

**THE IMPLEMENTATION OF PRESIDENT AND VICE PRESIDENT
ELECTION IN PEOPLE'S CONSULTATIVE ASSEMBLY (MPR)
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Abstract

The People's consultative Assembly is the highest state institution that has undergone a change in the constitutional structure after the amendments to the 1945 Constitution, changes to the MPR are very clearly seen in the first to the fourth amendments to the 1945 Constitution. Before the amendment to the 1945 Constitution, The MPR as the highest state institution was given unlimited powers, and MPR is the one that has the authority to enact the 1945 Constitution, GBHN, Appoint the president and vice president in accordance with the provisions of article 3 paragraph 1 of the 1945 Constitution before the amendment the MPR stipulates the constitution and the GBHN. The existence of the MPR at this time is indeed a high state institution. The MPR still exists has no position as no longer as the highest state institution and the big question is whether its existence is the absolute holder of the people's sovereignty

Keywords: *Constitutional Law Study; Election In People's Consultative Assembly (MPR); The Implementation of President; Vice President*

INTRODUCTION

Several years ago, many parties, including experts in Constitutional Law, proposed changes and even replaced to the 1945 Constitution of the Republic of Indonesia (UUD 1945). The reformation movement wanted it changes in all aspect including law. In the case of legal reform it is impossible to do without constitutional changes (constitutional reform).

One of those proposers, Harun Al Rasidkan, argues that constitutional reform is the first priority that must be demanded by the 98 Reformation Force to face the era of globalization and the challenges of the 21st century and first begin with a stipulation before any changes are

made. Changes at the level of structure and attitude and behavior.¹

According to Jimly Asshiddiqie, the 1945 Constitution which was passed into effect on August 18, 1945 was the constitution of the Republic of Indonesia which was intended - as Soekarno himself called it - 'UUD Kilat', 'Revolutive Grondwet' as a temporary constitution. Therefore, the 1945 Constitution can be changed even if necessary it can be replaced with a new constitution. After the fall of the New Order regime in 1998, the political dynamics state administration system in Indonesia underwent radical changes. Position of the People's Consultative Assembly (MPR) which was originally the highest state institution² turned into a high state institution. The MPR also does not have the authority to make legal statements.

Since the 1998 reformation, there were four changes (amandement) to the 1945 Constitution. The first changes were made at the 1999 MPR session, then the second was also made in the 2000 MPR annual session. The third amendment was also carried out at the MPR annual session

in 2001 and changes the last one was also held at the MPR annual session in 2002.

Not only is its position and position castrated, at this time the MPR also does not have the authority to form legal products, one of which is the State Policy Guidelines (GBHN). The MPR, which is no longer the highest institution in the country, the statutory regulations in the state legal system no longer recognize the term MPR Decree. In the reformation period, there was still an MPR Decree, but not as a regulation (regeling) but only limited in nature to stipulation (beschikking), such as a stipulation on the stipulation of a Vice President to become President if the President was permanently unavailable.

So how was the chronology of the MPR's authority and position being stripped?

Since the reform era in 1998 until now the amendments to the 1945 Constitution have been made 4 times. Specifically, the position and authority of the Indonesian People's Consultative Assembly was amended in the third amendment in 2001. In Article 1 paragraph (2) of the 1945 Constitution, the results of the third amendment read "Sovereignty is in the hands of the people and is exercised according to the Constitution," the new arti-

¹ Azhary, *State of Indonesian Law, Normative Juridical Analysis of Its Elements*, Jakarta: University of Indonesia Publisher, 1995, p. 33.

² Atmaja. *Interauthority Law (Concept and Method of Settlement)*. Page 8 Denpasar: FHUNUD, 2003.

cle reads. changed, the position and position of the MPR RI is the incarnation of people's representatives in parliament. This can be traced from the history of the Indonesian nation's journey at the beginning of Indonesia's independence. In the 1945 Constitution established by the Preparatory Committee for Indonesian Independence (PPKI) on August 18, 1945 the position of the MPR was the embodiment of people's sovereignty. This can be seen in Article 1 paragraph (2), which reads "Sovereignty is in the hands of the people and is fully exercised by the People's Consultative Assembly".

After 17 years of reform, the discourse of restoring the position and position of the MPR RI as the highest institution in the country was loudly conveyed by the Fifth President of the Republic of Indonesia, Megawati Soekarnoputri. At least in 2015 President Sukarno's daughter had suggested twice that the MPR be made the highest institution in the country. The first proposal was submitted on August 18, 2015 or to coincide with the day the Constitution was presented at the MPR building. Then the second proposal was submitted on Saturday, November 28, 2015. For Megawati, the position of the MPR had to be reviewed and its position restored as the highest state institution.

For Megawati, the position of the MPR as a high-level state institution certainly hampers the pace of national development. Because when it was still the highest state institution, the MPR could issue legal products, one of which was the State Policy Guidelines (GBHN) which was a guideline for national development.

On the other hand, in the reform era, the MPR's position was no longer authorized to issue legal products that were binding and obliged to be carried out by the President. Not to mention the development policies between the center and the regions sometimes not in tune and a trigger for stagnation in national development. Therefore, Mega wants the MPR position to be returned as the highest institution in the country.

The proposal by a number of factions to restore the MPR's position as the highest state institution is considered as a democratic setback following the risk of the MPR returning as an authoritarian state institution.

In the plenary session of the Golkar Party, PPP, and PKB factions, they suggested that the MPR function as the highest state institution that is above the executive, legislative and judicial branch-

es. In The view of the three factions is that the 1945 Constitution needs to be amended to restore and strengthen the functions and powers of the MPR.

Legal and Constitutional Observer Refly Harun said the proposal was a setback from the running of the democratic system in the country. "With the return of the MPR's function as the highest state institution, it will weaken the system of checks and balances between high state institutions," he said to *Bisnis*, Monday (22/9/2014). In fact, to ensure democracy runs well, all high state institutions must have a system of checks and balances. "If the check and balance system is not fulfilled, then one state institution has the potential to grow authoritatively. And it must be avoided. "Just look at the New Order, the MPR was the one that could be controlled by Golkar has strong authorization because of its president Soeharto. Likewise, when the MPR led by Amien Rais overthrew the 4th President of the Republic of Indonesia, Abdulrahman Wahid (Gus Dur).

The MPR, which was controlled by parties outside the government, impeached Gus Dur because of the weak constitutional system. "There are no checks and balances. Even though we

know the MPR has emerged as an independent one. However, this can be controlled and has absolute power," he said. Meanwhile, LIPI political researcher Siti Zuhro said that the proposal, he continued, was an idea to change the system of regional head elections (*pilkada*). The President will again be elected by the MPR. "If the The MPR has the power as the highest institution, it will be like that," he said.

According to him, there needs to be a system of balancing power. "President Soekarno as the founding father has thought that the power of the *Volksraad* [people's council] is not enough. There needs to be a counterweight, namely the MPR and DPD. "Currently, what the people's representatives who sit in the DPR and the MPR need to consider is the return to the function of the MPR as the highest institution. "After returning to its position as the highest state institution, is there a guarantee for participatory democracy by involving the people directly," he said.

Where is the position of the MPR? Article 2 paragraph 1 of the 1945 Constitution regulates that "The MPR consists of DPR and DPD members who are elected through general elections and further regulated by law". The MPR is a combination of two high-level state institutions

(Jimly's term) which logically must have a position above the two joining institutions. Meanwhile, in terms of authority, Article 3 paragraph 1 of the 1945 Constitution of the Republic of Indonesia regulates, 'The MPR has the authority to amend and stipulate the Constitution'.

The Constitution is the highest legal document governing a country. To determine and change it, it is up to the MPR, so that later there are those who call the MPR a state institution with highest authority. It seems that there is a spirit to fight the theory that the MPR is the highest state institution in RI, only to get psychological-political satisfaction that it has been freed from the political practice of the existence of the MPR before the amendment of the 1945 Constitution which holds hegemony and is far from the spirit of democracy. Even though the reality is that the MPR's interpretation is the same and equal to other state institutions, let alone being compared to the Constitutional Court, Supreme Court, and BPK, it has caused its own controversy both in theory and practice. This is what then made Megawati Soekarnoputri in her speech at the commemoration of 2015 Constitution Day said that the MPR did not be considered an ordinary state institution like the others.

The system built by the country's founders was intended as an alternative to the parliamentary system in Europe and the presidential system in America. Every time there is an idea to rearrange the position of the MPR which is the most phenomenal institution not only in Indonesia, but also in the world constitutional system, the issue that arises always does it mean that the MPR will become the highest state institution again? Widayati in her dissertation entitled Reconstruction of the Position of the MPR Decree in the Indonesian State Administration System (2015) even suggested that Article 2 paragraph 1 of the 1945 Constitution is currently enhanced by the formulation of 'MPR consisting of members of the DPR and DPD members who are elected through general elections, and group delegates which are further regulated by law'. Then Article 3 was added with a paragraph which reads 'The MPR has the authority to stipulate state regulations'. This state regulation is equivalent to the current meaning of the MPR Decree. This idea of settling the MPR's position requires serious and thorough attention. This will be a question that will continue to disturb the state administration system in the future. For example, the question of whether we adhere to a monocameral, bicameral, or

even tricameral system, respectively with the consequence of the functional relationship between the three existing legislative chambers, both the DPR, DPD, and the MPR.

Get to the right position

Even though it was full of challenges, controversies, and took a long time, the positioning of the MPR was very strategic and fundamental. The MPR, which is idealized as the highest form of legislative body that is compatible with the four principles of Pancasila, can be positioned to formulate strategic policies such as perfecting the Constitution, formulating GBHN, and establishing basic rules that have not been contained in the Constitution, but are needed as guidelines for government policies that will be revealed in the form of law. As for, the formation of more dynamic legislation is left to the DPR, DPD and the president. In addition to gradual structuring of the MPR, it can be carried out by amending the current 1945 Constitution, it can also be strengthened by forming a separate law on the MPR. The same can be done by forming a separate law on the DPR and DPD. It seems odd, if the derivative institutions of the people's sovereignty theory are formed with separate laws such as the Supreme

Court, MK, BPK and so on, in fact institutions such as the MPR, DPR, and DPD, even combined with the DPRD, are regulated in one law. Denny Indrayana in his book, *Negara between Exist and Nothing* (2008), emphasizes clarity of the Indonesian parliamentary system must be firmer. Apart from the position of the MPR, what must be emphasized is the position of the DPD.

The consideration function currently attached to the DPD in matters relating to regions should be improved. It is not only limited to giving considerations, but also has the right to vote in determining the passing of a law. In the future, the Indonesian Parliament is advised to become a strong bicameral system, although it does not need to be an equally strong system between the DPR and DPD, because it can cause deadlock in policy making.

To³ Meanwhile, it seems that what is starting to be tried to formulate an agreement is to give the MPR authority to make regulations that are regulating, including stipulating the GBHN. Also, if necessary, make strategic regulations regarding certain fields, such as the field of natural resource management, regional autonomy

³ Huda, Ni'matul.UUD 1945 and the idea of amendment, page 5 Jakarta: Rajawali pers, 2008.

regulatory policy arrangements including regional head elections, which cannot yet be contained in the Constitution, however, the guidelines needed to be stipulated in further laws.

In addition, the arrangement of the DPD and its functional relationship with the DPR also needs to be clarified, including the possibility of arranging the entry of group delegates to enhance the MPR's position as a consultative body. Meanwhile, the political representative institutions through the DPR and regional representatives through the DPD. If this can be done, the position of the MPR, whether as a permanent institution in our parliamentary system, or in the form of a joint session, will not be too influential, because the important thing is that its position and function have a more definite form.

Problem Identification.

The main problems that became the reference for discussion in the preparation of this research paper were:

1. Is it necessary to restore the MPR's status as the highest state institution?
2. Are there philosophical, sociological, and juridical considerations that it is necessary to restore the image of the MPR as the highest state institution?

Purposes And Uses

1. Purpose

The preparation of this research paper aims to:

- a. Explain the theoretical justification for the need for the MPR as the highest state institution.
- b. Explaining juridical considerations so that it is necessary to restore the image of the MPR as the highest state institution.

2. Uses

The uses or benefits obtained from the preparation of this research paper are:

- a. As a study material in legal knowledge, especially Constitutional Law which is dynamic and growing rapidly.
- b. As additional literature material for the development of the literalization of Constitutional Law in Indonesia.

METHOD

Research Methods

Type of Research

The material or material that underlies the preparation of this Scientific Paper comes from normative legal research, which includes:

- a. Positive legal inventory of laws and regulations relating to the MPR.

- b. Find the legal principles and doctrines that underlie the formation of State Institutions.

Legal Materials

- a. The legal materials underlying the preparation of this Scientific Paper are: Bahan hukum primer, yakni berupa peraturan perundang-undangan yang terkait dengan Lembaga Negara;
- b. Secondary legal materials, namely legal materials that are contained or scattered in various books, journals, and scientific research manuscripts. The legal material can be in the form of expert opinion regarding the existence of a State Institution; and
- c. Tertiary legal materials

ANALYSIS AND DISCUSSION

Definition and Criteria for State Institutions

State Institution is a government institution or "Civilized Organization" in which the institution is created by the state, from the state, and for the state which aims to build the country itself. State institutions are divided into several types and have their respective duties, among others.

One of the most important phenomena after the amendment of the 1945 Constitution is the spread of state auxiliary agencies in the Indonesian constitutional system. These institutions were formed with different legal bases, both with the constitution, laws, and some were even formed by presidential decrees.

The different legal bases show that These independent state institutions are formed based on partial issues, incidental, and as specific answers to the problems at hand. This results in the commissions running independently and not complementing each other, so that in further implications it may result in the effectiveness of the existence of the commissions in the constitutional structure still not appearing to be running in accordance with the noble goal of forming an extralegislative institution. the extra-executive, and the extra-judicial.

State Institutions in Indonesia

According to Hans Kelsen, the state organs carry out at least one of 2 (two) functions, namely the law-creating function or law-applying function. By using Kelsen's analysis, Jimly Asshiddiqie concluded that after the amendment of the 1945 Constitution, it could be said that

there were 34 state institutions. Of the 34 state institutions, there are 28 institutions whose authority is determined in general and in detail in the 1945 Constitution of the Republic of Indonesia. These 28 state institutions can be referred to as state institutions that have constitutional authority or whose authority is explicitly granted by the 1945 Constitution of the Republic of Indonesia.

The 34 organs can be distinguished from two aspects, namely in terms of function and in terms of hierarchy. The hierarchy between state institutions is important to determine because there must be regulations regarding legal treatment of people who occupy positions in state institutions. Which one is higher and whichever is lower need to be ascertained to determine the arrangement of seats in the ceremony and the amount of office allowances for the officials. For this reason, there are two criteria that can be used, namely (i) criteria for the hierarchy of normative sources that determine their authority, and (ii) the quality of their functions. Which are primary or support in the state power system. In connection

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