

The Existence of The MPR Post Amendment to The 1945 Constitution Related to the Representative System in Indonesia

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ABSTRACT

Based on article (2) point (1) the 1945 Constitution after reconstruction state that General People Assembly consist of members from House of Representative and Regional House of Representative. According from this fact that General People Assembly is independent institution or organisation besides House of Representative and Regional House of Representative. It's consequence that have three representative organ in Indonesia. Therefore General People Assembly is independent institution but don't have legislative authority. There is different fact between House of Representative and Regional House of Representative Authority.

Keyword: General People Assembly, Representative of System, MPR

ABSTRAK

Menurut Pasal 2 ayat (1) UUD 1945 pasca perubahan menyatakan MPR terdiri atas anggota DPR dan anggota DPD. Dengan fakta yang demikian maka MPR adalah suatu institusi atau lembaga yang mandiri di samping DPR dan DPD. Konsekuensinya di Indonesia ada tiga badan perwakilan sekaligus. Bila eksistensi MPR dikaitkan dengan sistem perwakilan yang ada maka sistem perwakilan di Indonesia menjadi tidak jelas. Meskipun MPR adalah institusi yang berdiri sendiri namun tidak memiliki wewenang legislatif. Demikian juga adanya perbedaan yang mencolok antara wewenang DPR dengan DPD

Kata Kunci: Majelis Umum, Perwakilan Sistem, MPR

INTRODUCTION

In the period from 1999 to 2002 there have been 4 (four) amendments to the 1945 Constitution, namely: the first amendment was ratified on 19 October 1999, the second amendment was ratified on 18 August 2000, the third amendment was ratified on 10 November 2001 and the fourth amendment was ratified on August 10, 2002. The four consecutive amendments to the 1945 Constitution have brought about fundamental changes to the Indonesian state system. These changes include: no longer recognized the distinction between the highest state institutions and state high institutions, the supremacy of the MPR to the supremacy of the Constitution,

The president and vice president are no longer elected by the MPR but are elected directly by the people, the abolition of one of the top state institutions, namely the DPA and the introduction of new state institutions, namely the Constitutional Court, DPD and the Judicial Commission, as well as a shift in legislative functions from the hands of the president to the DPR. In addition, the amendments four times in a row also resulted in changes to the Constitution itself. If the 1945 Constitution before the amendment consisted of preambles, articles and explanations, then after the amendments to the 1945 Constitution only consisted of preambles and articles.

The 1945 Constitution which before the amendment consisted of 37 articles, only 5 articles were not touched by changes, namely Article 4 concerning Government Powers, Article 10 concerning the

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President Holding the Supreme Power over the Army, Navy and Air Force, Article 12 concerning the President Declaring a State of Danger, Article 29 concerning Religion, and Article 35 concerning Flags (Fatwa, 2009). The 1945 Constitution, which before the amendment had 71 provisions, has 199 provisions or an increase of almost 200% (Maylawati et al., 2022).

Of the total 199 provisions, the text of the 1945 Constitution which is still original and has not been changed is only 25 provisions (12%), while the remaining 174 provisions (88%) are completely new material. In this paper, we will examine the existence of the MPR in relation to the representation system in Indonesia after the amendment to the 1945 Constitution (Kusumaningtyas, 2018). The introduction of a new state institution, the Regional Advisory Council or DPD, is the idea of establishing a bicameral representation system or a two-chamber representation system together with the DPR. However, it should be remembered that the MPR is also an independent state institution in addition to the DPR and DPD. It is interesting to examine what kind of representation system was adopted by the 1945 Constitution after the amendment?

RESEARCH METHOD

This study uses qualitative research methods (Sugiyono, 2015), with the main source of data consisting of related research articles. The data in this article were analyzed using content analysis and reduced to become a collection of new conclusions.

RESULTS AND DISCUSSION

THE EXISTENCE OF MPR POST AMENDMENT OF THE 1945 CONSTITUTION

The existence of the MPR institution in the state institutional system of the Republic of Indonesia is a unique state institution. Its uniqueness is that an institution like the MPR is difficult to compare in any country. (Philipus M. Hadjon, 1992) When it comes to the institutions that existed in the Dutch East Indies government, in the past, only the MPR was uniquely Indonesian. (Jimly Asshiddiqie, 2004) Other state institutions are only blueprints. The DPR can be associated with the "Volksraad" (People's Council), the President is nothing but a substitute for the "Gouverneur General", the Supreme Court is related to "landraad" and "Raad van Justitie" in the Dutch East Indies, as well as "Hogeraad" in the Netherlands. BPK comes from "Raad van Rakenkamer", and DPA comes from "Raad van Nederlandsche Indie" in Batavia or "Raad van State" in the Netherlands. While the MPR did not have previous examples, except for those in communist countries that implemented a single system, through which the sovereignty of the people was channeled into the institution of the supreme People's Council (Supreme People's Council), such as in the Soviet Union and China.

Article 1 paragraph (2) of the 1945 Constitution before the amendment stipulates: sovereignty is in the hands of the people and is carried out entirely by the People's Consultative Assembly. Based on what is determined by Article 1 paragraph (2) of the 1945 Constitution before the amendment, the supremacy of the MPR was born. (Philipus M. Hadjon, 2008) Based on the provisions of Article 1 paragraph (2) of the 1945 Constitution before the amendment that placed the MPR in a position of supremacy, it means:

1. The agency has the "legal power" to determine everything that is confirmed by the Constitution.
2. There is no rival authority, which means that no one or any body has the power or authority to violate or override something that has been decided by the agency (Philipus M. Hadjon, 1992).

After undergoing changes, the formulation of Article 1 paragraph (2) of the 1945 Constitution changed to: "sovereignty is in the hands of the people and implemented according to the Constitution". With this provision, there has been a shift from the supremacy of the MPR to the supremacy of the Constitution.

According to Bagir Manan, this means that the powers of all state apparatus are limited, that is, are limited by the Constitution. Unlimited power as the MPR had in the past was prohibited by the Constitution, because it was proven that this power was used to violate the Constitution (Philipus M. Hadjon, 1992). According to Article 2 paragraph (1) of the 1945 Constitution after the amendment, the MPR consists of members of the DPR and members of the DPD. With these provisions, the structure of the MPR can be seen in Figure 1:

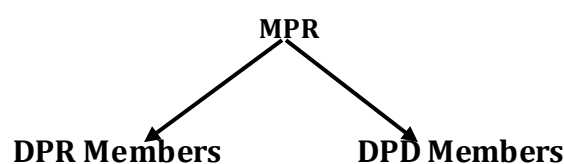


Figure 1. MPR structure

Thus, based on the picture above, it can be seen that the MPR after the amendment to the 1945 Constitution is an institution or institution that is independent or independent in addition to the DPR and DPD.

REPRESENTATIVE SYSTEM THEORY

Salah satu hal penting yang menjadi perhatian dalam sistem ketatanegaraan Indonesia pasca amendments to the 1945 Constitution were made in the period 1999 to 2002, including those concerning the representative system adopted by the Republic of Indonesia (Gde Panjta Astawa, 2009). According to Arbi Sanit, what is meant by representation is the relationship between two parties, namely the representative with the representative where the representative holds the authority to take various actions related to the agreement he made with the represented (Sanit, 1985).

Talking about the representative system is essentially talking about the organizational structure in the people's representative institution. In theory, there are several representative systems, namely the unicameral system of representation or one-chamber representation system which means that there is only one representative organization or institution, the bicameral system of representation or two-chamber representation system which means that there are two representative organizational structures and the threecameral or multicameral system which means that there are more than one representative. two organizational structures of representative institutions.

The existence of a people's representative institution is a must in a country that adheres to the principle of people's sovereignty. This people's representative body is known by various terms, for example: Parliament, Legislature, Congress, House of Commons, Diet, Bundestag or House of Representatives (Dahlan Thaib, 1999).

UNICAMERAL REPRESENTATIVE SYSTEM

With a unicameral representation system, it means that there is only one organizational structure for representative institutions. According to Jimly Assidique, this unicameral system of representation is the most popular and adopted in most countries in the world. (Abdy Yuhana, 2009) Countries that follow the unicameral system of representation, for example, are Vietnam, Laos, Lebanon, Syria and Kuwait. In Vietnam the representative body of the people is the National Assembly, in Singapore the representative body is the Parliament, in Syria the representative body is the House of Representatives, in Lebanon the representative body is the Assembly of Representatives and in Kuwait the representative institution is the National Assembly (Gde Panjta Astawa, 2009).

BICAMERAL REPRESENTATIVE SYSTEM

In a bicameral system of representation or a two-chamber representation system, it means that there are two organizational structures of representative institutions. The two representative institutions each have the authority to carry out their functions as people's representative bodies. (Gde Panjta Astawa, 2009) The two representative institutions also have a balanced or equal position.

There are two possibilities for adopting this bicameral representation system. The first reason is to establish a mechanism for checks and balances and for further discussion in the legislative field. The second reason is to form representatives to accommodate certain interests which are usually not adequately represented by the first assembly (Abdy Yuhana, 2009; Mustapa et al., 2020). Countries that adopt a bicameral representation system include the United States, Britain, the Netherlands and others. In the United States, the representative body called Congress consists of: the Senate (representative of the states) and the House of Representatives (representative of all the people). In England, the representative body of the people is called Parliament consisting of: the House of Lord (representative of the class) and the House of Commons (representative of all the people). In the Netherlands, the people's representative body is called the Staten General consisting of: de Eerste Kamer (representatives from the regions) and de Tweede Kamer (representatives of all the people). (Gde Panjta Astawa, 2009). been followed in Indonesia where the people's representative institutions consist of two organizational structures, namely the Senate and the House of Representatives.

THREECAMERAL OR MULTICAMERAL REPRESENTATIVE SYSTEM

In the three-cameral or multicameral system, this means that there are three organizational structures of representative institutions with their respective functions and having a balanced or equal position. The threecameral system is not popular and is rarely implemented.

Countries that adopt this threecameral or multicameral system of representation, for example, the Republic of China, Taiwan under the 1948 Constitution, whose representative body is called the Parliament, consists of: the National Assembly/People's Assembly, the Legislative Yuan or the People's Representative Council, and the Control Yuan or the Supervisory Board. But now, under the 1994 Constitution, the Parliament only consists of: the National Assembly or the People's Assembly and the Legislative Yuan or the People's Representative Council. (Gde Panjta Astawa, 2009)

REPRESENTATIVE SYSTEM IN INDONESIA POST AMENDMENT TO THE 1945 CONSTITUTION

Among the unicameral representation system, bicameral representation system and threecameral or multicameral representation system, which representation system is adopted in Indonesia based on the 1945 Constitution? As explained above, the birth of a new state institution called the DPD is related to the idea of forming a bicameral system, namely the DPD and the DPR. So is the representation system in Indonesia bicameral? The following will be studied further.

In discussing the representative system, it is relevant to examine the position of the MPR, considering that as stated above, the MPR is a separate state institution apart from the DPR and DPD. According to Article 2 paragraph (1) of the 1945 Constitution: The People's Consultative Assembly consists of members of the People's Representative Council and members of the Regional Representative Council who are elected through general elections and further regulated by law. Thus, according to Article 2 paragraph (1) of the 1945 Constitution, the structure of the MPR consists of: members of the DPR and members of the DPD. When made in the form of an image, the MPR structure will look like Figure 2:

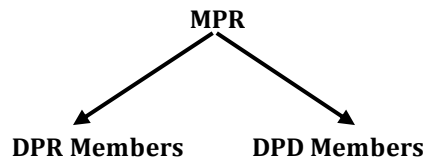


Figure 2. MPR structure

With a picture like the one above, the MPR is an independent institution or an independent institution in addition to the DPR and DPD. Thus in Indonesia there are three representative bodies at once namely the MPR, DPR, and DPD. This situation is different from, for example, the United States. Article 1 paragraph (1) of the United States Constitution states: All legislative power herein granted shall be vested in the Congress of the United States, which shall consist of a Senate and House of Representatives. If made in the form of a picture, the structure of the Congress in the United States will be like Figure 3:

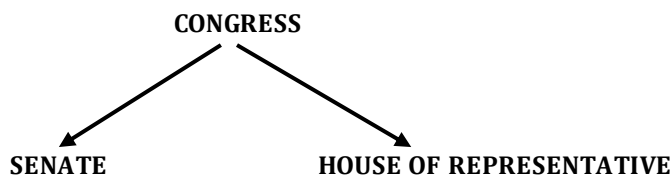


Figure 3. Structure of Congress

Thus, unlike the MPR in Indonesia, the Congress in America is not an independent institution or body. Congress is simply a forum between the Senate and the House of Representatives. Under such circumstances, it is clear that in the United States the system of representation is a two-chamber system of representation consisting of two representative institutions, namely the Senate and the House of Representatives. If the MPR is to be made like the Congress in the United States, the MPR structure should consist of: DPR and DPD. If made in the form of an image then the result will be like Figure 4:

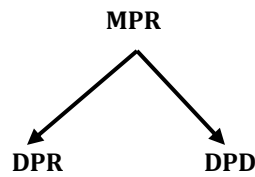


Figure 4. The structure of the MPR is made congress

Is it that the representation system in Indonesia adheres to a three-cameral representation system because there are three representative bodies at once, namely the MPR, DPR and DPD. Associated with the function of the MPR which according to Article 3 paragraph (1) of the 1945 Constitution is to amend and stipulate the Constitution, the MPR is not a legislative body here. MPR only has a *grondwetgeving* function, not a *wetgeving* function. Thus, it is also inappropriate to call it a three-cameral system. Is it then that adopting a bicameral system is linked to the DPR and DPD institutions. This can be studied in relation to the functions of these state institutions. According to the 1945 Constitution, the DPR has the following functions: to make laws (Article 20 paragraph (1), discuss draft laws together with the president for mutual approval (Article 20 paragraph (2)). The DPD has the following functions: to submit to the DPR a draft law relating to regional autonomy, central and regional relations, formation and expansion and merging of regions, management of natural resources and other economic resources, as well as those relating to the balance of central and regional finances (Article 22D paragraph (1). DPD also has the function of providing consideration to the DPR on the bill on the state revenue and expenditure budget and the bill relating to taxes, education and religion (Article 22D paragraph (3).

Looking at the functions of the two state institutions, it turns out that there is an imbalance or there is a disparity in authority. Because of the weak function of the DPD, Jimly Assidique jokingly called the DPD not a "Regional Representative Council" but a "DPR Advisory Council". Under such circumstances, according to Jimly Assidique, although there are two representative bodies, they can only be called "soft bicameral" not "strong bicameral".

With this reality, according to Gde Pantja Astawa, the idea of a two-room system becomes invisible. Even according to Gde Pantja Astawa, with the existence of three representative bodies at once, namely the MPR, DPR and DPD and if it is relevant to the theory of the representative system, then Indonesia does not adhere to both, meaning that it is neither unicameral nor bicameral. Therefore it is often said that the Representative System of the Republic of Indonesia after the amendment to the 1945 Constitution is "sexless". (Gde Panjta Astawa, 2009).

CONCLUSION

Based on the explanation above, it can be seen that after the amendment to the 1945 Constitution, the MPR is an institution that was established in addition to the DPR and DPD. Under these circumstances the idea of forming a bicameral system of representation did not materialize. If you want to make a representative system in Indonesia with a bicameral system, the MPR structure must be changed from the MPR consisting of: MEMBERS of the DPR and DPD MEMBERS to an MPR consisting of the DPR and DPD. Thus later the MPR will only become a mere forum between the DPR and DPD as the Congress in the United States.

In addition, to realize the idea of a bicameral representation system, reforms must also be made to the authority of the DPD so that there is a balance of authority between the DPD and the DPR. If this is

done, it will clarify the representative system adopted in Indonesia and of course it will also reduce the "over organization" of state institutions and of course reduce the burden on the state budget.

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