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**THE POSITION OF THE PEOPLE'S CONSULTATIVE ASSEMBLY
IN THE CONSTITUTIONAL STRUCTURE
OF THE REPUBLIC OF INDONESIA**

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The position of the People's Consultative Assembly of the Republic of Indonesia (MPR) as the high state institution fundamentally changed after the amendments to the 1945 Constitution. Previously the MPR was the highest governing body in Indonesia. Nowadays the position and the authority of the MPR in the Indonesian constitutional structure is no longer the highest state institution then is equal to other high state institutions. It is a consequence of the presidential system of government, where the position of all high state institutions is balanced and the principle of "checks and balances" between branches of government is implemented. This paper is a normative legal research examining the amendments to the 1945 Constitution, especially the provisions governing the authority of the MPR as contained in article 3 of the Basic Law. Despite all the changes, the MPR is still being the highest legislative branch in the Indonesian political system. This is because the MPR still has the authority to amend the Constitution.

Keywords: People's Consultative Assembly, MPR, state administration, separation of powers, Indonesia.

**ПОЛОЖЕНИЕ НАРОДНОГО КОНСУЛЬТАТИВНОГО КОНГРЕССА
В КОНСТИТУЦИОННОЙ СТРУКТУРЕ
РЕСПУБЛИКИ ИНДОНЕЗИЯ**

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Положение Народного консультативного конгресса Республики Индонезия (НКК) как высшего государственного института коренным образом изменилось после внесения поправок в Конституцию 1945 года. До этого НКК являлся высшим руководящим органом Индонезии. Сегодня положение и статус НКК в индонезийской конституционной структуре таковы, что НКК

более не является высшим государственным институтом, а приравнивается к другим высшим органам государственной власти. Это обусловлено президентской системой правления, где сбалансировано положение всех высших государственных институтов и действует принцип «сдержек и противовесов» между ветвями власти. Настоящая статья является нормативно-правовым исследованием, в котором рассматриваются поправки к Конституции 1945 года, особенно положения, регулирующие полномочия НКК, содержащиеся в статье 3 основного закона. Несмотря на все перемены, НКК по-прежнему является высшим законодательным органом в политической системе Индонезии. Это связано с тем, что НКК имеет право вносить изменения в Конституцию.

Ключевые слова: Народный консультативный конгресс, НКК, государственное управление, разделение властей, Индонезия.

Introduction

Before the amendment to the 1945 Constitution of Republic of Indonesia in 2004, the People's Consultative Assembly (MPR) institution was the highest institution among the high state institutions. So the MPR institution was the embodiment of people's sovereignty. Article 1 paragraph (2) of the 1945 Constitution contains a provision that sovereignty is in the hands of the people and is fully implemented by the People's Consultative Assembly. This means that the source of power only lies with the people, because the number of people is so many up to hundreds of millions, it is impossible for the people to exercise this power in a concrete and tangible way on the ground. Thus there is a need for an institution to represent the people's power.

The authority of this MPR institution in the 1945 Constitution is stated in the provisions of article 3, which contains the following provisions: to determine the Constitution and outline of the state's direction. Article 6 paragraph (2) contains the following provisions: the President and Vice President are elected by the People's Consultative Assembly with the most votes. The authority possessed by the MPR

institution is enormous in the 1945 Constitution. This institution has the right to appoint and dismiss the President if he is suspected by the MPR to have violated the outlines of state direction set by the MPR, because the President is the MPR mandate that must implement government policies in accordance with the State Policy Guidelines (GBHN). The 1945 Constitution places the MPR institution as the highest institution compared to other high-ranking institutions, because it is an embodiment of people's sovereignty submitted to the MPR institution in accordance with the mandate of article 1 paragraph (2) where sovereignty is in the hands of the people and is fully implemented by the Assembly People's Consultation.

After reforms took place in Indonesia and there was a change in the constitutional system and the more after a change or amendment to the 1945 Constitution, the roles of members of the MPR institution had changed including their membership composition. Before the amendment to the 1945 Constitution, the MPR membership consisted of the People's Representative Council members, plus representatives from regions and groups, according to the rules stipulated by law. What is meant by groups here are bodies such as cooperatives, labour unions, and other collective bodies in accordance with the conditions at that time. Besides that members of the MPR are also appointed by the President, namely from members of the Armed Forces of the Republic of Indonesia (ABRI) where ABRI did not vote in the General Election. So it was given allotments through the appointment process, with the aim of stabilizing politics during the "New Order" era (1968-1998), where political stability was the basis for the course of development where ABRI as a defence force was also a socio-political force.

The authority of the MPR after the amendments to the 1945 Constitution underwent drastic changes in line with changes in the constitutional system in Indonesia. In article 1 paragraph (2), sovereignty is in the hands of the people and is exercised according to the Constitution. After this amendment to the 1945 Constitution, the MPR is no longer the highest institution, whose position is the embodiment of the people's sovereignty. But the MPR has the same position as other high-ranking institutions, sovereignty is still held by the people and its

implementation is carried out by the Constitution. The authority of the MPR after the amendment to the 1945 Constitution is contained in the provisions of article 3, which contains provisions:

1. The People's Consultative Assembly has the authority to amend and enact the Basic Law.
2. The People's Consultative Assembly appoints the President and/or Vice President
3. The People's Consultative Assembly can only dismiss the President and/or Vice President during their term of office according to the Constitution.

One of the powers of the MPR is the authority to amend and enact the Constitution. Thus it can be said that the product produced by the MPR is the Constitution, even though in the current state institutional structure the position of the MPR is equal with the position of other high institutions, such as the People's Representative Council (DPR) Institute, the Presidential Institute, the Audit Board (BPK) Institute, the Supreme Court Institution, the Regional Representative Council (DPD) Institution and other high institutions.

Starting from this amendment to the 1945 Constitution (UUD amendments), the author wants to find out more about the position of the high institution – the MPR, which is now aligned with other high institutions, so that the author wishes to conduct research on the position of the MPR in state administration.

Methodology

The research method used in producing this article is to use normative legal research by analysing the amendments to the 1945 Constitution which has been amended, especially article 3 concerning the authority of the State Institution of the People's Consultative Assembly, which prior to the amendment was the highest state institution, then after becomes only a state institution with the same authority as other ones. This research also analyses the products produced by the MPR, one of which is establishing the Basic Law. In the law science the Constitution is the highest legal product, which becomes a guideline for the making of laws and regulations under it,

for this reason placing the MPR only as a state institution that is parallel to other ones, need further research.

Results and discussion

Principles and principles of people's sovereignty

The 1945 Constitution provides guidelines for state administrators that sovereignty is in the hands of the people and is fully implemented by the People's Consultative Assembly in accordance with the mandate of the provisions of article 1 Paragraph (2), thereby placing a state institution called the MPR as the holder of people's sovereignty mandated by the 1945 Constitution. Sovereignty in terms of law is the ability to determine laws and implement them on their own, so a nation is considered to have sovereignty [9, p. 85].

But what is meant by the provisions of article 1 paragraph (2) is the highest power in a country where that power is in the hands of the people and is exercised by an institution called the MPR which by the provisions of that article is the embodiment of the people's sovereignty. Because it is impossible for the people to exercise their power directly in the administration of the state, because in addition to being large in the constitutional system it is difficult to carry it out on their own, then people's power needs to be represented in other institutions. The transfer of power by the people to institutions entrusted with the mandate of the people's power, namely through direct, free and secret general elections in both the Legislative and Executive Elections.

In international law, the definition of sovereignty is addressed to countries that have the right to determine their own affairs, both concerning domestic matters and issues related to foreign policy without any interference or intervention from other countries. Organization of the state according to its own wishes which includes its duties in the legislative, executive and judiciary fields, outside sovereignty is expressed in its power to establish diplomatic relations with other countries or in its power to declare war or peace with other countries.

In Constitutional law the meaning of sovereignty can be relative, meaning that sovereignty is not only known to countries that have full external and internal

powers, but also to countries that are bound by an agreement in the form of a treaty or in the form of a confederation or a federation, and most recently if that sovereignty is only defined as the power to manage one's own household, which is called autonomy. So sovereignty is not fragmented, original and perfect or unlimited. It is not divided because in a country there is only one supreme power. Original because the highest power does not come from a higher power that can limit that power [q.v.: 3].

In relation to the teachings of people's sovereignty, Rousseau argues that culture, with its new discoveries and with its efforts to seek refinement in everyday life, will in essence bring consequences for mankind to deteriorate and collapse in its life. The advances in technique, the establishment of industries only sharpened the existence of luxury on the one hand and poverty on the other. This is because humans have lived deviating from the instincts that were brought from birth as gifts from God [7, p. 86-87].

The teaching of people's sovereignty stems from its findings that there is order and power, humans will live insecure and unsafe. Without discipline, humans are wild animals "homo homini lupus" and that life turns into war between humans "bellum omnium contra omnes" that is why humans agreed to establish a state, and for that they entered into a community agreement. The paths taken are various. According to one opinion, the power of the people because of the agreement of the people is exhausted, because that power is transferred to the ruler who now has absolute power, who is the sovereign. Another opinion is that humans are born with rights. To guarantee these rights, they entered into a community agreement. So the task is to protect people's rights. If the authorities do not carry out their duties properly, then this means that the ruling party has violated the agreement and the people can take appropriate action against such violations. In the first and second terms mentioned earlier, the ruler is sovereign and that sovereignty.

According to the first principle, the people who have handed over their power to the rulers are no longer sovereign, the sovereign is the ruler. In the second view, the people can still replace the ruler who has violated the agreement by replacing it

with another ruler, but the sovereignty does not lie with the people anymore and transfers to the ruler who can carry it out without any help. Furthermore, in the theory of Rousseau the sovereign people are only a fiction, because the people can represent their power in various ways, namely: representing only one person or several people, to a voter corps, or even from generation to generation. The real sovereignty no longer lies with the people, but in a person, a few people. In the corps of voters or to the king who actually exercises his power. So, according to Rousseau, people's sovereignty is also a pseudo-understanding and abstract, because this understanding cannot be seen clearly in a concrete form.

Almost every country includes the principle of people's sovereignty in the constitution or its Basic Law even though this principle is only a myth. Because in practice one person is ultimately distinguished from another, because one is smarter than the other, richer, more skilled, higher position, more opportunities and so on so that in reality the sovereign in that state is a small group of people in society. This group because of its advantages is the group that rules "the ruling class".

Due to the vast area of the region and the large number of people living in it, direct democracy is no longer possible to implement, only representative democracy or indirect democracy. In modern democracies, representation is exercised in various ways and variations. In general, the division consists of representatives with the parliamentary system and representatives with the separation of powers system [q.v.: 2].

In the first way the relationship between the executive and the people's representatives is very close. Because of the ministerial accountability system, each minister must be accountable for his policies to the people's representatives, so the formation of a cabinet requires the support of the trust of the Parliament, which means that the goals to be achieved by the Government depend on the approval of the Parliament.

In the second system, the executive power in principle does not depend on people's representatives. The basis for the power of the executive lies in the choice of the people and the President as chief executive appoints his assistants, who are not

responsible to the people's representatives, but to the president. Therefore, this executive cannot be overthrown by the House of Representatives with the most votes.

People's Consultative Assembly high institution regulations in the 1945 Constitution

At the beginning of the "Old Order" era, the MPR could not be formed completely because of the gravity of the situation at that time. This has been anticipated by the nation's founders with article IV of the Transitional Rules of the 1945 Constitution (pre-Amendment) which states before the People's Consultative Assembly, the People's Representative Council and the Supreme Advisory Council were formed according to this Basic Law, all their powers run by the President with the assistance of a National Committee.

Since the issuance of the Decree of the Vice President No 10, there have been fundamental changes in the position, duties and authorities of the Central Indonesian National Committee (KNIP). Since then, a new chapter in the history of Indonesian constitutionality has begun, namely the KNIP was entrusted with legislative powers and participated in setting outlines of State Policy. Thus, at the beginning of the enactment of the 1945 Constitution (pre-Amendment), the first sheet of the history of the MPR began, namely the formation of the KNIP as the embryo of the MPR.

During the enactment of the Constitution of the Republic of Indonesia (1949-1950) and the Provisional Basic Law (1950-1959), the MPR was not recognized in the constitutional configuration of the Republic of Indonesia. On the 15th of December 1955 general elections were held to elect members of the Constituent Assembly, who were in charge of drafting the Constitution.

However, the Constituent Assembly, which was originally expected to be able to enact a Basic Law, turned out to be deadlocked. In the midst of endless debates, on the 22th of April 1959 the Government recommended to return to the 1945 Constitution, but even this recommendation did not reach an agreement among members of the Constituent Assembly.

In this unfortunate situation, on the 5th of July 1959 President Sukarno issued a Presidential Decree containing it:

1. Dissolution of the Constituent Assembly.

2. The re-enactment of the 1945 Constitution and the no longer validity of the Provisional Constitution of 1950.

3. Establishment of the Provisional People's Consultative Assembly (MPRS) and the Provisional Supreme Advisory Council (DPAS) [6, p. 59].

To carry out the formation of the Provisional People's Consultative Assembly (MPRS) as ordered by the Presidential Decree of the 5th of July 1959 the President issued Presidential Decree No 2 of 1959, which regulated the formation of the MPRS as follows:

1. The MPRS consists of members of the Gotong Royong ("Mutual Assistance") DPR-GR plus delegates from the regions and groups.

2. The number of MPR members is determined by the President.

3. Referred to as regions and groups are Level I autonomous regions and work groups.

4. Additional MPRS members are appointed by the President and take an oath according to their religion before the President or the Chairperson of the MPRS who is authorized by the President.

5. The MPRS has a Chairman and several Deputy Chairmen who are appointed by the President [5, p. 4].

The number of MPRS members at the time it was formed based on Presidential Decree No 199/1960 was 616 people consisting of 257 DPR-GR Members, 241 Work Group Representatives, and 118 Regional Representatives.

After the September 30th Movement failure in 1965 it was absolutely necessary to have a total correction of all policies that had been taken previously in state life. The MPRS, whose formation was based on the Presidential Decree of the 5th of July 1959 and further regulated by Presidential Decree No 2 of 1959, after the September 30th Movement rebellion, the Presidential Decree was deemed inadequate.

To fulfil this need, steps were taken to purify the MPRS membership from the elements of the Indonesian Communist Party. And it was confirmed in Law No 4 of

1966, that before the formation of the People's Consultative Assembly elected by the people. The MPRS carried out its duties and authorities in accordance with the 1945 Constitution until the MPR as a result of the popular election who felt betrayed by the events of the September 30th Movement, hoped that President Sukarno's accountability was clear regarding the plotters and its epilogue and economic and moral decline. However, President Sukarno's accountability speech entitled "Nawaksara" did not satisfy the MPRS as the mandate provider. MPRS dissatisfaction was manifested in MPRS Decree No 5 of 1966 which asked President Sukarno to complete his accountability speech [11, p. 132].

Although then President Sukarno complied with the MPRS request in his letter dated on the 10th of January 1967 which was named "Complementary to Nawaksara", it did not fulfil the people's expectations. After discussing the President's letter, the MPRS leadership concluded that President Sukarno had neglected to fulfil his constitutional obligations. Meanwhile DPR-GR in its Resolution and Memorandum dated on the 9th of February 1967 in evaluating "Nawaksara" and its companions argued that "President Sukarno's leadership was constitutionally, politically/ideologically endangering the safety of the nation, state and Pancasila" [11, p. 132].

In this regard the MPRS held a Special Session to dismiss President Sukarno from the position and elect/appoint Lieutenant General Suharto as the acting presidency in accordance with article 3 of MPRS Decree No IX/MPRS/1966, observation, examination and legal prosecution.

The arrangement of the MPR institution in statutory regulations follows the development of political conditions in the country, thus there were experienced changes in the Constitution during the "Old Order" era Indonesia used three Constitutions, namely the 1945 Constitution, the 1949 Federal (RIS) Constitution, the 1950 Provisional (UUDS) Constitution and back again to the 1945 Constitution. During the "Old Order" period the MPR was not yet formed even though in the 1945 Constitution there were provisions regarding the MPR institution both regarding its

position and authority [4, p. 62]. Because the socio-political conditions at that time did not allow the MPR to be formed in accordance with the 1945 Constitution.

The arrangement of the MPR Institution before the amendment of the 1945 Constitution is regulated in article 1 paragraph (2), article 2 paragraph (1), (2), (3) and article 3, article 37 paragraph (1), (2) currently being enacted in the 1945 Constitution (amendments) are contained in article 2 paragraph (1), (2), (3), article 3 paragraph (1), (2), (3), article 7B paragraph (1), (5), (6), (7), article 8 paragraph (2), (3), article 9 paragraph (2). While the regulation regarding the MPR in statutory regulations is in the form of Law, this institution is regulated in Law No 16 of 1969, Law No 27 of 2009, Law No 17 of 2014, and Law No 42 of 2014 concerning Amendments to Law No 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional People's Representative Council and the Regional People's Council.

Duties and authorities of the higher institution of the People's Consultative Assembly

In the period 1945-1950 the 1945 Constitution could not be fully implemented because Indonesia was busy with fighting for independence. The Decree of the Vice President No 10 on the 16th of October 1945 decided that the Central Indonesian National Committee (KNIP) was entrusted with legislative powers, because the MPR and DPR had not yet been formed. On the 14th of November 1945 the first Semi-Presidency ("Semi-Parliamentary") Cabinet was formed, so that this event was a change in the government system to be considered more democratic.

At the time of the RIS Constitution the Indonesian governmental system was a Parliamentary system, the form of government and the form of the state was a Federation, namely a state in which it consists of states, each of which has its own sovereignty to manage its internal affairs.

During the period of the UUDS 1950 a Parliamentary Democracy system was enforced, which is often called Liberal Democracy. During this period the cabinet always kept changing, as a result development did not run smoothly, each party paid more attention to the interests of the party or group. After the Indonesian state with

the UUDS and the Liberal Democracy system experienced by the nation for almost 9 years, the Indonesian people realized that this Constitution was not suitable, because it was not in accordance with the spirit of Pancasila and the 1945 Constitution. Finally the President considered that the condition of the Indonesian Constitution endanger the unity and integrity of the nation and the state and obstruct the universal development plan to achieve a just and prosperous society. So that on the 5th of July 1959 announced a decree regarding the dissolution of the Constituent Assembly and the enactment of the 1945 Constitution and the invalidity of the 1950 Constitution.

Returning to the 1945 Constitution again, because of the political situation at the 1959 Constituent Assembly where there were many tug-of-war between the interests of political parties, so that they failed to produce a new Constitution President Sukarno issued a Presidential Decree, one of which was to reimpose the 1945 Constitution, replacing the Provisional Basic Law of 1950 which was in effect at that time.

During the “New Order” era the government stated that it would carry out the 1945 Constitution and Pancasila doctrine purely and consistently. However, its implementation deviates from the pure Pancasila and the 1945 Constitution, especially the violation of article 23, where the private debt burden is borne by the government and article 33, which gives power to the private sector to destroy our forests and natural resources.

During the “New Order” era, the 1945 Constitution was placed as a very “sacred”, so that people could not criticize the provisions contained in the articles of the Basic Law. The “New Order” government strengthened several provisions and rules in the form of MPR decrees that made the 1945 Constitution inviolable. These provisions, among others:

1. MPR Decree No I/MPR/1983, which states that the MPR is determined to defend the 1945 Constitution, does not wish to make changes to it.

2. MPR Decree No IV/MPR/1983, regarding Referendum which, among other things, states that if the MPR wishes to amend the 1945 Constitution, it must first ask for people’s opinion through a referendum.

3. Law No 5 Year 1985 regarding Referendum, which is the implementation of TAP MPR No IV/MPR/1983 [1, p. 130].

The MPR institution during the “Old Order” era was still not formed even though in the 1945 Constitution there was already a normative legal rule, because the socio-political conditions during that time were not stable. So the authority of the MPR institution during the “Old Order” period was still not running properly.

It was only after the “New Order” came to power, that the MPR had the duties and authorities in accordance with the provisions of the Basic Law. The tasks and authorities of the MPR as stated in the 1945 Constitution were as follows:

1. The MPR is the highest institution that holds the people’s sovereignty.
2. The MPR establishes the Constitution and outline of the state direction.
3. Appoint and dismiss the President and Vice President.
4. Amend the Constitution.
5. Issue MPR Decree.

The position of the high institution of the People’s Consultative Assembly in state administration

After the fourth amendment to the 1945 Constitution, (which will then be referred to as the 1945 Constitution of the Republic of Indonesia), there was a fairly basic change in both the constitutional system and state institutions in Indonesia. This can be seen from the elimination of the MPR's position as the highest state institution and the formation of several new state institutions, namely the Regional Representative Council and the Constitutional Court. In addition, the position of all state institutions is equal as a high state institution. The institutions listed as high state institutions according to the 1945 Constitution of the Republic of Indonesia are as follows:

1. The People’s Consultative Assembly (MPR).
2. House of Representatives (DPR).
3. Regional Representative Council (DPD).
4. President.
5. Supreme Court.

6. The Constitutional Court.

7. The Financial Audit Board.

The amendment to the 1945 Constitution has created a constitutional system based on a balance of powers (checks and balances), in which each power is limited by law based on its respective functions. In addition, improvements in the position and authority of each state institution are adjusted to the development of a modern democratic state, one of which is to emphasize the presidential system of government by continuing to take elements of parliamentary government as an effort to cover the shortcomings of the presidential government system [10, p. 160-161].

In terms of the authority of state institutions, the 1945 Constitution emphasizes the existence of several changes in the authority of the People's Consultative Assembly. The most prominent thing regarding the MPR after the amendments to the 1945 Constitution was the elimination of its position as the highest state institution. In addition, the changes that have occurred in the MPR, both regarding the composition, position of duties and authority are as follows:

1. The MPR no longer stipulates the State Policy Guidelines.

2. The MPR no longer appoints the President who is directly elected by the people through general elections (article 6A paragraph (1) of the 1945 Constitution). The MPR is only tasked with inaugurating the elected president according to the election results (article 3 paragraph (1) of the 1945 Constitution).

3. The composition of the MPR membership has changed, which consists of members of the People's Representative Council (DPR) and the Regional Representative Council (DPD) who are elected directly through the election.

4. The MPR still has the authority to change and enact the Constitution (article 3 paragraph (1) of the 1945 Constitution).

5. The MPR can only dismiss the President and/or Vice President during his term of office if at the suggestion of the DPR, which is of the opinion that the Resident/Vice President has violated the law or is no longer eligible to hold this position [8, p. 13- 16].

When viewed from its members, the MPR is a combination of the DPR and DPD (article 2 paragraph (1) of the 1945 Constitution). However, the MPR still has its own authority. One of the fundamental powers possessed by the MPR in the field of legislation is to amend and enact the 1945 Constitution. Apart from that, the MPR also has authority related to the positions of President and Vice President. The existence of the MPR is a mandate of article 2 and article 3 of the 1945 Constitution, including its authority. These powers can be further seen in article 4 letters b) to f) of the Law on the Composition of the People's Consultative Assembly, the People's Representative Council, the Regional People's Representative Council and the Regional Representative Council.

Conclusion

After the amendment to the 1945 Constitution, the position of the MPR has changed from being the highest state institution to only the high state institution, which is equal to other high state institutions. The People's Consultative Assembly is no longer the holder of people's sovereignty, which has great authority over which the MPR as a manifestation of the people's sovereignty.

Amendments to the 1945 Constitution are an effort to reorganize state administration based on a presidential system, where the positions between state institutions must be equal and balanced or "checks and balances". That, no state institution has a higher position. The holders of people's sovereignty, who were previously attached to the position of the MPR, are now handed over by conducting direct elections by the people to elect their leaders both in the legislative and executive fields.

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