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# The 2nd Proceeding "Indonesia Clean of Corruption in 2020"



"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"



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# STANCE AND AUTHORITY OF PEOPLE'S CONSULTATIVE ASSEMBLY DURING REFORMATION ERA<sup>1</sup>

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## A. BACKGROUND

One of the state-level institution within the governance system of the Republic Of Indonesia is the People's Consultative Assembly (hereinafter, "MPR RI", "the MPR"). Prior to the amendment of the Constitution of 1945 (hereinafter, "UUD 1945") during the early period of Reformation (1999-2002), the stance of MPR is considered as the highest state-level institution in Indonesia empowered with a very broad authority.

Based on the idea within the Article 1 sub article (2) of UUD 1945, the understanding as explained in the General Explanatory of UUD 1945 strengthened by the Presidential Decree dated 5 July 1959 as an inseparable part of the UUD 1945, mentioning that the President is responsible to the MPR. Thus, it is to be understood that MPR is the highest institution, or known as the highest state-level institution, so it is common to say that the existence of said institution is to be ruled in the very first part of the UUD 1945.<sup>2</sup> The positioning of MPR RI as the highest state-level institution is strengthened by the TAP MPR

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<sup>1</sup> This writings is a summary of Thesis sourced from the same-titled Thesis, within the Magister Programme of Legal Science of Universitas Jayabaya, Jakarta (2015)

<sup>2</sup> Jimly Asshiddiqie, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, Jakarta, 2006, hlm. 145

*Nomor IV/MPR/1973* regarding the Stance and Relation amongst the Highest State-Level Institutions with/or Interrelation of Highest State-Level Institution.<sup>3</sup>

The amendment of the UUD 1945 in the early reformation era, 1992-2002 had changed the very basic ground of the governance system of Indonesia, including the stance of MPR. Through said changes, the MPR is no longer placed as the highest state-level institution to execute the sovereignty of the nation [Article 1 sub article (2)]. It means that the MPR is no longer the source/institution of the state's highest authority that distributes the authority to the other state-level institutions.<sup>4</sup>

In regard to this notion, Jimly Asshiddiqie establishes that subsequent to the amendment of the UUD 1945, "Highest State-Level" institution is no longer acknowledged. In accordance with the doctrine of separation of power within the principle of checks and balances amongst the branches of state's authority, MPR has the equal position to the other state-level institution.<sup>5</sup>

The amendment of constitution is to be seen as the changes of fundamental aspects of governance system, from the vertical-hierarchy system with the principal of supremacy of MPR down to the horizontal-functional principal that balances and checks amongst the state institution.<sup>6</sup>

The Chief of Central Representative Body (DPP) Golkar Party, Aburizal Bakrie suggested that Golkar desired to have a platform that can accommodate the people of Indonesia for the next 25, 50 and up to 100 years. He suggested, due to the absent of GBHN

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<sup>3</sup> in the Article 1 sub article (1) *Ketetapan MPR "Yang dimaksud dengan Lembaga Tertinggi Negara dalam Ketetapan ini ialah Majelis Permusyawaratan Rakyat yang selanjutnya dalam Ketetapan ini disebut Majelis."* Article 1 subarticle (2) *Ketetapan MPR* considers the state's institution as follows: *Presiden, Dewan Pertimbangan Agung, Dewan Perwakilan Rakyat, Badan Pemeriksa Keuangan, dan Mahkamah Agung.* See detail of *Ketetapan MPR* in *Himpunan Ketetapan MPRS dan MPR Tahun 1960 s/d 2000*, penerbit Sekretariat Jenderal MPR RI, 2001

<sup>4</sup> Sekretariat Jenderal MPR, *loc.cit.*, hlm. 4. Article 1 sub article (2) subsequent to amendment, "*Kedaulatan berada di tangan rakyat dan dilaksanakan menurut Undang-Undang Dasar.*"

<sup>5</sup> Jimly Asshiddiqie, *Perkembangan dan Konsolidasi ...*, *ibid.*, hlm. 147

<sup>6</sup> *Ibid*

hence the national policy-making process is tied upon the Presidential domain of work and can only reach maximum 5 years of service period. Even if said President is to be re-elected for the next five years of service period, the maximum range will only be extended to 10 years. This 10 years range is deemed too short to set out the national development plan. Hence, it is highly needed to have a national program for long term period for any Ruling President.<sup>7</sup> From said explanation regarding the platform, it can be understood that Golkar Party wanted to have the GBHN re-implemented.

In the end of service period of MPR members of 2009-2014 period, the MPR set out a General Assembly (GA) Meeting in the end of September 2014 in Jakarta. The results of the *Ad Hoc* II BP MPR that was validated by the GA are the seven recommendations of the next period of MPR. Said recommendations are the changes of UUD 1945 to strengthen the role of MPR as the institution in amending, establish and to elucidate the UUD 1945.<sup>8</sup> In full, the recommendation of the Research Team of Governance System of Indonesia – MPR is “to strengthen the MPR as the state’s institution which has the highest authority in amending, establishing, elucidating the UUD and to give a directive of national policy to the other state’s institutions.”<sup>9</sup>

## **B. PROBLEM FORMULATION**

1. How is the stance and the authority of the MPR subsequent to the amendment UUD 1945 after the descent of its position and the reduction of its authority through said amendment?

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<sup>7</sup> Said statement had been delivered by Aburizal Bakrie during the opening speech of Focus Group Discussion (FGD) “Penguatan Sistem Presidensiil di Indonesia” in MPR together with DPP Partai Golkar, 4 Desember 2013. see <http://kajian.ketatanegaraan.mpr.go.id/?p=1048>, downloaded on 11 Juli 2014

<sup>8</sup> “Tata Cara Pelantikan Presiden Dipertanyakan”, *Kompas*, Selasa, 30 September 2014, hlm. 2.

<sup>9</sup> Keputusan MPR Nomor 4/MPR/2014 tentang Rekomendasi Majelis Permusyawaratan Rakyat Republik Indonesia Masa Jabatan 2009-2014, hlm. 3-4

2. What are the consequences of the descent of position and reduction of authority of the MPR, for the MPR itself and for the governmental system of the Republic of Indonesia in general?

### **C. PURPOSE OF RESEARCH**

1. To research and analyze the stance and authority of the MPR subsequent to the UUD 1945 after the descent of its position and the reduction of its authority through the amendment of UUD 1945.
2. To research and analyze the consequences of the descent of position and the reduction of MPR's authority, for the MPR itself and for the governmental system of the Republic of Indonesia in general.

### **D. ANALYSIS**

#### **1. Stance of MPR Prior and Subsequent to the Amendment of UUD 1945**

Within the governance system of the Republic of Indonesia as regulated under the UUD 1945, MPR holds the highest position. Its position is the highest compared to the other existing state's institution such as President, DPR and MA. This position places it as the Highest State-Level Institution whilst the other state's institution such as President, DPR, DPA, MA, and BPK is placed in the lower position below the MPR and categorized as the High Level State Institution. Due to the fact that UUD 1945 gives the highest position to the MPR, hence the system that was implemented in the state's administration was known as "MPR System" or the "Supremacy of the MPR".

President was the one who –in the real implementation- rule out MPR through his political policies, including in regards to those who will be chosen as the Regional Representation (*Utusan Daerah*) and Party Representation (*Utusan*

*Golongan*), the members of the MPR including its leaders, and the issues that need to be decided by it.

The stance of MPR after the amendment of UUD 1945 is no longer to be the Highest State-Level Institution. MPR holds the equal position to the other State's Institution (President, DPR, DPD, MA, BPK and MK). MPR voluntarily lower its position through the amendment conducted in the early time of Reformation (1999-2002).

MPR during the early era of Reformation realized that "MPR system" implemented during Soekarno and Soeharto era is no longer fit and in line with the democracy principles, openness and freedom. Due to that reasoning, the MPR implemented the amendment in the very basic sense by lowering its position to the state's institution with equal position to the other state's institution, and the difference would only be emphasized on the role and authority.

Based on those considerations, if in the early time UUD 1945 used to implement "MPR System" or "MPR's Supremacy", in today's time the UUD 1945 is to be implemented based by the "Supremacy of Constitution". The Constitution, in this regard the UUD 1945, would be the highest part of the governmental system of Indonesia. Based on "Supremacy of Constitution" within the UUD 1945 thus there will be no more "highest state-level institution" in Indonesia.

## **2. Authority of MPR Prior and Subsequent to the Amendment of UUD 1945**

UUD 1945 prior to the amendment in the beginning of the Reformation era ruled out and gave a very broad authority to the MPR. Even, in the Elucidation of the UUD 1945 mentioned that MPR had unlimited authority.

Despite the given authority to change and establish UUD, since the implementation period of UUD 1945 either in the Soekarno or Soeharto era, MPR

had never been done any changes of constitution. During the Soekarno era, there were indeed some changes of constitution, but they were more like adjustment from the UUD 1945 to the RIS (Indonesian Federal State) Constitution.

In the perspective of law, to prevent and to blocks the changes of the UUD 1945, the government through the MPR established the TAP MPR regarding Referendum. Based on this TAP MPR, if there is any attempt whatsoever to change the UUD 1945, there should be an initiation of declaration for referendum to know the public opinion upon said changes. If the majority of the people agree to that notion, then the changes can be executed and implemented.

Through that strict measures to obtain people's acceptance for the amendment of UUD 1945, it can be deemed that there was only a few chances to change the UUD 1945 through referendum hence it cannot be further responded to the executional level. Even if the referendum allows the changes of UUD 1945, there is only a slight chance that the MPR allow said attempt because most of MPR members are under the influence of the ruling authority at that time.

The authority of the MPR to appoint, elect and to dismiss President and/or Vice President in they period of service is a part of the biggest authority of the MPR. During its development in the Soekarno period, this institution had established Soekarno as the Lifetime President. During that period of Soeharto Era, MPR always agreed to re-appoint Soeharto up to seven election times.

The election process of President by MPR during the Soeharto Era shows us that this institution is not independent in executing its function, but rather more dependent to the will of Soeharto who in the real political sense was more dominant than the MPR. Based on that fact, Soeharto had always been re-elected as President up to seven times of period of service and finally decided to step

down from his position after the wave of protesters raging the Capital City of Indonesia in Mei 1998.

Based on the rules in the elucidation part of UUD 1945, two President of Indonesia ended they time of service through impeachment of MPR namely the Soekarno and Abdurrahman Wahid. During the dismissal of those two leaders, the political reasoning were more dominant to the legal reasons.

Subsequent to the amendment of UUD 1945, the authority of the MPR had been reduced significantly. The authority of that had been remove from MPR namely the right to elect the President and Vice President, including the removal for the right to establish GBHN.

MPR had no longer in its authority to elect the President and Vice President as the logical consequences of the election process of President and Vice President of Indonesia through a direct election in the amendment of the UUD 1945 (Article 6A). The implementation of the direct election of President and Vice President is a rather significant breakthrough in the election system of Indonesia, which prior to the amendment was conducted by the MPR. Many criticism had been passed when the MPR with a mere hundreds of members possesses the right to elect the President and Vice President to rule out Indonesia for five years period of service.

Practice of the President and Vice President direct election (implemented three times in 2004, 2009, and 2014) that had been implemented democratically, honest and fair, safe and sound, with clean record, despite there were still many weaknesses spotted, proof that the readiness of Indonesian people to choose their leader. Through direct election, President and Vice President had been strengthened legitimately for their power.

MPR subsequent to the changes of the UUD 1945 is no longer authorized to establish GBHN. This situation is the consequence from the election system of President and Vice President directly by the people. Vision, mission and working programme of the President and Vice President are the directive for the implementation of development and state administration.<sup>10</sup>

## **E. CONCLUSION AND SUGGESTION**

### **A. Conclusion**

1. MPR prior to the amendment of UUD 1945 is placed as the Highest State-Level Institution, which regulates and divides the authority of the nation to itself and to the other state's institutions under it (known as *Lembaga Tinggi Negara*).
2. MPR prior to the changes of the UUD 1945 holds very huge authorities, even according to the Elucidation of the UUD 1945, MPR holds an unlimited power due to the idea that MPR as the representation of the will of the people.
3. The stance and authority of MPR prior to the constitutional changes had opened the opportunities of UUD 1945's violation, legal breach and human right abuse without any chance to prevent, block nor to solve it by the other state's institution.
4. After the implementation of the UUD 1945, the position of the MPR had been equal to the other state's institutions such as President and DPR. The differences between those institutions are merely lied on the tasks and authorities.

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<sup>10</sup> Within the last few years there are many suggestions to re-establish similar program to GBHN made by MPR. This is one of the recommendation of the MPR of the Period of Service of 2009-2014

5. The changes of UUD 1945 had also caused the reduce of MPR authority hence it can no longer in possession of a very wide authority that may cause certain abuse of power and human rights violation.

## **B. Suggestion**

1. It is necessary to run certain research and analysis in a deeper manner regarding the implementation of the stance and authority of the MPR subsequent to the changes of the UUD 1945 including the consequences to the governance system..
2. MPR need to be given certain authority in its relation to Pancasila, UUD 1945, NKRI and Bhineka Tunggal Ika.
3. It is necessary to consider whether or not MPR needs to have certain authority to run a GBHN model that can be implemented and adjusted with the presidential system and democracy level of Indonesia.

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