

Strengthening the Authority of the People's Consultative Assembly the Republic of Indonesia to Create Checks and Balances System based on Post-Amendment Constitution 1945

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ABSTRACT

The aims of the research is to analyze the urgency of strengthening the authority of the People's Consultative Assembly the Republic of Indonesia (MPR RI), because post-amendment constitution 1945 in year 1999-2002 the MPR RI is currently only placed as a state institution of accessories in the design of state governance which has only one authority, namely a five-year meeting to appoint the president and vice president after the presidential election. MPR RI institutions need to be designed to have performance accountability and build balanced relationships between state high institutions and state commissions in presidential government system. This research uses socio constitutional legal methods to focus on secondary data from various legislation and literature studies. The purpose of this research is that the MPR RI as the unique democratic institution of Indonesia can be further empowered and strengthen the practice of the parliamentary system of Tricameralism: the MPR RI, the House of Representatives (DPR RI), and Regional Representative Council (DPD RI). To strengthen the authority of the MPR RI are: (1) the authority to request performance reports of state institutions; (2) the authority to make regulations; (3) the authority to increase the composition of the group's delegates; and (4) the authority to form the guidelines of state guidance (GBHN).

Keywords: People's Consultative Assembly, Republic of Indonesia, Checks-Balances, and Constitution 1945.

INTRODUCTION:

The idea of a democratic system is aimed at becoming an instrument of limiting political power, since if political power is not restricted, it will only produce an authoritarian system of government. Therefore, the term -‘constitutional democracy’- was born, namely governance based on the foundation of the constitution. This model asserts that the government is not based on power, but based on law or rule of law. Democracy will only work well in a country when it comes to designing various models of political systems that can support it. The presence of the People's Consultative Assembly (MPR RI) in Indonesia, in the scheme of a presidential governmental system is certainly intended to contribute to constitutional democracy. Because, in the view of Alfred Stepan and Cindy Skach, democratic politics in the present context is not only measured at the high achievements of social and economic conditions of a nation, but also depends on the extent to which the design of political institutions in a country can affect the effectiveness in the course of a democratic government. (Stepan, 1993, p. 1). Often the development of the Indonesian state administration system after the 1945 Constitution of public attention is more directed to the DPR because much more can be seen and felt, although the results are not satisfactory. (Sherlock, 2010).

On the contrary, the public's attention to the MPR RI institution is almost zero, as well as its performance

cannot be seen or felt directly by the people, also because its function in the 1945 Constitution post-amendment is systematically weakened from the “highest state institution” to only “the state high institution”. (Assiddiqie Jimly, 2004, pp. 38-39). The relationship between MPR RI and other state institutions is only functional-horizontal rather than vertical-structural. The existence of the MPR RI seems redundant, because it only meets once a year in five years according to the intention of Article 2 Paragraph (2) of the 1945 Constitution after the amendment and Article 199 Paragraphs (1) and (5) and Article 268 Paragraph (1) and (5) of Law No . 27 of 2009 on MPR, DPR, DPR, DPRD (Law Number 27, 2009).

The rest of the MPR's performance only focuses on routine Socialization of 4 (four) Pillars of Statehood Life: Ideology of Pancasila, Constitution 1945, The Unitary State of the Republic of Indonesia (NKRI) and Diversity in Unity (Bhineka Tunggal Ika). (Yani, 2012).

Therefore, this present study aimed to analyze, firstly, the reason why is it necessary to strengthen the authority of MPR RI post-amendment constitution 1945. Secondly, what are the efforts to put forth to strengthen the authority of the MPR RI to create checks and balances of relationships between state institutions in the scheme of Indonesia presidential government system.

RESEARCH METHODS:

This is a socio-legal research, ie legal research using interdisciplinary as research in social science, because the definition of law varies greatly in context. (Micheil, 2007, pp. 14-15). This study focuses on the source of legal materials and library data or documents (library research). Library research is intended to obtain secondary data, in the form of primary, secondary and tertiary legal materials. Among others: the 1945 Constitution before and after the amendment, Law No. 17 of 2014 on MPR RI, DPD RI, DPR RI and DPRD, and various articles of journals and books related to the issue of MPR RI. Then proceed with inventory, examine or test the legal materials or written data relevant to the object of research.

LITERATURE REVIEW:

Indonesian Constitution 1945 and Amendment:

Amendments to the Constitution and the People's Consultative Assembly (MPR RI), originally the existence of the MPR RI before the amendment constitution 1945 was placed in a very vital position, even the MPR RI declared as the highest state institution that exceeds from other state institutions. MPR RI is a democratic institution positioned as a mandate to the president. Therefore the president is declared the mandate of MPR RI. This is what the founders of the Indonesian nation called in the Minutes of Meeting of the Investigating Agency for the Preparation of Independence of the Republic of Indonesia (BPUPKI) on 11-15 July 1945 and the Minutes of the Committee for the Preparation of Indonesian Independence (PPKI) on 18 August 1945 as recorded in the Archives AG Pringgogidgo-AK.Pringgogidgo referred to as "own system". (Kusuma & R.M., 2004, p. 24). This system does not refer to the parliamentary system in the UK because it embraces the ideology of individualism and tends to give birth to the shift of power that occurs due to the turbulence between political parties in multiparty schemes. (Manan, 2006, p. 17). Nor does it refer to a rigid US presidential system because the presidential term is rigidly restricted in the constitution, the winners in the elections take all positions of executive and legislative power (winner takes all) and potentially a prolonged conflict between the executive and legislature, which may not be appropriately applied in Indonesia as a new democracy. (Indrayana, 2007).

However, the noble ideals of the founders of the Indonesian nation were systemically denied by the New Order government over the 32-year period from 1967 to 1998. The position of the People's Consultative Assembly of Indonesia (MPR RI) as the highest institution was betrayed only to be a centralization accessory and a client of the New Order government's political regime under the presidency of General Suharto.

When the New Order regime collapsed by the global economic crisis, the political and economic situation was shaken and encouraged the emergence of various civil society movements led by the student movement on 20 May 1998 with the slogan of the Reformation. (Denny, 2006)

One of the demands is the need for amendment constitution 1945 in year 1999 up to 2002. This is due to the belief that the failure of the New Order government is the result of the desertion of the constitutional system through the constitution 1945 which lacks checks and balances mechanisms, too much attribution of authority, the existence of multi-belie in the spirit of people (state organizers). (Mahfud M. , 2003, pp. 146-150).

The voices of political and legal activists who demanded the amendment of the Constitution 1945 could be captured by the MPR / DPR RI election results accelerated in 1999. (MPR Decree No.XIV / MPR / RI / 1998 on Amendments and Supplement to the Decree of the People's Consultative Assembly of the Republic of

Indonesia / MPR Decree No III / MPR / RI / 1998 on Election Acceleration). Thus, an ad hoc MPR RI committee was formed through the MPR Working Body (BP/MPR) to amend the Constitution 1945. (Constitution, 1945)The amendments to the Indonesian Constitution 1945 were conducted for four times in the years 1999, 2000, 2001 and 2002. In the amendment of the Constitution 1945 in year 1999-2002 it was agreed not to change its name to the Constitution 1945 until today. However, the process and the results of this amendment were not successful enough to be called a democratic constitution, because: the amendment agenda is volatile, and objective, the amendment plan that is full of short-term political interests, the failure of the MPR RI to make itself as an institution trusted by the public in amendment and weak public participation in the amendment process. (Indrayana, 2008, p. 385).

One of the amendments in constitution 1945 is to dismantle the vital functions of the MPR RI, such as: no longer having the right to make state guidelines (GBHN) and no longer choosing the president and vice president, although not dissolved. The most prominent is the MPR RI is no longer placed as the highest state institution.

This repositioning occurred as a result of the idea of amendment constitution 1945 with the introduction of direct presidential and vice presidential models by itself about the MPR RI functions to elect the president and vice president. (Agus, 2007, p. 6). However, the choice of a presidential system is more due to political trauma and poor perceptions of the political elite to the parliamentary system of the 1960s, although not all parliamentary practices in that era are bad. (Andrew, 2004, pp. 1-184).

Indonesian Presidential Government System:

The four-year amendment constitution 1945 shows that Indonesia wants to build an architectural design of a presidential government system that lays down the principle of balance and mutual control among state institutions (checks and balances) especially between the executive (President), the legislature (DPR) and the Judiciary (Supreme Court) so there is no single power that is absolute in the hands of a state institution, as it did in the New Order era, where the center of power is in the hands of the president (the power upon to president). There is even a common local believe that the king can not be blamed and can do no wrong.

Of course the principle can not be justified in the modern state system which always puts the position of mutual support and to realize the architecture of a strong and balanced system of government. That is why the amendment Constitution 1945 is a reflection of the total correction of the New Order state system by limiting the power of the president and strengthening the role and function of the Regional Representative Council (DPD) which originally did not exist to till date.

The Indonesian state constitutional system has changed from a unicameral system to a bicameral system, although the actual adopted bicameral system has not been followed by a real delegation of power. The DPD still acts as a "junior partner" of the House of Representatives (DPR RI) whereas in a pure bicameral representation system the DPD (Senate/Upper House) may have greater power or at least equal to the House of Representatives (Congress/Lower House). Perhaps this state of our constitution is what is called "new constitutional architecture in making". (Todung, 2015).

Naturally since the 1945 amendments to the 1945 Constitution many argue over whether the Indonesian system of governance is truly pure presidentialism as stated in many theories of government systems, as stated by IDEA: 2012: "One central issue in democratic constitution buliding and constitutional design is the framing of state structure. Generally, constitutions do not expressly declare that they have adopted a president, parliamentary or mixed system. Instead, each constitutions designs its own specifics and context-relateds balances between the two branches of government, and political scientist then categorize them as follows a specific model design". (Bockenforde Markus, 2011, p. 3).

If reading the results of the amendment to the Constitution 1945, it is difficult not to state that the Indonesian government system is presidential. As the head of state, the constitution has given considerable rights other than the conduct of daily government, the right to joint parliamentary legislation and the right to judicial matters (Butt & Lindsey, 2012, pp. 26-50).

According to Todung Mulya Lubis (2015; 3) if there is never a special statement in the text of the Constitution 1945, the President is a "head of state", and only declared as head of government. See for example, the provision of Article 4 of the Constitution 1945 states that, "The President of the Republic of Indonesia holds the power of government according to the Constitution". So in fact, the Constitution 1945 does not distinguish the head of state and head of government.

Furthermore, if reading the authority of the president is all the authority of the head of government. In Article 17 of the Constitution 1945 there is a sentence (1) The President is assisted by state ministers; (2) The Ministers shall be appointed and dismissed by the President; (3) Every minister in charge of certain affairs in government;

and, (4) Establishment, alteration and establishment of state ministries shall be governed by law. Clearly from Article 4 (1) and Article 17 can be seen berkedidannya function head of state with the head of government, especially if reading the provisions of Article 5, 10, 11, 12, 13, 14, 15 and 16 UUD 1945. (Todung Mulya Lubis, 2015: 3). Thus the real shift in the model of a presidential government system built into the Indonesian context is to imitate the model of state constitutional of the United States (US), based on the need for checks and balances between high-ranking state institutions. (V. Verney, 1979): 31-47 in Arend Lijphard, 1992).

Over the years, after the amendment of the Constitution 1945, it was felt that there had been various clashes and disharmony of working relationships between the higher state institutions and between the organs of the state commission. (Mahfud, 2010, p. 375).

For example, the clash of authorities in the judicial supervision function between the Judicial Commission and the Supreme Court or between the Judicial Commission and the Constitutional Court. Similarly, between the KPK with the Police and the attorney general in the handling of corruption cases or more.

The phenomenon teaches how the construction of the amendment result of the Constitution 1945 greatly influences the form and great design of relations among state institutions. The implication is the ineffectiveness of presidential government systems.

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RESULTS AND DISCUSSION:

The Authority Requests Performance Reports Of State Institutions:

Strengthening the function of MPR RI can be done by increasing the duty of MPR RI to hold accountability of the performance of state high institutions through the annual session of MPR RI (ST / MPR).

This is where the relevance of the idea to strengthen the authority of the MPR RI as an institution in which the performance of the state high institution through the agenda of the annual session (ST/MPR) listened to the performance reports of the state's high institutions as a form of accountability for the performance of MPR RI and to actualize the function of MPR RI in the present era.

The Authority To Make Rules:

The next way to strengthen the authority of the MPR RI is to revive the MPR RI to issue an MPR RI Decree that is governed not only for the MPR RI's own institution but also the state institutions that have submitted annual performance reports to the MPR RI to carry out all records and performance evaluations by the MPRRI, even within certain limits can govern all the people of Indonesia. If the MPR Decree is governed then its name should not be MPR RI Decree, but MPR RI Rules. For the philosophical basis of the drafting of laws and regulations, the matters of a "becheking" merely apply exclusively to non-public arrangements, but to a single nature shall apply and regulate for the agency issuing such provisions. While regulatory matters are generally applicable, it must be made in the form of a regulation so that the regulation can be binding on all the people of Indonesia.

The Authority To Make A Decision To Inaugurate The President:

One of the functions of the MPR RI in post-amendment Constitution 1945 is to take the oath of elected president and vice-president in presidential elections held every five years. Tradition so far MPR RI only listen to the oath and promise of the head of state alone without any consequence binding a president on oath and promise made before the MPR RI. In order for this presidential oath and pledge to have an important meaning for the president in performing the duties of state and government, the MPR RI must issue the Speech of the MPR RI after the inauguration of the President as a state juridical requirement. Simultaneously as a form of accountability oath in the presence of the people through representatives of the MPR RI.

The Authority To Increase The Composition of The Group's Delegates:

The position of the MPR RI as the highest state institution is a form of representation of the system of self-government as stated in the Minutes of the Preparation Meeting of Indonesian Independence Enterprises (BPUPKI) and the Preparatory Committee for Kemerdekaan Indonesia (PPKI). It has been through a deep debate, based on philosophical and empirical arguments.

At least in the formulation of the modern states it is usually influenced by two views of the state of the relationship

between the state and the citizens: First, the individualism developed by Thomas Hobbes, Jhon Locke, JJ Rousseau, Herbert Spencer and HJ Laski coloring the lives of Western nations which will give birth to liberalism and capitalism. Second, collectivism based on theory class developed by Marx, Engels and Lenin. Later on, the view that ideological or racial equality is the basis of the formulation of the state. In practice, however, gave birth to a system of authoritarian and totalitarian socialism, as experienced by Germany under Hiltler, the Soviet Union under Mussolini, and the People's Republic of China under Mao Ze-Dong. (Efendi, 2012, pp. 13-15).

The founders of the Indonesian nation chose a model of collectivism combined with the thoughts of Spinoza, Adam Muller, Hegel and Gramsci on integralistic ideals, whose state-backed establishment was not to guarantee the interests of individuals or groups, but to guarantee an integral society of all classes, sections and members, the other an organic unity.

The founding view of the collective nation of Indonesian collectives is synonymous with the spirit of *gotong royong*"and *thanunggaling kawulo lan Gusti*." This is the original democracy of Indonesia which is the basic principle of the preparation of the state of Indonesia which contains two elements, namely First, the mechanism between citizens to discuss to accommodate the wishes of all parties. Secondly, in deciding it is done by agreement model. This is called the "*Majelis Permusyawaratan Rakyat*" (MPR) or People's Consultative Assembly. From this it can be seen that the MPR RI is a representation of all groups of diverse Indonesian society. While the MPR RI post-amendment constitution 1945 composition consists only of the House of Representatives (political representation) and the Regional Representative Council (regional representation). Therefore, the composition of the MPR RI in the future needs to be drawn up based on all groups that need to be represented in the MPR RI so that no one group will not be contained in state affairs.

The Authority To Make Outlines of State Policy:

In addition to the position of the MPR RI strong, it is necessary to be given new authority to be able to compile the Guidelines of State Policy (GBHN). It must be admitted that without the GBHN Indonesia's post-Reformation year 1998 up to 2018 development system is heavily dependent on government policies set out in the president-proposed program that has been approved by the majority of people in presidential and presidential elections every five years. Therefore, the national development program is not the program of the people's will but the political will of the elected president based on the people's approval in the presidential election. The people are considered to have approved the national development program proclaimed by the presidential candidates when competing in the presidential election.

The national development program without the guidance of GBHN will tend to lead to the political orientation and ideology of political parties holding presidential candidates and five-year presidential term. As a result, the national development system cannot run continuously between one president and another. Therefore, the national development system relies heavily on political character and ideology of political parties of the president and vice president. If the elected president is a liberal political character, then the development program that will be carried out in his five-year government policy is liberal.

Whereas if the elected president is a socialist character, then certainly the development program will be socialist as well. In contrast, if it has a GBHN guideline that allows a long-term development program to be designed without relying on any ideological ties with the elected president.

Because the GBHN is structured on the basis of the policy of state policy with the ideology of "Pancasila" which is a representation of all political ideologies in the state. It is expected that the GBHN can "lock" the president in order to carry out the mandate of GBHN, not on the basis of the will and ideology orientation of the political party of the penggusung.

According to (Aidul, 2010, p. 6) historically, the effort to formulate the GBHN has been done since the beginning of independence as part of the economic planning model mandated by Article 33 of the Constitution 1945. At that time, President Soekarno formed Central Indonesian National Committee (KNIP) based on the Notice No. X dated October 16, year 1945 the task of helping the President prepare the GBHN, before the MPR and the House are formed. However, the state of the revolution does not allow the government to implement the GBHN perfectly. The systematic arrangement of the economic plan was first made during the Natsir Cabinet (September 1950 up to March 1951) which was the first cabinet after returning from the United Republic of Indonesia (RIS) to the Unitary State of the Republic of Indonesia (NKRI). Then in year 1955 compiled a planning script which later became the outlines of the Five-Year Development Plan year 1956 up to year 1960 which was later set forth in Law No. 85 of 1958 on the Five-Year Development Plan year 1956 up to year 1960 (Law Number 85, 1958). In year 1960 post-president Soekano issued Presidential Decree 5 July 1959 MPRS formed by President Soekarno for the first time issued two decisions regarding the development plan, namely (MPRS Decree Number I / MPRS, 1960) on Outlines of State Policy and (MPRS Decree Number II / MPRS, 1960) on the Outline of the

First National Plan of Development Plan of the First Phase year 1961 up to year 1969. From the history of GBHN formation can be learned 3 (three) lessons basic ideas about GBHN design formulation in Indonesia's future state constitutional system.

First, the realization of the GBHN is a necessity in order to prepare the state guidance for the long term as a manifestation of the mandate of economic policy planning within the framework of the welfare state based on the populist economy as referred to in the provisions of Article 33 of the Constitution 1945. Secondly, GBHN is a manifestation of the implementation of the Constitution 1945 before the amendment (original), especially Article 33. At the time of amending Article 33 this was never abolished, even added to 3 (three) verses after the Constitution 1945. Therefore, GBHN is not related to the choice governance system, whether presidential or parliamentary system. Because in any government system the outlines of the state's bow is a necessity in order to manifest the great vision of the nation by anyone who will become the political leaders. So the task of political leaders in any system is to realize its mission in the form of concrete programs every 5 (five) years of tenure, without having to create a new vision because it is contained in the GBHN

Third, reviving the GBHN does not mean to revive the historical romance of the past in the New Order era under the dark President Soeharto for 32 years (1966-1998) fulfilled by the practice of the rente, hegemony, oriented towards political stability and reviving the supremacy of the MPR as an institution "highest" state. If referring to the history of GBHN, GBHN is not an inheritance from the New Order era but is the heritage of Sukarno-Hatta founder who was presented as a way to realize the long-term dream of Indonesia.

It's just that in the future GBHN was reduced by President Soeharto to be very capitalist-oriented, corruption and for the stability of political development. This is more because the New Order era has placed the MPR despite being the "supreme" institution of the state, but members of the MPR are President Soeharto's cronies. That is why the composition of the GBHN is a reflection of the nature of the New Order's power rather than the character of state politics. That is why at the time of formulating the amendment of the 1945 Constitution for 4 (four) times from 1999-2002 the function of the MPR to draft the GBHN was stripped, even the MPR RI was no longer within the spectrum of the "supreme" locus of power, position parallel to the president as a "high" state institution. Where the relationship between the president and the MPR RI is merely a functional horizontal rather than a structural vertical.

At this point it is understandable that actually reviving the notion of GBHN is not a taboo, even a necessity that must be done today. The rationality of strategies that can be done in reviving the GBHN is not necessarily always begun through the door to amendment Constitution 1945, because it will be able to change the national political constellation and encourage complicated public debate. Therefore, the current strategy is to strengthen the regulatory basis at the level of legislation under Constitution 1945. First, strengthening the Law on National Development System through revision of Law Number 17 Years 2009 on the National Long Term Development Plan (UU RPJPN) (Law Number 17, 2009) . The law should clearly state the grand vision of a long-term (50-year), medium-term (for 25 years) long-term National Development Planning (VCT) Plan, as well as short-term planning documents (for 5 years) in accordance with a presidential term adapted to the vision contained in this Act. Therefore, the president's work program during one period of office is sufficient to pour in the form of technical elaboration that is adapted to the great vision of national development as stipulated in the National Development System Law.

Second, strengthening the strategic position of the National Development Planning Agency (Bapenas) in order to synergize in long-term, medium and short term development planning with Provincial and District/City Development Planning Board (Bapeda). This can be done by ensuring there is a mechanism of public debate in formulating GBHN and involving experts in it. This is necessary to ensure public involvement in the preparation of national development and ensures that this document can serve as a binding national development guide, not only the central government but also binding provincial and district governments to ensure the sustainability of national and planned development ideas synergize.

CONCLUSION:

The urgency to strengthen the authority of the People's Consultative Assembly of the Republic of Indonesia (MPR RI) due to the amendment of the Constitution 1945 4 (four) times in year 1999, 2000, 2001 and year 2002 has weakened its authority from the highest state institution to become a state high institution, therefore the MPR RI just a joint session between the House of Representatives of Indonesia (DPR RI) and the Regional Representative Council of the Republic of Indonesia (DPD RI) and meet only five years for the swearing-in and the inauguration of the president and vice president. The form of strengthening the authority of the People's Consultative Assembly of the Republic of Indonesia (MPR RI) in order to create a system of checks and

balances the relationships between state institutions in the presidential system is, (1) the authority to request performance reports of state institutions; (2) the authority to make regulations; (3) the authority to increase the composition of the group's delegates; and (4) the authority to form the guidelines of state guidance (GBHN).

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