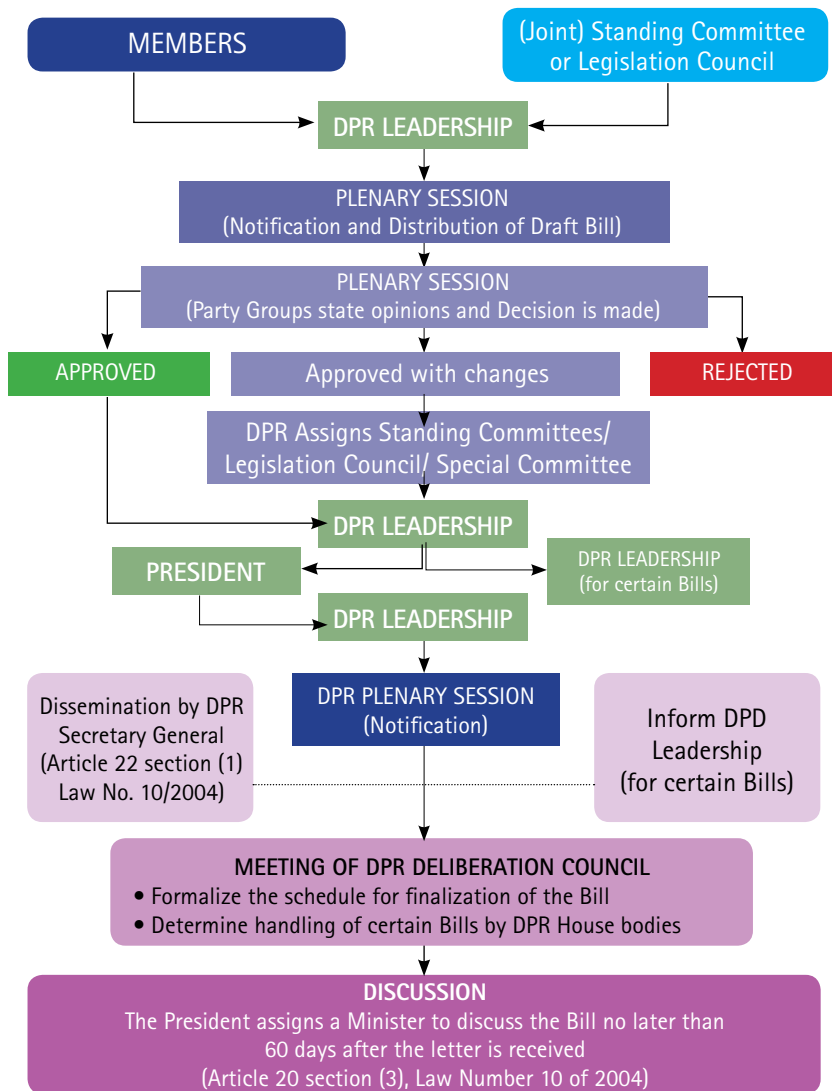
For a Bill that has been drafted and submitted by the DPR, the President assigns the Minister whose scope of duties covers the content of the Bill to coordinate further discussions with relevant Ministers and non-ministry governmental institutions. Pursuant to the provisions of Article 32 section (1) of Presidential Regulation No. 68 of 2005, the Minister who is assigned shall prepare the views and opinions of the Government and prepare suggestions for necessary improvement in the form of an Inventory List of Issues (*Daftar Inventarisasi Masalah/DIM*), in coordination with the relevant Ministers and heads of non-ministry governmental institutions. If there are differences of opinion in the presentation, the assigned Minister and the other relevant ministers shall report to the President to obtain a decision or guidance.

The views and opinions of the Government, together with the Inventory List of Issues (DIM), will be forwarded to the President, who then assigns a Minister to represent him/her for the deliberations in the DPR and communicates this appointment to the DPR Leadership. The appointment notification also includes the opinions of the Government on the Bill proposed by the DPR. The appointment of the relevant Minister and communication of the opinions of the Government shall be submitted to the DPR Leadership within 60 (sixty) working days from when the DPR Leadership's letter was received.

In practice, the Government's version of the DIM (Inventory List of Issues) is often not very well formulated. For example, Defense Minister Juwono Sudarsono acknowledged the weakness of the Government's version of the DIM for the Bill on State Secrets. The process of drafting the DIM was conducted with the involvement of several government agencies: the Ministry of Communication and Information, the State Intelligence Agency, and the Coordinating Minister for the Economy, in addition to the Defense Ministry. Because of the involvement of so many institutions, poor coordination, and minimal harmonization, many terms used were ambiguous and open to multiple interpretations. ⁷

The following figure (Figure 3) shows the process for Bills originating from the DPR:

Figure 3
Bills Originating from the DPR



Bills Originating from the President

Pursuant to the First Amendment of the 1945 Constitution, the President has the right to submit Bills to the DPR. This provision creates a dynamic relationship between the executive and legislative branches of government in the creation of legislation.⁸ The term "has the right" (*berhak*) in the norms of Article 5 section (1) clearly delineates certain roles that may and may not be performed by the President. Yet in the practice of state affairs, the President plays quite an active role in the creation of Laws, in the process and stages of preparing Bills, deliberation of Bills, and enactment of Laws.

In the legislative process, Bills that are submitted by the President will at certain stages employ the use of the institution of the presidency, the Government (administration), and the relevant Ministries. This legal fact clarifies the position and legal functions of governmental offices, whether in the preparatory, deliberation, or enactment stages. It is not excessive to say that through this role these institutions gain a comprehensive understanding of the legislative process, because inherent in the roles borne by these state institutions is an institutional authority in the legislative process, which it is hoped will promote an institutional synergy in the creation of Laws.

What is the procedure for preparing Bills that are submitted by the President? As well as in Law 10/2004, regulation related to this can be found in Presidential Regulation Number 68/2005 regarding Procedures for Preparing Bills, Drafts of Government Regulations in Lieu of Law, Drafts of Government Regulations, and Drafts of Presidential Regulations, which was promulgated on 13 November 2005. The procedure for the preparation of Bills originating from the Government involves the following stages:

1) Drafting of Bills

The drafting of Bills can be done in two ways. The first is initiatives based on the National Legislation Program (Prolegnas). The drafting of Bills based on the Prolegnas does not require formal permission for the initiative from the President. Secondly, in certain circumstances, the initiative to draft Bills outside the Prolegnas can be undertaken after submitting a request to the President for permission for the initiative, accompanied by an explanation of the concepts underlying the proposed Bill. Explanations regarding the intended Bill require the following:

- a. Urgency and purpose of the regulation;
- b. Target to be achieved;
- c. Conceptual framework, scope, or object to be regulated;
- d. Reach and direction of the intended regulation.

The specific circumstances required for submitting a Bill outside the Prolegnas are as follows:

- a. establishing a Government Regulation in Lieu of Law as a Law;
- b. ratifying international conventions or treaties;
- c. executing a verdict of the Constitutional Court;
- d. dealing with extraordinary situations, conflicts, or national disasters; or
- e. other certain conditions that ensure the national urgency of a Bill that is jointly approved by the DPR Legislation Committee and a Minister.

In drafting a Bill, the initiative can be taken by first writing a Technical Paper regarding the material that will eventually be addressed by the Bill. The Technical Paper formulates, among other matters, the philosophical, sociological, and legal basis for the Bill, as well as the main points and the scope of the material that will be regulated. The Technical Paper can be drafted by the initiator together with the Ministry responsible for legislation - the Ministry with duties and responsibilities in the field of Laws and regulations is the Ministry of Law and Human Rights (Dephukham). The actual drafting side of this endeavor can be assigned to scholars at a university or another third party with sufficient experience in the field.

a. Drafting of Bills Based on Prolegnas

In the first phase, the initiator will establish an Interdepartmental Committee led by a chairperson appointed by the initiator. The members of the committee should comprise elements from the ministries and non-ministry government agencies related to the substance of the Bill. According to Article 6 of Presidential Regulation No. 68/2005, Interdepartmental Committees shall be formed after the Prolegnas has been promulgated by the DPR.

To form an Interdepartmental Committee, the initiator submits a letter of request for members of the Interdepartmental Committee to the relevant Ministers or heads of government agencies. The request is accompanied by a description of the concept and main points of the Bill, and other supporting materials that will give a general picture of the matters to be addressed in the Bill. The Minister or relevant agency should respond to the letter of request within seven working days. The response will provide the names of officials with the authority to make decisions, legal experts and/or legislative drafters who have the technical competence to address the issues in the Bill. The formation of the Interdepartmental Committee should be completed within 30 working days from the submission of the request letter.

In every Interdepartmental Committee, a representative from the Ministry of Justice and Human Rights, as the Ministry responsible for legislation, also participates in order to harmonize the Bill and ensure proper techniques of legislative drafting. Pursuant to Article 9 of Presidential Regulation No. 68/2005, the head of the legal bureau or head of the work unit that manages functions in the field of legal regulations in the initiator's institution shall functionally act as the secretary of the Interdepartmental Committee.

The Interdepartmental Committee focuses its discussion upon the principal issues regarding the object to be regulated and the scope and direction of the regulations. The drafting activities, including preparation, processing, and formulation of the Bill, are performed by the legal bureau or work unit that manages functions in the field of legal regulations in the initiator's institution.

The output of this drafting is forwarded to the Interdepartmental Committee to examine how well it accords with the principles that have been agreed upon. The officials, legal experts, and/or legal drafters serving as members of the Interdepartmental Committee are required to submit reports to and/or request guidance from their Ministers/heads of agencies regarding the progress in the Bill drafting and/or the problems being faced. In the deliberations of the Bill in the Interdepartmental Committee, the Initiator can invite experts from academia or from other social, political, professional and community organizations as needed.

During the discussion of the Bill by the Interdepartmental Committee, the Chairperson of the Interdepartmental Committee is required to report progress in the drafting of the Bill and/or problems that are faced to the initiator to seek decisions or guidance.

When the discussions are complete, the Chairperson of the Interdepartmental Committee forwards the final formulation of the Bill to the initiator, together with explanations as needed. Before the initiator submits the Bill to the Ministers and heads of relevant agencies, the Initiator may disseminate the Bill for review so that the Interdepartmental Committee can refine the Bill.

After that, the initiator forwards the Bill to the Minister with duties and responsibilities in the sector of laws and regulations, which is currently the mandate of the Minister of Justice and Human Rights, and to other relevant Ministers or heads of agencies to receive their input and initials of approval. The opinions and initialing of approval from the Minister of Justice and Human Rights focus mainly on the harmonization of concepts and techniques of legislative drafting and should be provided within a maximum of 14 working days from when the Bill is received.

In the event that the initiator perceives discrepancies among the opinions received, the initiator and the Minister of Justice and Human Rights shall resolve these differences with the other relevant ministers and/or heads of agencies. If these efforts at reconciliation do not succeed, the Minister of Justice and Human Rights submits a written report on the issues to the President for review and a decision.

Once there are no further problems with the Bill, the initiator submits the Bill to the President, who will forward it to the DPR with a copy to the relevant Minister.

If the President is of the opinion that the Bill still contains problems, the President will assign the Minister and the initiator to coordinate and further revise the Bill. Within 30 working days from the assignment, the initiator resubmits the Bill to the President, with a copy to the relevant Minister.

b. Drafting of Bills outside Prolegnas

If a Bill is proposed outside the Prolegnas, in formulating the concept of the Bill the initiator is required to consult with the Minister of Justice and Human Rights so as to harmonize, solidify and refine the concepts in the Bill. Further, the Minister of Justice and Human Rights will coordinate further dialogue on the concept with officials with decision-making authority, legal experts, and/or legislative drafters from the initiator's institution and other related institutions. If necessary, such coordination may also involve universities and/or other social, political, professional or community organizations as appropriate to the drafting of the Bill.

If this coordination fails to produce harmony, unanimity, and solidity on the concepts of the Bill, the Minister of Justice and Human Rights and the initiator shall report this to the President together with an explanation regarding the differences of viewpoints to obtain a decision and guidance, which will also serve as the approval and permission for the initiator to draft the Bill.

2) Relaying a Bill to the DPR

Pursuant to the provisions of Article 25 of Presidential Regulation No. 68/ 2005, a Bill that has been approved by the President will be forwarded to the DPR for discussion. Then, the State Secretary Minister will prepare the President's Letter to the DPR Leadership which will be sent with the Bill along with a Governmental Explanation regarding the Bill.



The Presidential Letter will contain the following:

- a. The Minister who is assigned to represent the President in the discussion of the Bill at the DPR;
- b. The nature of the intended resolution of the Bill; and
- c. The method of addressing or discussing the issue.

The Governmental Explanation is prepared by the initiator, and shall contain among other things:

- a. Urgency and goals of the submission;
- b. Targets to be accomplished;
- c. Conceptual framework, scope, or objects to be regulated; and
- d. Reach and direction of the regulation; all of which will illustrate the overall content of the Bill.

Copies of the President's Letter are sent to the Vice President, coordinating ministers, the Minister assigned to represent the President/initiator, and the Minister of Justice and Human Rights. For discussion of the Bill, the initiator disseminates the Bill to all relevant parties in the numbers required.

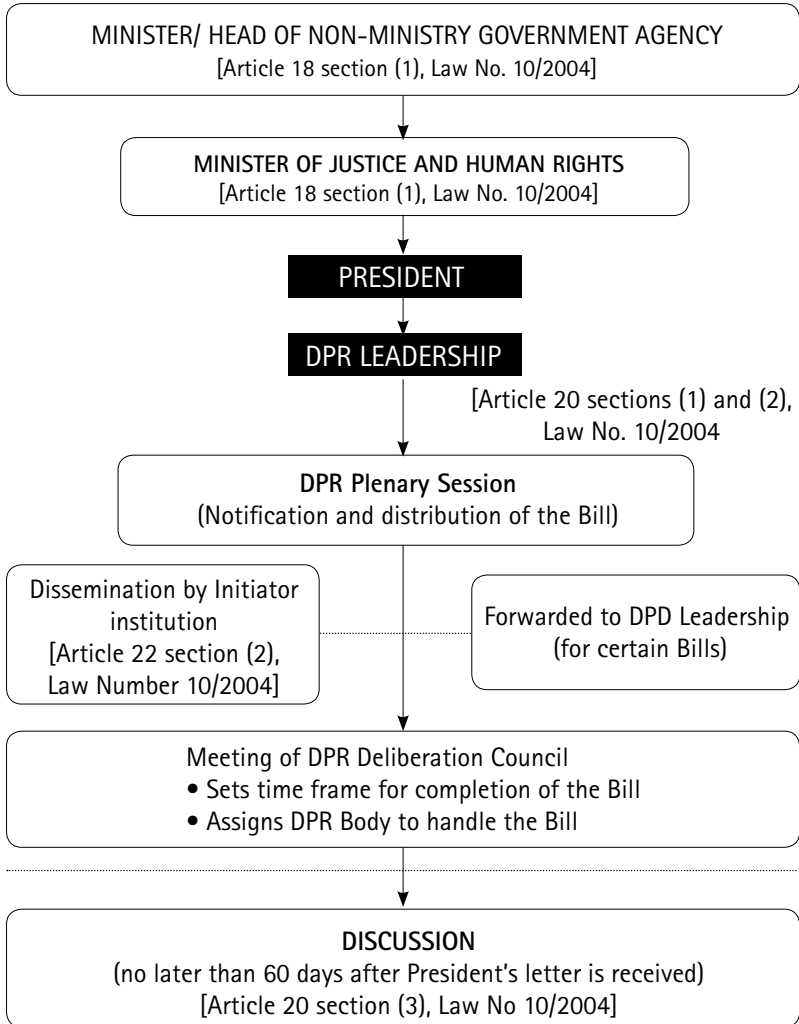
In deliberations of the Bill in the DPR, the Minister designated to deliberate the Bill is required to report to the President on progress and any problems that are faced in order to receive decisions and direction. If, in the deliberations, there are problems of principle and the direction of the deliberation is likely to alter the content of the Bill, the designated Minister must report these developments to the President together with recommendations for a solution in order to receive a decision.

The final opinion of the Government in deliberation of the Bill at the DPR is communicated by the designated Minister, after first reporting it to the President.

The designated Minister shall immediately report to the President when the DPR has or has not given its approval. In the event that the Bill does not achieve consensus between the President and DPR, the Bill in question may not be submitted again during the same session of the DPR.

The following diagram shows the flow process of a Bill submitted by the President.

Figure 4
Bills originating from the President



Bills Originating from the DPD

With the enactment of Law No. 27 of 2009 on the MPR, DPR, DPD and DPRD, the procedure for submission and deliberation of Bills originating from the DPD has also undergone some changes. The procedures for preparation (drafting process) and deliberation of a Bill that originates from the DPD are to be regulated in the Standing Orders of the DPD, with reference to the most recent amendment of the Law.

The Bills that may be proposed by the DPD to the DPR are Bills related to regional autonomy; relations between the central and regional governments; the creation, partitioning, or merger of administrative regions; management of natural resources and other economic resources; and matters relating to financial balance between the central and regional governments.

After going through the legislative drafting process in the DPD, in principle, a Plenary Session of the DPD will decide whether the Proposed Bill can be accepted as a DPD-Proposed Bill or not. There are three possible decisions by the Plenary Session:

- a) Accepted,
- b) Accepted with changes, or
- c) Rejected.

The decision is made after the Bill Drafting Committee has presented its explanation and the proponent is given the opportunity to present its views. If the Proposed Bill is accepted with changes, the DPD assigns the Bill Drafting Committee to refine the proposed Bill. A proposed Bill that has been accepted without changes, or a Bill that has been revised, will be forwarded to the DPR Leadership and the President together with a Cover Letter from the DPD Leadership.

The Bill Deliberation Process in the DPR

The entire formal deliberation of the Bill is conducted in the forum of DPR sessions. The Government and the DPD may participate in these deliberations, but the final decision regarding the Bill rests with the DPR. However, the DPR may not decide on the Bill without the consent of the Government.⁹ Every Bill, whether it originates from the Government, the DPR or the DPD, is deliberated in the DPR through two levels of discussion:

1. First Reading (Level I), conducted in Standing Committee Meetings, Joint Standing Committee Meetings, Legislation Council Meetings, Budget Committee Meetings, or Special Committee Meetings.
2. Second Reading (Level II), conducted in a Plenary Session.

In the First Reading, the Bill will be discussed in Standing Committee Meetings, Legislation Council Meetings, Budget Committee Meetings or Special Committee Meetings, together with the Government, with the following activities:

- a. Introduction to deliberation:
 1. The DPR provides an explanation and the President's views are presented, if the Bill originates from the DPR;
 2. The DPR provides an explanation and both the President's and the DPD's views are presented, if a Bill is related to the authority of the DPD originates from the DPR;
 3. The President's explanation is presented and the various Party Groups (*Fraksi DPR*) provide their views, if the Bill originates from the President; or
 4. The President's explanation is presented and the Party Groups and the DPD present their views, if a Bill related to the authority of the DPD originates from the President.
- b. Deliberation of the inventory list of issues submitted by:
 1. the President, if the Bill originated from the DPR;
 2. the DPR, if the Bill originated with the President.
- c. Presentation of brief opinions, presented at the end of the First Reading by:
 1. the DPR Party Groups;
 2. the DPD, if the subject of the Bill falls under the responsibility of the DPD;
 3. the President.

There are two matters that should be noted regarding the First Reading:

- (1) If the DPD does not state its views and opinions, the First Reading will still take place.
- (2) In the First Reading, the heads of state institutions or other institutions may be invited if the content of the Bill is related to the institutions in question.

The Second Reading is then conducted, as follows:

- (1) The Second Reading consists of decision making in a Plenary Session, with the following activities:
 - a. The presentation of a report containing the process, the brief opinions of the Party Groups, the brief opinion of the DPD, and the results of the First Reading;
 - b. Oral statements of approval or rejection by each DPR Party Group and by Members as requested by the chairperson of the Plenary Session; and
 - c. The final opinion of the President as communicated by the Minister representing him/her.
- (2) If agreement cannot be reached through deliberations to achieve consensus (*musyawarah untuk mufakat*), the decision will be made through majority vote;

(3) If the Bill does not achieve reach mutual assent of the DPR and the President, the Bill may not be submitted again during the same sitting period of the DPR.

Once the deliberations in the Second Reading are completed, a Bill that has been jointly agreed upon by the DPR and the President will be sent to the President for formal ratification. The next diagram shows the deliberation of Bills in accordance with the respective proposing institutions.

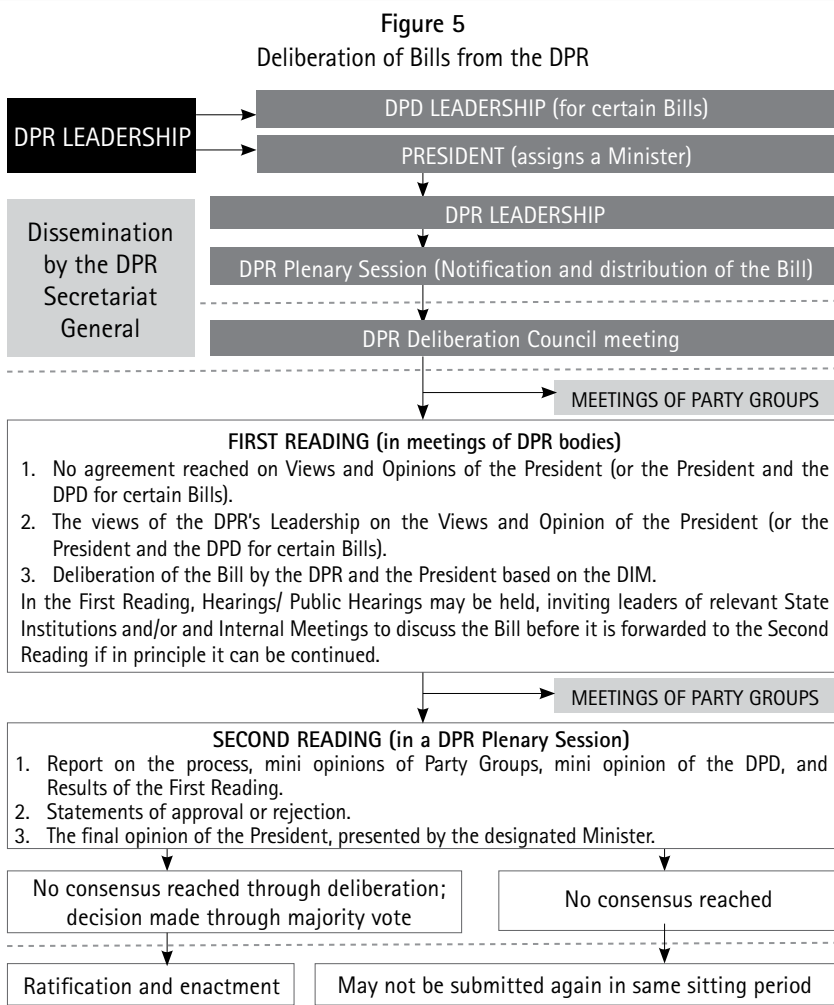


Figure 6
Deliberation of Bills Submitted by the President

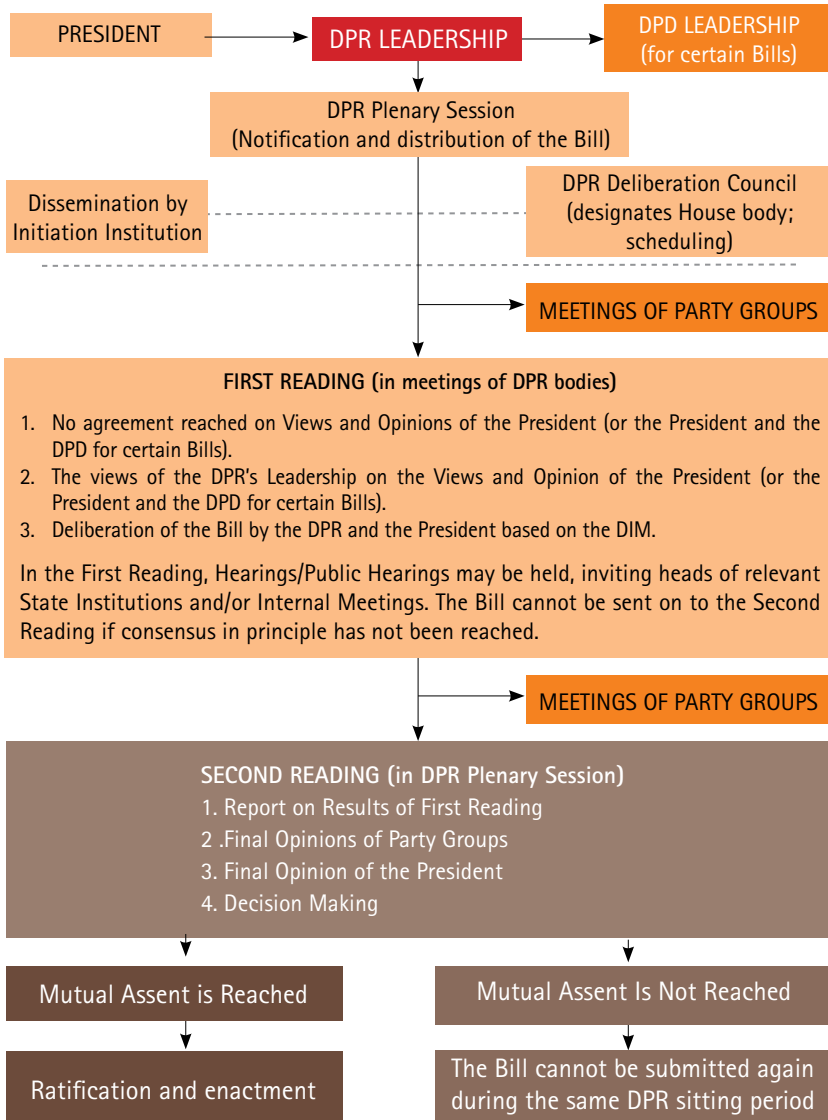
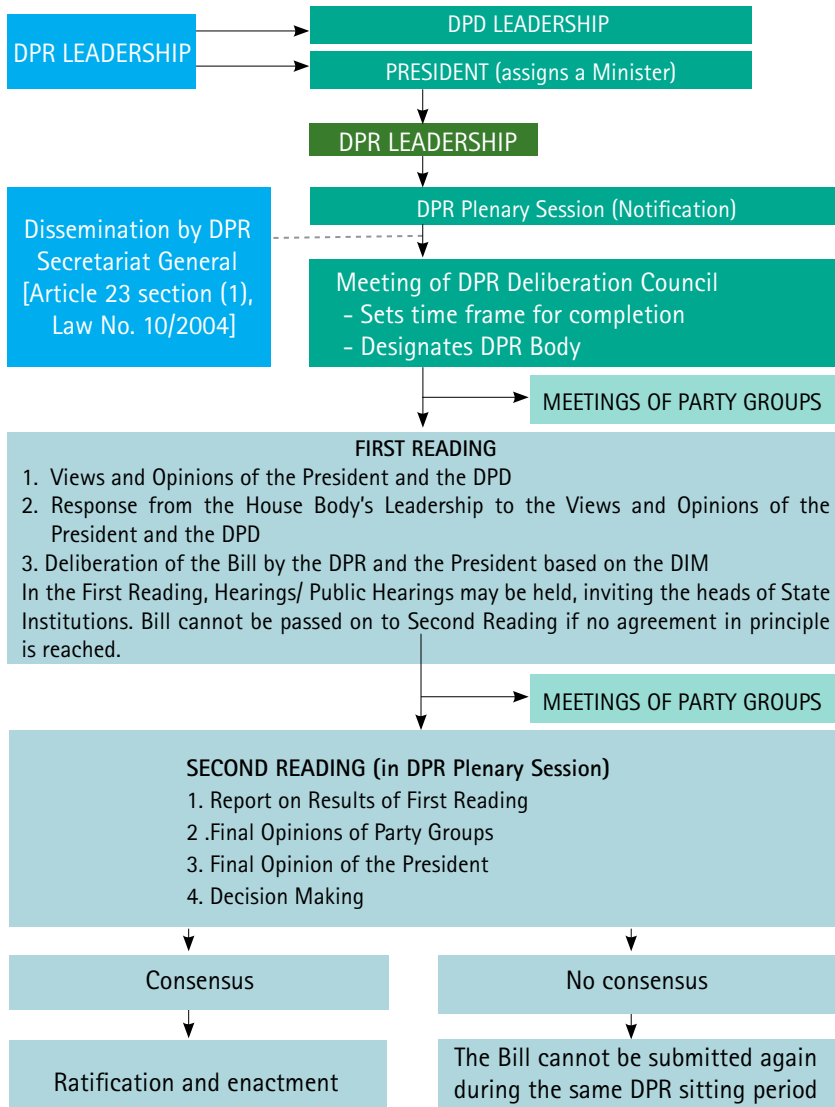


Figure 7
Deliberation of Bills from the DPR with DPD Participation



Ratification of Bills and Enactment

Pursuant to Article 37 of Law Number 10 of 2004, a Bill that has been jointly agreed upon by the DPR and President shall be enacted within seven days after the consensus is reached.

After receiving a Bill that has been approved by the DPR and the President, the State Secretariat will set it forth on presidential paper and finally send it to the President to be endorsed as a Law.

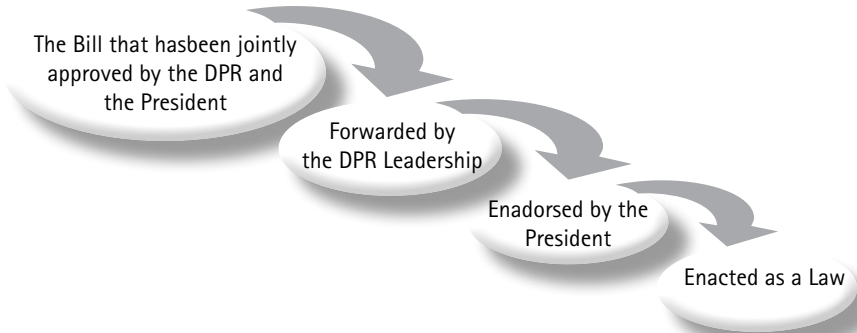
The endorsement of a Bill that has been jointly approved is effected through the President's signature no later than 30 days after the ratification of the Bill to become Law by the DPR and President.

After the President endorses the Bill that has been jointly agreed with the DPR, the new Law will be formally enacted by the Minister of Law and Human Rights so that the Law will be valid and possess the binding power of proper legislation. Normally, any Law or regulation comes into effect and has binding force upon the date of its enactment, unless stipulated otherwise in the Law or regulation concerned.

If the Bill is not signed by the President within 30 days after it was approved by the DPR and President, the Bill become a valid Law and must be enacted, in line with the provisions of Article 38 section (2) of Law Number 10 of 2004 and Article 20 section (5) of the Amended 1945 Constitution.

After the Law has been enacted in the State Gazette of the Republic of Indonesia, the Government must disseminate the newly-enacted Law.

Figure 8
Enactment



- 1) A Bill that has been approved is sent by the DPR Leadership to the President to be endorsed within seven working days;
- 2) If within 15 working days the Bill has not been endorsed as Law, the DPR Leadership sends a letter to the President to request an explanation;
- 3) If the Bill is not endorsed by the President within 30 days from when it was approved, the Bill becomes valid as a Law.

CHAPTER III

**The Process of Amending Laws,
Public Participation, and the Role of
the Constitutional Court in the Law
Making Process**

The Process of Amending Laws

Definition of Amendment

A Law is amended when it becomes apparent that certain provisions in the Law are no longer appropriate to the characteristics or conditions prevailing in society. This may, for example, be the result of a legal verdict of the Constitutional Court that invalidates and requires the amendment of certain articles, sections, and/or parts of a Law.

The amendment of a Law can involve:¹⁰

1. Adding or inserting new provisions, refining or deleting existing provisions, whether in the form of chapters, articles, sections, or wording, numbers, letters, punctuation, etc.
2. Replacing certain provisions with other provisions, whether in the form of chapters, articles, sections, or wording, numbers, letters, punctuation, etc.

How is the process of changing a Law carried out? In principle, changes can be made in the initial stages of law making by submitting an amendment Bill. The initiator may submit a Bill for certain reasons, such as to implement a decision of the Constitutional Court (MK), if the Bill originated from the Government, or conversely if the Bill originated from the DPR or DPD in line with the duties and authority of these institutions.

Several Principles that Must be Observed in Amending Laws

There are several principles that must be observed when amending a Law, including the following:

1. A Law can only be amended by:
 - a. a legal regulation of the same type, that is, a Law.

Example: Law Number 16 of 2001 regarding Foundations was amended through Law Number 28 of 2004; or

- b. a legal regulation that is at the same level as a Law, that is, a Government Regulation in Lieu of Law (Perpu). However, for such Perpu, approval must be requested from the DPR.

Example: Government Regulation in Lieu of Law (Perpu) Number 3 of 2005 on Amendment of Law Number 32 of 2004 regarding Regional Governance. Perpu Number 3 of 2005 was approved by the DPR and ratified as a Law through Law Number 8 of 2005.

2. The "Considerations" section of the amendment Law must state the reasons why changes to the old Law must be made.
3. Even though amendment of a Law is permitted, if the amendment causes:
 - a. changes in the systematic organization of the Law itself;
 - b. the content of the Law to change by more than 50 percent; or
 - c. a change in its essence, then the Law that is to be amended should ideally be revoked and reformulated as an entirely new Law that addresses the same issue (through a process of revoking the Law and replacing it).
4. Changes to Laws are made by:
 - a. inserting or adding new material;
 - b. deleting part of the material; and/or
 - c. replacing or altering some of the material with new material.
5. Amendment of a Law can be made towards:
 - a. books, chapters, parts, articles, sections, general elucidation, elucidation article by article, and/or attachments; and/or
 - b. words, phrases, sentences, terms, numbers, and/or punctuation.
6. Basically, the main body of the amended Law consists of two articles which are written with Roman numerals (Article I and Article II), as follows:
 - a. Article I contains the title of the amended Law and all the amended material.
 - b. Article II contains provisions regarding when the Law comes into force. In certain circumstances, Article II may also contain transitional provisions of the Law of Amendment, which are different from the transitional provisions of the original Law that is being amended.

Public Participation in the Lawmaking Process

Regulation

Participation of the public or society in the process of establishing laws and regulations is regulated by Law No. 10 of 2004, Presidential Regulation No. 68 of 2005, and within the DPR by the Standing Orders of the DPR. Public participation is possible both during the stage of Bill preparation and during the stage of deliberation of a Bill.

Broadly speaking, public participation in the formation of new Laws can be conducted in the forms of 1) dissemination to the public, and 2) accommodation of public aspirations.

Dissemination of Bills

According to Law Number 10 of 2004, dissemination of Bills originating from the DPR shall be done by the DPR Secretariat General, while dissemination of Bills originating from the President shall be done by the initiator institution.

The purpose and objective of dissemination is so that the general public is aware of the existence of a Bill being discussed by the DPR so that they can provide input on the content of the Bill. Dissemination can be done through electronic media such as TV, radio, and the Internet and through print media such as newspapers, magazines, and flyers.

Capturing Public Aspirations

If the goal of dissemination is achieved, it is hoped that the public's right to provide input on the Bill will be fulfilled. Public input can be conveyed orally or in writing during the deliberation of the Bill. The main techniques for conveying public aspirations are as follows:

1. During the Stage of Preparation of the Bill:

Written:

- addressed to the DPR Leadership, clearly indicating the writer's identity.
- within seven days, the leadership will forward the input to the House body that is handling the Bill.

Oral:

- the leadership of the House body sets a time for a meeting and the number of people to be invited.

The meeting can be held in the form of a Public Hearing, a Meeting with the Leadership of the House body, or a Meeting with the Leadership of the House body accompanied by several Members. The results of these meetings will then serve as input for the Bill.

2. During the Stage of Deliberation of the Bill

Written:

- addressed to the DPR Leadership, clearly indicating the writer's identity, before the Second Reading.
- within seven days, the leadership will forward the input to the House body that is handling the Bill.

Oral:

- the leadership of the House body sets a time for a meeting and the number of people to be invited.

The meeting can be held in the form of a Public Hearing, a Meeting with the Leadership of the House body, or a Meeting with the Leadership of the House body accompanied by several Members. The results of these meetings will then serve as input for the Bill that is being discussed with the President.

Forms of Activities

Besides input based on the public's request, the House body that is preparing or discussing a Bill can engage in other activities to obtain public input. The forms of these activities may include: (a) Public Hearings, (b) Visits, (c) Seminars, or (d) other similar activities, such as workshops of Focus Group Discussions.

From the forms of public participation or involvement of the general public and/ or stakeholders in the process of establishing Laws as mentioned above, participatory activities are conducted as needed.

The following diagram shows the forms of public participation at various stages: during the process of preparation, during the process of deliberation by the legislative institution, and after the Law has been enacted to be put into force and implemented.

Figure 9
Dissemination of a Bill

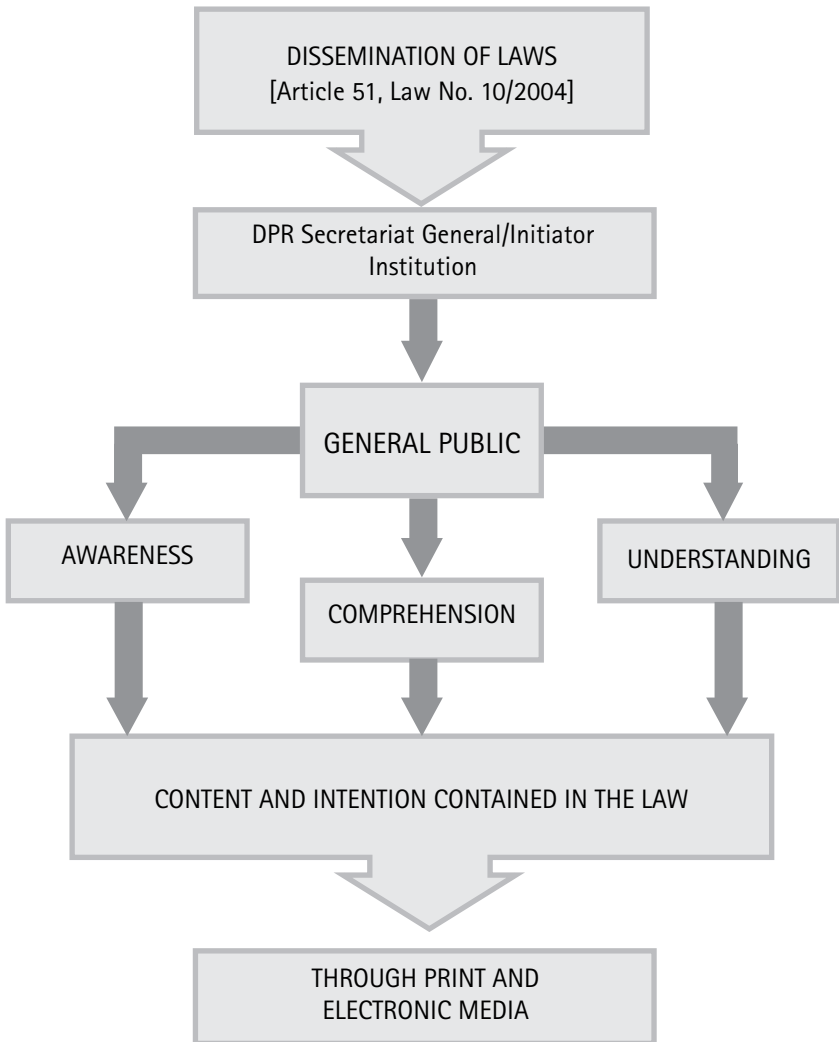
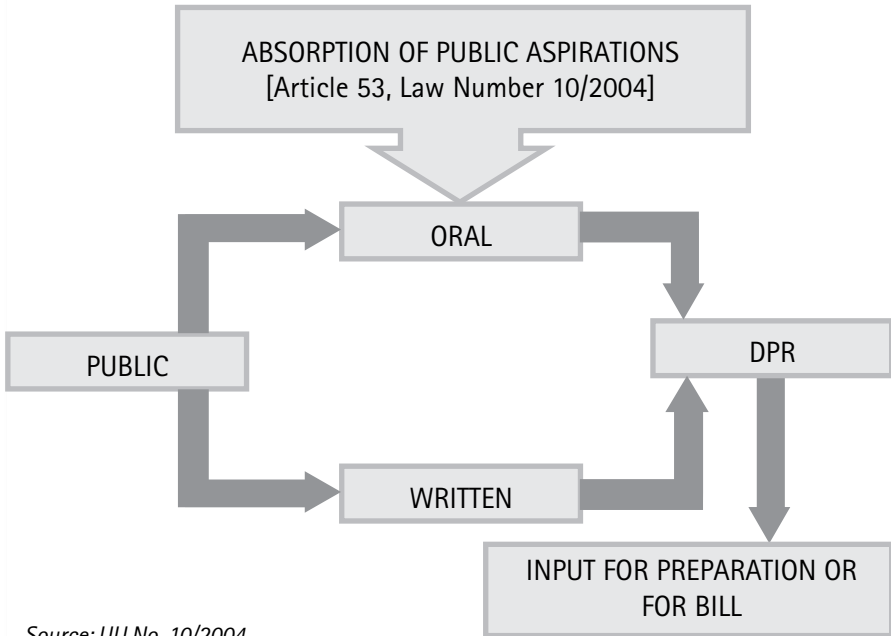




Figure 10
Absorption of Public Aspirations



Source: UU No. 10/2004

Practices of Capturing Public Aspirations

The regulation of public participation in legislation represents a very positive step in the context of empowering the public to become actively involved in the legislative process. Nevertheless, the forms provided for dissemination of Bills and Laws and the absorption of public aspirations by providing written and oral input through dialogues and/or hearings indicate that the Government or that the DPR, in formulating these forms of public participation, based this mainly on a passive approach; it seems to be assumed that the people already know and understand the issues, content and purpose of a Bills and Law by themselves, and that the people know about and are able to exercise their right to provide input.



The problems that arise are as follows:

1. In reality, often the public's participation is engineered to provide legitimacy and fulfill the formal requirements of the legislative process, merely as a formality to fulfill the requirements of democratic principles and good governance, or to reduce unrest and/or rejection by elements of the populace.
2. In terms of the scope of the topic in question and the territorial reach, the approach to dissemination of Bills using the facilities and infrastructure of communication and information technology can be considered efficient and effective. This approach reaches the general public and reflects the implementation of democratic principles in the legislative drafting process.
3. When seen from the media that are used, the target is elements of the community and/or stakeholders who have relatively strong ability and ease of access to information through electronic and print media. This approach is most appropriate for discussion and formulation of certain types of legislation whose regulatory scope does not directly affect the general public. That is, the main target for aspiration incorporation is only certain stakeholders, whether intended or not, who are considered to have a direct interest in the content of the Bill.

For example: Dissemination of the Bill on Corruption Crimes through electronic media, communication and information is not the most effective way to absorb the aspiration of the public in the regions. This is because the people in the regions do not necessarily know or understand about, let alone have the ability to provide written input and arguments on this issue to the central or regional governments or to the DPR or the DPRD (Regional Houses of Representatives).

On the other hand, a direct approach through dialogue or hearings is essentially elitist, because its target is community groups or stakeholders who claim to speak in the name of the common people, such as NGOs, experts, academics, public figures, associations, professional and functional organizations, and other community organizations. But considering the level of the difficulties faced, since dialogue and public consultation with the entire community is needed, the approach of using dialogues and hearings with stakeholders is the most effective means to capture the aspirations of various sectors in society, even if somewhat elitist.

The goal of public participation is, actually, to empower the public. First, the people gain extensive opportunities and access to convey and struggle for the aspirations to which they are entitled, and to know and understand their obligations and responsibilities as citizens. Second, stakeholders have the opportunity to upgrade their ability to exercise the functions of public oversight.

The public oversight function can be exercised through a variety of activities; one of these is advocacy on public policies. Advocacy is performed so that the institutions and officials who make policies do not act arbitrarily in their use of power and authority, especially in matters relating to legal certainty, protection, and public welfare.

As well as exercising oversight and offering criticism, such advocacy also provides input to the institutions and officials in positions of authority about what the public feels needs to be regulated, what the obligations and responsibilities of the Government and the people's representatives are in providing services and protection to the people, and what needs to be done by the public to fulfill their own obligations and responsibilities. In this regard, it is essential for both the central and the regional governments, especially officials in the government bureaucracy, to provide adequate space for empowerment of the public to develop and enhance their active role in supporting the preparation, drafting and establishment of Laws and regulations, and for their successful implementation.

The creation of laws and regulations whose subjects and objects relate to the public basically occurs because: First, society needs to be regulated, that is, in connection with the aspirations and needs of the public to stipulate norms and values existing within the society as binding legal norms. In this matter, the Government acts as a facilitator; the people are given the opportunity to formulate for themselves what is needed, the direction of the regulation, and the content of the regulatory material. The Government, in its capacity as a regulator, then accommodates the aspirations of the public and matches them with legal policies, Laws, and regulations, whether national and/or regional.

Secondly, to elaborate the Vision, Mission, and Direction of legal policy with the goal of revitalization and in line with the demands of changes in society by regulating new matters that will shape new values within society; new values that are defined in contrast with the existing values of society, and that are intended to affect change in society and its values (example: Law Number 5 of 1979 on Village Governance, which affected the values and societal norms of Marga and Nagari).



Today, the creation of Laws is oriented mostly towards the second of the two points above, and because they are not in line with the aspirations and needs of society, many rules and regulations are either not implemented or are greeted with a strong rejection by some members of the community. For that reason, there is a need to better understand the diversity of values and norms that exist in society, by empowering society to take an active role in the processes of planning, formulating, and deliberating draft legislation.

It would also be very good if every DPR Member could dig deep into the communities that are directly affected, through meetings with their constituents during recess period, so as to know and understand the issues and the causes of the issues actually faced by the community and/or stakeholders, as well as steps to tackle these problems. In this way, this data, information and input in the form of problems existing in society, their root causes, and the aspirations of stakeholders that require regulation can be analyzed and then combined with the input obtained from the results of dissemination and hearings, as described above.

In this way, material for the concepts and contents of draft Bills should not be based solely on ideas, opinions, and rational analysis of concepts, theories, experience and formal legalism, or the principle of doing what is best for oneself or in the interest of power, politics, and the vested interests of certain groups. This is the real reason why the processes of public participation have not developed as hoped, and why the public is disappointed: they feel their aspirations are neglected. This situation can make the public apathetic or cause them to manifest their discontent through rejection, demonstrations, and even anarchistic resistance to the law.

The Role of the Constitutional Court

Introduction

In modern states, it has become a tradition to monitor the exercise of power in the making of (draft) Laws by legislative bodies.¹¹ This tradition is a reflection of the basic concept of the separation of powers in a democratic government based on Laws. This also applies to oversight of other legal regulations that have already been established. The 1945 Constitution, as the highest Law of the Indonesian governmental system, bestows authority and sets limits upon legislative institutions to create Laws through a system of separation of powers that also involves the executive branch. It is important to understand that the constitutional concept requires limits to prevent the excessive use of power. The power of the state must be based upon the foundation of a constitutional

system. The regulation of the creation and the material content of legal norms is clearly stipulated in the Constitution and is not open to further interpretation.

In the theory of institutions to test constitutionality of laws, generally the law makers, judges, or some specific governmental body is assigned to perform this function. In Germany and France, there are separate institutions to evaluate the constitutionality of Laws. In Germany, this is called the *Bundesverfassungsgericht* as stipulated in Article 93 in conjunction with Article 94 of the *Grundgesetz* (Constitution).¹² In France, the duty of evaluating the constitutionality of Laws is delegated to the *Conseil Constitutionnel*, as stipulated in Article 61 of the Constitution.¹³ This institution assesses the constitutionality of all organic Laws (Institutional Acts). In regard to other Laws, this institution only provides decisions upon request. These requests can only be submitted by those granted the right to do so by the Constitution: the head of state, prime minister, president of the national assembly, and president of the Senate. The *Conseil Constitutionnel* tests the material, and can only do so before the Law is enacted.¹⁴ This differs from the *Bundesverfassungsgericht*, which may issue decisions either before or after a Law is enacted. The range of persons who can request decisions from this institution is also broader.¹⁵

In Indonesia, the authority to test Laws against the Constitution, often referred to as "judicial review," is delegated to the Constitutional Court. The authority of the Constitutional Court is stipulated in the Third Amendment to the 1945 Constitution, specifically Article 24C section (1), which states: "*The Constitutional Court has the authority to hear matters at the lowest and highest levels and to make final decisions in the review of legislation against the Constitution...*" This testing of Laws by the Constitutional Court is the test of constitutionality of a particular Law, that is, it tests the extent to which the Law in question is in line with or does not conflict with the Constitution.

In connection with this authority to review Laws, it is interesting to see the role of the Constitutional Court in the law-making process in Indonesia. But first, let us explain the definition of testing. There are two forms of testing:

1. The formal testing of a Law, that is, the testing of a Law because the process of its creation is felt not to have met the requirements of the Constitution.
2. The material testing of a Law, that is, the testing of a Law because there is content in the sections, articles and/or parts of the Law that the applicant feels contradict the Constitution.

What is formal testing? If the creation of a Law does not fulfill the provisions for creation of a Law as stated in the Constitution, the Constitutional Court will declare that the entire Law is without binding legal force. In contrast, in material testing, only the material content of certain sections, articles or parts of a Law are declared to not be legally binding.

Role and Influence of Constitutional Court Decisions on the DPR

There are several basic aspects that require attention as a consequence of the role of the Constitutional Court in relation to the formation of Laws:

1. Applicants for judicial review;
2. The position of the DPR in judicial review of Laws; and
3. The legal consequences of Constitutional Court decisions.

Who can apply for a judicial review? In procedural law, the applicant for judicial review is described as a party that has legal standing, so that it can be justified in filing a request for review. According to Law Number 24 of 2003, the parties that may file for judicial review are those who feel that their constitutional rights and/or authority are diminished by the implementation of the Law, specifically:

- a) Individual Indonesian citizens;
- b) Social groupings practicing customary law who live in a way that is in line with societal development and the principles of the Unitary State of the Republic of Indonesia as stipulated in Indonesian Laws;
- c) Public or private legal entities; and
- d) State institutions.

This strong recognition of citizens' constitutional right and opportunity to correct the Constitution has a tremendous influence on the creation of Laws. To eliminate conflicts that could result in the revocation of Laws, preventive actions should place a greater burden on lawmakers. And what is the status of the DPR as the institution holding the power to form Laws in relation to the Constitutional Court?

The answer to this question is that the Constitutional Court can request that the DPR provide clarification and/or minutes of the meetings that deliberated the Bill in connection with a Law that is under review. The DPR's clarification can be in the form of oral testimony and/or written explanations that contain the philosophical, sociological and legal aspects regarding the background on the formulation of particular sections, articles, and/or parts of the Law that is being reviewed, and the background to the

TABLE: Recapitulation of Reviews of Laws by
the Constitutional Court of the Republic of Indonesia
2003 through 29 October 2008

No.	Year	Remaining from previous year	Accepted	Total (3+4)	Granted	Rejected	Not Accepted	Withdrawn	Number of Decisions (6+7+8+9=10)	Remainder this Year (5-10)	Number of Laws Tested	Notes
-1	-2	-3	-4	-5	-6	-7	-8	-9	-10	-11	-12	-13
1	2003	-	24	24	-	-	3	1	4	20	16	(8) 2 no authority
2	2004	20	27	47	11	8	12	4	35	12	14	
3	2005	12	25	37	10	14	4	-	28	9	12	
4	2006	9	27	36	8	8	11	2	29	7	9	
5	2007	7	30	37	4	11	7	5	27	10	12	
6	2008	10	23	33	8	10	6	3	27	4	10	
	Total		156	-	41	51	43	15	150	-	73	

Source: Constitutional Court, 29 October 2008

CHAPTER IV

Conclusion

The law-making process is aimed at facilitating the DPR in its efforts to produce Laws. As a process, the making of Laws is done through a series of stages that are continuous and mutually interrelated, from the preparation of the Bill to its deliberation and its final enactment as a Law.

Each stage provides certainty and facilitation for the fulfillment of the constitutional rights of Members, Standing Committees or Joint Standing Committees, and the Legislation Council to submit proposals to create Laws. Initiatives that originate from within the DPR are referred to as DPR Initiative Proposals; initiatives may also come from the Government or the DPD.

In the deliberation stage, in terms of the substance, no matter who initiated the Bill, the debate in the discussions between the DPR and the Government is a vital component of the process. In meetings in the DPR, as well as discussions regarding the DIM (Inventory List of Issues), public participation and input will also directly or indirectly affect the quality and content of the Bill.

The quality of a Law is also affected by the role of the Constitutional Court as the institution with the authority and mandate to conduct judicial review of Laws. As a consequence of the binding nature of Constitutional Court decisions, a Law that has been corrected will inevitably have to undergo amendment, to adjust sections, articles, verses and/or parts of the Law that are declared to conflict with the 1945 Constitution.

In conclusion, we hope that the publication of this book will serve as an initial step for all parties with an interest in efforts to enhance the authority of the DPR and to participate actively in the creation of Laws.

End Notes

¹ A Law (*Undang-Undang*) is a legal regulation or piece of legislation that is defined as a written regulation that is produced by a state institution or an authorized official and that has binding legal force. Aside from the category of Law (UU) itself, Law No. 10 of 2004 also mentions other types of legal regulations, and the hierarchy of laws is defined in Article 7 section (1) of Law Number 10 of 2004 as follows: the 1945 State Constitution of the Republic of Indonesia (UUD 1945), Laws (UU), Government Regulations (PP), Presidential Regulations (Perpres), and Local Regulations (Perda).

² *Badan Legislasi DPR-RI* (Legislation Council of the DPR-RI), *Evaluasi Prolegnas 2005-2009* (Evaluation of the National Legislation Program for 2005-2009).

³ Maria Farida Indrati, *Ilmu Perundang-undangan* (Science of Legislation), Book 2, Jakarta, Penerbit Kanisius, 2007, p. 8.

⁴ *Sekretariat Jenderal DPR RI* (DPR-RI Secretariat General), *Panduan Penerapan Metode Dampak Regulasi di Lingkungan DPR RI* (Guide to Application of the Regulatory Impact Assessment Method within the DPR-RI), Setjen 2009.

⁵ Ibid

⁶ Erni Setyowati and M. Nur Sholikin, *Bagaimana Undang-Undang Dibuak* (How Laws Are Made), www.parlemen.net

⁷ www.hukumonline.com Wednesday, 9 September 2009

⁸ Note the provisions of Article 20 section (2) of the 1945 Constitution which outlines and illustrates the relations between the two institutions, which states: "Every Bill shall be discussed by the DPR and the President in order to reach mutual consent."

⁹ Jimly Asshiddiqie, *Perihal Undang-Undang* (About Laws), Konstitusi Press, Jakarta, p. 288-289.

¹⁰ Maria Farida Indrati, op. cit., p.

¹¹ France allows for laws that are still in "draft form" to be reviewed (as stipulated in Chapters VII and VIII), while Law No. 24 of 2003 does not regulate testing of laws that are still in "draft" form, but only refers to Laws.

¹² This institution recently issued a decision regarding consistency of application of a law on abortion and the German Constitution. The German Constitutional Court, also called the Federal Constitutional Court, is regulated by Articles 93 and 94 of the *Grundgesetz* (German Constitution of 23 May 1949, last amended 31 August 1990).

¹³ This institution is said to have semi-judicial authority and is not categorized as an ordinary court. It has the authority to decide whether a legal regulation, or one that has not yet been formalized and enacted as law, conflicts with the constitution or not. In addition, this institution has the authority to provide decisions on the possibility of making amendments, Bills, disputes regarding referenda, and various disputes regarding the election of President or members of parliament. See Wim Voermans, *Komisi Yudisial di Beberapa Negara Uni Eropa* (Judicial Commissions in Several Countries of the European Union), translated by Adi Nugroho and M. Zaki Hussein, LelP, Jakarta, 2002, p. 68

¹⁴ Article 61 of the French Constitution reads: *Institutional Acts, before their promulgation, and the rules of procedure of the parliamentary assemblies, before their entry into force, must be referred to the Constitutional Council, which shall rule on their conformity with the Constitution. To the same end, Acts of Parliament may be referred to the Constitutional Council, before their promulgation, by the President of the Republic, the Prime Minister, the President of the National Assembly, the President of the Senate, or sixty deputies or sixty senators. In the cases provided for in the two preceding paragraphs, the Constitutional Council must rule within one month. However, at the request of the Government, if the matter is urgent, this period shall be reduced to eight days. In these same cases, reference to the Constitutional Council shall suspend the time limit for promulgation. If the Constitutional Council declares a provision unconstitutional: A provision declared unconstitutional shall be neither promulgated nor implemented. No appeal shall lie from the decisions of the Constitutional Council. They shall be binding on public authorities and on all administrative authorities and all courts (Article 62).*

¹⁵ I.C. van der Vlies, *Handboek Wetgeving* (Handbook on Legislation), W.E.J. Tjeenk Willink-Zwolle, p. 157.

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