



## **The Position of The People's Representative Council in the Indonesian Constitutional System**

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### **ABSTRACT**

*This research is based on the fact that Indonesia is a country based on law as regulated in Article 1 Paragraph (3) of the 1945 Constitution. One of the principles of the State of Law is the guarantee of human rights. As a country with people's sovereignty, the state guarantees the rights of citizens, including freedom of expression in public. This research method uses a normative legal research type, with a legislative approach and a conceptual approach. From the results of the study, it can be concluded that from the perspective of a state based on law, freedom of expression in public is a constitutional right of every Indonesian citizen and as a guarantee of protection of human rights, so that its existence is guaranteed by law. Meanwhile, from the perspective of a democratic state, freedom of expression is a form of people's sovereignty, where the people must get broad participation space in determining government policies. Therefore, the law guarantees people's freedom as a form of people's sovereignty, but the way people's aspirations are conveyed must be based on legal provisions.*

**Keywords :** *Posistion Of The DPR, Indonesian Constitutional System*

### **Introduction**

Indonesia is a country that implements a system of division of powers, where the Executive includes the President and Vice President and their cabinet members, while the Legislative includes the People's Consultative Assembly (MPR), which consists of the People's Representative Council (DPR) and the Regional Representative Council (DPD). Finally, the Judiciary, which includes the Supreme Court (MA) and the Constitutional Court (MK).<sup>1</sup> In terms of legislative power, those who represent the

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<sup>1</sup> Abu Daud Busroh. Ilmu Negara. Bumi Aksara. Jakarata. 2017. h. 85

aspirations of the people are members of Parliament or what is known as the People's Representative Council.

Based on the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as UUD RI 1945), the branches of power do not only consist of 3 (three) organs (Executive, Legislative, and Judicial) like Montesquieu's Tria Political Theory before but the number varies. Thus, the 1945 Constitution of the Republic of Indonesia does not adhere to the teachings of the separation of powers (separation of power) from Montesquieu but develops a distribution of power (distribution of power) with a sharing power pattern.<sup>2</sup>

In the Indonesian constitutional system, the Legislative institution has a close relationship with the people, both directly and indirectly, where the Legislative has the right and obligation to represent the aspirations of the people so that the regulations made are in accordance with common goals.

In the current Indonesian constitutional system, the DPR has a position as a state institution, this is stated in Article 68 of Law Number 17 of 2014. Article 68 states that "The DPR is a people's representative institution that has a position as a state institution". The benchmark of a democratic state is not only seen in the process of electing people's representatives through the General Election but will also be seen in the implementation of the functions of the People's Representative Institution whose members have been elected through the General Election.

The origin of the formation of the DPR RI emerged in the early days of Indonesian independence, namely the formation of the Central Indonesian National Committee (KNIP) in accordance with Article 4 of the transitional provisions in the 1945 Constitution of the Republic of Indonesia, this was the beginning of the formation of the Legislative Body in Indonesia. In the constitutional system of the Republic of Indonesia in the current reform era, the DPR RI is still included in the Legislative Institution together with the Regional Representative Council (DPD) which is part of the People's Consultative Assembly (MPR). The Legislative Institution was formed in order to realize the sovereignty of the State.

Article 1 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia explains that sovereignty is in the hands of the people and is implemented according to the Constitution, whereas before the amendment, sovereignty was in the hands of the

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<sup>2</sup> Khelda Ayunita dan Abd. Rais Asman. Hukum Tata Negara Indonesia. Mitra Wacana Media. Jakarta. 2016. h 11.

people, and was implemented entirely by the People's Consultative Assembly (MPR). The amendment to Article 1 Paragraph (2) of the 1945 Constitution shows that the DPR is one of the holders of people's sovereignty which functions as a representative institution of the people together with the president in forming laws.

The Indonesian House of Representatives as a representative institution at the central level, is regulated in Article 2 Paragraph (1) (third amendment to the 1945 Indonesian Constitution, which reads: "The People's Consultative Assembly (MPR) consists of members of the People's Representative Council (DPR) and the Regional Representative Council (DPD) who are elected through general elections and are further regulated by law."

The changes were fundamentally changed, initially, the MPR membership consisted of members of the Indonesian House of Representatives, plus delegates from regions and groups, to become the People's Consultative Assembly (MPR) consisting of members of the People's Representative Council (DPR) and members of the Regional Representative Council (DPD). However, the functions of the DPR and DPD are constitutionally not equal. So in its implementation, the position of the DPR is stronger when compared to the DPD in the function of forming laws as regulated in Article 20 Paragraph (1) of the 1945 Indonesian Constitution, that the DPR holds the power to form laws".

The DPR has duties and functions that have been regulated in Law Number 17 of 2014 which has been amended twice, most recently through Law Number 13 of 2019. Therefore, the People's Representative Council (DPR) is an important part of the Indonesian state system to carry out its functions properly, especially in accommodating and realizing the aspirations of the Indonesian people. In the legislative function, it emphasizes the position of the DPR as a legislative institution that exercises the power to form laws. The affirmation of the DPR's function in the 1945 Constitution of the Republic of Indonesia will greatly support the implementation of the DPR's duties so that the DPR functions more according to the hopes and demands of the people.

Although the DPR has been appointed as a people's representative institution that can accommodate and convey the aspirations of the people, in reality, the position of the DPR still causes problems. Before the 1945 Constitution was amended, the position of the DPR had not been placed proportionally as a people's representative institution, while after the New Order, the DPR had not been able to play an optimal role in carrying out its duties and functions. Even the placement of the DPR institution in this marginal

position will have an impact on the position of the MPR as the highest state institution. This causes the existence of the DPR to refer more to the president's working partner, which is seen as a complementary institution in the government system in Indonesia.

### **Metode Penelitian**

The type of research used in this study is normative juridical, which is a process for finding legal rules, legal principles, and legal doctrines in order to answer the legal issues faced,<sup>3</sup> considering that legal science is perspectival, not descriptive.<sup>4</sup> Therefore, this legal research is focused on studying the norms in positive law. The problem approach used is the statute approach and the conceptual approach.

The statute approach is carried out by examining all laws and regulations relating to the legal issue being handled..<sup>5</sup> The conceptual approach is an approach that starts from ideas and doctrines that develop in legal science, in order to find relevant ideas as a basis for building a legal argument in solving the legal issues faced.<sup>6</sup>

The collection of materials is carried out by linking relevant legal materials to the problems that are occurring, both primary legal materials and secondary legal materials that are collected based on the problem topics that have been formulated and classified according to their sources and hierarchies to be studied comprehensively.

### **Research Results and Discussion**

#### **The Position of the DPR in the State System of the Republic of Indonesia**

The DPR is a representative body of the people that has the same position as a state body. The Representative Council of the Republic of Indonesia, better known as the DPR-RI, is one of the highest state bodies included in the legislative body in the Indonesian state system as a representative body of the people. The House of Representatives is formed of members of the political parliament who act as participants in the general election and who have been selected through the general election mechanism.

The Republic of Indonesia is a republican state by Article 1 (1) of the Basic Laws of the Republic of Indonesia in 1945, hereinafter referred to as the 1945 Constitution of the Republic of Indonesia. Matters regarding the power of government must be based on the 1945 Constitution of the Republic of Indonesia. In the 1945 Constitution of the

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<sup>3</sup> Peter Mahmud Marzuki. *Penelitian Hukum*. Kencana Prenada Media Group. Jakarta. 2013. h.35

<sup>4</sup> Ibid. h 6

<sup>5</sup> Ibid. h.93.

<sup>6</sup> Ibid. h.141

Republic of Indonesia, there was a shift in the power of the president in the DPR. The hall is based on the legislative function which previously became the authority of a president, but after the amendment of the 1945 NRI Constitution was enacted, the legislative function was transferred to the authority of the DPR as stated in Article 5 paragraph (1) of the Amendment to the 1945 NRI Constitution. The article explains that the President has the authority to submit laws to the DPR. Article 20 paragraph (1) of the DPR holds the authority to form laws. In this hall, it is necessary to highlight the point of national legislative power which began when a president transferred to the head of the DPR.

As a representative body, the DPR has the following duties:

- a. The DPR has the authority to draft, approve, finalize and distribute the national legislative program and the planning of laws.
- b. The DPR carries out the acceptance of the drafting of the Laws previously submitted by the DPD on regional autonomy, the acceptance of the drafting of the Laws submitted by the DPD related to regional autonomy, the relationship between the center and the region, the formation and expansion and integration of the region, the management of natural resources and other economic resources, and related to the balance of central and regional incomes.
- c. The DPR carries out the activities of the smoothest monitoring of the drafting of the Laws, the ALPBN, and government policies.
- d. The DPR shall carry out the legalization and follow-up on the audit of the management and accountability of state assets that have been submitted by the Audit Board of State (BPK).
- e. The DPR shall have the right to approve the transfer of state assets that are its authority based on the provisions of the laws and regulations and the legalization of the process that is broad in the basis of the life of the people related to the state assets.
- f. Absorbing, collecting, accommodating, and following up on the mental aspiration;
- g. As well as carrying out traffic duties that have been regulated in the Laws.

State institutions carry out their functions smoothly based on the authority of the state which is regulated by the laws and regulations, so that government actions are considered wrong.<sup>7</sup> And next function of the DPR in the 1945 Constitution of the Republic of Indonesia, Amendment to Chapter VII, Article 20 paragraph (1) Jo. Article

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<sup>7</sup> Sadjiono. Bab-bab Pokok Hukum Administrasi Negara. LaksBang. Yogyakarta. 2011. h.58

69 paragraph (1) letters a-c of Law Number 2 of 2018 concerning the MPR, DPR, DPD, DPRD (MD3) is DPR has the following functions. legislative function, budget function), and control function. These three functions are carried out in the form of community representation, in implementing foreign policy based on laws and regulations. What is meant by these three functions are the legislative function, regulatory function, and control function.

The legislative function is to form laws that are then approved by the President to obtain general approval. The proposal for the drafting of laws comes from the DPR, the President, and the DPD. This shows that the DPR does not work alone in formulating or drafting laws. The House of Representatives is the holder of legislative authority. Legislative authority is the authority that first reflects the sovereignty of the people. This authority includes state activities, namely to regulate general life. Therefore, in the hall, a regulation was established which was then given to the head of the representative body of the Republic of Indonesia, namely the Parliament which in Indonesia is headed by the Representative Council of the Republic of Indonesia.

There are three things that must be formulated by DPR members, namely:

1. Regulations regarding the reduction of citizens' rights and freedoms,
2. regulations regarding the burden on citizens' assets,
3. regulations regarding expenditures incurred by state institutions

Regulations on these three matters can only be carried out with the consent of the citizens themselves, through their representatives in parliament. The legislative function is stipulated in Article 5 paragraph (1), Article 20, Article 21 paragraph (1), and Article 22 of the 1945 Constitution, before the first amendment to the 1945 Constitution. After the first amendment to the 1945 Constitution of the Republic of Indonesia, the legislative function is regulated in Article 20 of the 1945 Constitution of the Republic of Indonesia, which states that the People's Representative Council holds the power to form laws.

The results of the amendments to the 1945 Constitution of the Republic of Indonesia determine that the legislative function of the People's Representative Council has legal consequences for the People's Representative Council, including:

- a. The DPR is obliged to prepare the priority of Draft Laws that are in accordance with the needs of the community in general.
- b. The DPR can accept input or suggestions from the community or non-governmental organizations

- c. The DPR can make its draft of the Draft Law.
- d. The DPR can cooperate in preparing the draft of the Draft Law.
- e. The DPR must supervise the Laws that have been in effect so far.
- f. The DPR must conduct an inventory and evaluation of problems with Laws that are considered no longer relevant to current conditions.

The law in Indonesia has given the power to form laws to the People's Representative Council, but still gives the government the right to submit draft laws to the People's Representative Council. The purpose of the policy of shifting power in the formation of laws to the People's Representative Council is based on the desire to implement a democratic system of government based on the concept of distribution of power and the establishment of checks and balances mechanisms between state institutions.<sup>8</sup>

The provisions can be implemented well by the President and the House of Representatives as a manifestation of the principle of checks and balances between the two institutions. However, sometimes there are differences of opinion so that there is no agreement between the two parties. As in the revision of the Law on Regional Head Elections, the President did not agree with the House of Representatives and in the end the President issued a Regulation instead of Law.<sup>9</sup> There is a phrase "discussed together" in Article 23 paragraph (2) of the 1945 NRI Constitution after the amendment which raises questions regarding the position of the two institutions, namely the president and the DPR in discussing the Draft State Budget. This is very important, there is a provision in Article 23 paragraph (3) of the 1945 NRI Constitution after the amendment which states that if the DPR does not approve the Draft State Budget submitted by the President, the government will implement last year's State Budget.

In this case, the budgeting function is to discuss and provide approval or not to provide approval for the draft Law on the State Budget submitted by the President. Article 20A paragraph (1) of the 1945 NRI Constitution states that the DPR has strong authority in the process of determining the State Budget or APBN. This can also be seen from the provisions in Article 23 paragraph (3) of the 1945 NRI Constitution which states that the State Budget submitted by the government must first receive approval from the People's Representative Council. Furthermore, in using systematic

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<sup>8</sup>A.M. Fatwa. *Melanjutkan Reformasi Membangun Demokrasi*. Raja Grafindo Persada. Jakarta. 2004. h. 97

<sup>9</sup><http://www.voaindonesia.com/content/presiden-sby-akan-keluarkan--perpu-terkaitupilkada/2468436.html>,

interpretation, the relationship between Article 23 paragraph (2) and (3) shows an explanation or affirmation that the DPR's position is higher than the President's in discussing the RAPBN. This is because the DPR is the one who gives the word of agreement or disagreement. This means that the DPR has budget rights.<sup>10</sup>

Hal ini merupakan pelaksanaan fungsi untuk melaksanakan proses pengawasan (pengendalian) terhadap pelaksanaan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 beserta peraturan perundang-undangan untuk pelaksanaannya.<sup>11</sup> This function is needed as an effort to control the government's progress, which targets the conformity of policies that have been set or even deviations. Implementation of the Trias Politica concept, power is not separated from each other strictly because there is an element of division of tasks in making policies. Legislative power is carried out jointly by the House of Representatives and the President. Togetherness is maintained between the House of Representatives and the President, with the importance of finding a legal basis to determine what is to be achieved through development activities and how much budget is needed. After an agreement is reached, it is stated in the determination of the State Revenue and Expenditure Budget, the government is tasked with realizing development programs. Meanwhile, the House of Representatives has the task of supervising the entire development program by correcting any deviations or the absence of deviations.

### **The Relationship between the DPR and the President in the Legislative Process**

The transfer of legislative power from the President to the DPR is one part of the effort to reorganize the position and relationship of the executive and legislative branches in the implementation of state governance. The transfer or shift of legislative power to the DPR is a characteristic of the presidential system as well as a manifestation of the implementation of people's sovereignty and limitation of power. The President's authority in the legislative field as constructed in the 1945 Constitution after the amendment has distorted the principle of separation of powers and resulted in an imbalance in the position of the President and the DPR in the formation of laws. The imbalance resulting from the President's large legislative authority can create dominance of the President in the formation of laws and has the potential to trigger acts of abuse of power by the President.

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<sup>10</sup> Jimmly Assiddiqie. *Pergumulan Peran Pemerintah terhadap APBN*. UI Press. Jakarta. 1996. h.8

<sup>11</sup> Bagir Manan. *Konvensi Ketatanegaraan*. FH UII Press. Yogyakarta 2006. h. 11.



The President's legislative power after the amendment to the 1945 Constitution is not appropriate if placed within the framework of a presidential system of government. The President's legislative power after the amendment to the 1945 Constitution cannot be understood from the perspective of any system of government that has developed in the era of modern democracy which emphasizes that the power to form laws lies with the people's representative institutions. The presidential system of government places the legislature as an institution that has broader powers than the executive. The executive's involvement in the legislature process is not in line with the nature of legislature and the position of the legislature in the presidential system of government which adheres to a strict separation of the position and function of the executive and legislative branches of power in the implementation of state power.

The President's right of initiative as emphasized in Article 5 paragraph (1) of the 1945 Constitution is an unusual right in the practice of legislature in the presidential system of government. Submission of draft laws is a routine task of DPR members as a manifestation of the implementation of the DPR's legislative function. Submission of draft laws by the executive is a characteristic of the parliamentary system because in the parliamentary system the executive is part of the legislature as a result of the absence of a strict separation of the executive and legislative branches. The President's right of initiative as regulated in Article 5 paragraph (1) of the 1945 Constitution obscures the position of the President as the holder of executive power and the DPR as the holder of legislative power. The separation of powers as a principle of the presidential system is not perfectly explained. The submission of draft laws by the President should be able to be done by DPR members who come from the President's political party.

The President's right to initiative makes it easier for the President to force his political agenda to be embodied in the form of laws. Law No. 12/2011 emphasizes that if the President and the DPR submit draft laws that regulate the same material, then the draft law originating from the DPR will be prioritized for discussion. The provisions of Law No. 12/2011 are meaningless because in practice the President is the executive who is more dominant in taking the initiative to submit draft laws and the DPR is more passive. Moreover, if the majority of DPR seats are controlled by the government party or a coalition of parties supporting the government, it will be easier for the President to force his political agenda to be realized in law.

Article 21 of the 1945 Constitution after the amendment gives the right to DPR members to submit draft laws and this right arises from the authority of the DPR as the holder of the power to form laws as emphasized in Article 20 paragraph (1) of the 1945 Constitution after the amendment. The position of the DPR as a representative institution of the people whose members are directly elected by the people through general elections reflects the existence of a people's mandate in the duties and obligations of DPR members as agents to realize the will of the people through laws.

The right of DPR members to submit draft laws as regulated in Article 21 of the 1945 Constitution, does not provide a significant contribution in balancing the President's right of initiative. This is because the draft laws submitted by DPR members are merely drafts and not in the sense of a complete draft law as understood in the President's right of initiative in Article 5 paragraph (1) of the 1945 Constitution. What should be submitted by DPR members is not a "draft" of a draft law but a complete "draft" as only draft laws originate from the President's right of initiative based on Article 5 paragraph (1) of the 1945 Constitution.

After the draft law proposal from the DPR members has been discussed and approved in a plenary session of the DPR, the draft is then sent to the President to be asked for an opinion as well as a letter of request for the President to appoint a Minister who will represent the President in discussing the draft together with the DPR. In practice, the DPR letter is often interpreted as a request for the President's opinion and approval of the draft law sent by the DPR. The mechanism as described above shows that the President's intervention is quite large in the formation of laws. The President's letter of recommendation shows that the President's control has begun since the beginning of the legislative process.

The provisions of Article 21 of the 1945 Constitution are also unclear when there are no express regulations in the 1945 Constitution regarding the subsequent mechanism for submitting draft laws by DPR members. The follow-up mechanism for draft laws submitted by DPR members is only regulated in Law No. 12/2011. The proposal in question must first be discussed internally within the DPR to then be approved as a draft law from the DPR. The draft is then discussed together by the DPR and the President to obtain joint approval. Looking at the provisions in Law No. 12/2011, it is understandable that the draft law from DPR members may never become a draft law if it does not receive approval in a plenary meeting of the DPR. The follow-up mechanism in Law No. 12/2011 has reduced the meaning of the DPR's legislative

power as stated in Article 20 paragraph (1) of the 1945 Constitution. The provisions of the law have also narrowed the room for DPR members to fight for the aspirations of the people in the legislative process.

The formation of laws is the absolute authority of the DPR within the framework of the presidential system of government. Article 20 paragraph (1) of the 1945 Constitution after the amendment expressly states that the DPR holds the power to form laws. The phrase "holding power" as formulated in Article 20 paragraph (1) of the 1945 Constitution after the amendment must be interpreted as "holding authority", because a power (*macht*) in this case the power to form laws (*wetgevende macht*) contains the meaning of the authority to form laws. Because the power to form laws is in the hands of the DPR, the submission, discussion and approval of draft laws into laws should be the authority of the DPR. It has become customary that the power to form laws is in the hands of legislative institutions as a manifestation of the sovereignty of the people.

## **Conclusion**

The People's Representative Council better known as the DPR is one of the institutions in the Indonesian state structure. The institution has its duties and functions that have been regulated in Law Number 2 of 2018 concerning the second amendment to Law Number 17 of 2014. Regarding the duties of the DPR, they are regulated in Article 72 of Law No. 2 of 2018. While the functions of the DPR are regulated in Article 20A paragraph (1) Jo. Article 69 paragraph (1) letters a-c of Law No. 17 of 2018. The People's Representative Council in carrying out its duties and functions cooperates with other institutions so that there is a challenge and balance in the Indonesian state system... The regulation of the President's legislative power after the amendment to the 1945 Constitution is not by the principles of the presidential system of government which strictly separates the executive and legislative branches of power in the state power system as an implementation of the idea of limiting power and the principle of people's sovereignty. The President's legislative power after the amendment to the 1945 Constitution can weaken the legislative function of the DPR, create an imbalance between the executive and legislative, and hinder the realization of laws that are by the will of the people.

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