

Reconstruction Of Status And Material Content Of The People's Consultative Assembly Legal Products In Indonesia

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ABSTRACT

The current constitutional dynamics have negated the People's Consultative Assembly (MPR) authority to issue legal products (regelling) through amendments to the 1945 Constitution and have resulted in equal standing between state institutions. So that several problems arise as an implication of the change in the powers of the MPR, for example regarding the state planning system, the existence of the existing MPR Decree in the statutory system of law, and the implications for the Indonesian constitutional system which confuse the MPR's authority as a state institution. This paper will also contain several changes and ideas in the constitutional system to answer various problems, through repositioning the position of the MPR, forming a legal product review body for the MPR, and implementing the fifth amendment to the 1945 Constitution, and arranging Indonesian legislation.

Keywords: MPR Decree, Legislative Regulations, UUD 1945, State Institutions, State Administration System.

ABSTRAK

Dinamika ketatanegaraan dewasa ini telah meniadakan wewenang Majelis Permusyawaratan Rakyat (MPR) untuk dapat mengeluarkan produk hukum (regelling) melalui perubahan UUD 1945 dan membawa konsekuensi kedudukan yang sederajat antar lembaga negara. Sehingga beberapa permasalahan muncul sebagai implikasi perubahan wewenang MPR tersebut, misalnya saja mengenai planning system negara, keberadaan Tap MPR existing dalam sistem peraturan perundang-undangan, dan implikasinya terhadap sistem ketatanegaraan Indonesia yang membuat rancu wewenang MPR sebagai lembaga negara. Tulisan ini juga akan memuat beberapa perubahan dan gagasan dalam sistem ketatanegaraan untuk menjawab berbagai permasalahan, melalui reposisi kedudukan MPR, membentuk badan pengujian produk hukum MPR, dan melakukan amandemen UUD 1945 kelima, serta menata Peraturan Perundang-Undangan Indonesia.

Kata Kunci: Tap MPR, Peraturan Perundang-Undangan, UUD 1945, Lembaga Negara, Sistem Ketatanegaraan.

A. INTRODUCTION

The concept of a rule of law that was conceptualized by Julius Stahl views the position of legislation as a principle matter because it is the basis for the administration of government (*wetmatigheid van bestuur*).¹ Specifically, this paper will discuss one type of legislation referred to in Law Number 12 of 2011 concerning the Formation of Legislative Regulations, namely the decree of the People's Consultative Assembly or the temporary People's Consultative Assembly (Tap MPR / MPRS) which is a legal product of the People's Consultative Assembly (MPR) whose position is positioned at under the 1945 Constitution, hereinafter referred to as the 1945 Constitution and above Law or hereinafter referred to as Law. However, when read thoroughly, the MPR Decree as mentioned in Article 7 paragraph (1) of Law Number 12 of 2011 is only in the MPR / MPRS Decree which is declared still valid based on the MPR Decree No.I / MPR / 2003 concerning Review of Material and Status The Provisional People's Consultative Assembly Decree Law and the Decree of the People's Consultative Assembly of the Republic of Indonesia from 1960 to 2002.²

Such conditions raise problems that are quite basic theoretically. The People's Consultative Assembly (MPR) is inability to re-issue the MPR Decree creates a legal impasse in a condition if in the future there will be changes or deletion of the MPR Decree which is no longer in accordance with the times, of course this cannot be done because there is no mechanism to make changes or deletions. According to Satjipto

Rahardjo, a law must have the power to correct and corrects itself, because basically the MPR Decree cannot be changed or canceled by a law which has a lower degree than the MPR Decree. Moreover, the laws and regulations in Indonesia do not yet recognize the sunset policy. In some countries that implement a sunset policy on certain laws and regulations, it can be a lesson that can be learned and adapted to the conditions typical of Indonesia.³ In addition, the People's Consultative Assembly is inability to form a regulatory product (as held before the amendment to the 1945 Constitution) has resulted in the absence of legal regulations that can fill the shortcomings of the Constitution as "*staatgrundgezet*" or basic state rules whose material cannot be contained in one formal laws, due to differences in the content and nature of the two legal products.⁴

According to Crabbe,⁵ the important part of legislation is not only the regulatory aspect but the law-making process itself. The need for the re-existence of the People's Consultative Assembly authority in forming legal products that are regulatory in nature is supported by the fact that there was no state direction that was previously given the law suit "MPR Decree (Tap MPR)" in the administration of the state today. In fact, the existence of the state direction is an important thing in directing the implementation of government and state administration in accordance with the will of the people as holders of

¹ Moh. Mahfud MD, *Demokrasi Dan Konstitusi Di Indonesia* (Yogyakarta: Liberty, 1993), 28.

² "Republic Of Indonesia Law Number 12 of 2011 Concerning the Formation of Laws and Regulations" (n.d.).

³ "Academic Paper on the Bill on Amendments to Republic Of Indonesia Law Number 12 of 2011 Concerning the Formation of Laws and Regulations" (n.d.), 5.

⁴ Maria Farida Indrati Soeprapto, *Ilmu Perundang-Undangan 1: Jenis, Fungsi, Dan Materi Muatan* (Yogyakarta: PT Kanisius, 2007), 49.

⁵ Crabbe, "Legislative Drafting Vol I," 1993, 4.

sovereignty. Bagir Manan⁶ stated that the desire of the founders of the state and compilers of the Constitution to create and carry out directed and guided people's sovereignty, a system of outlines was created rather than the state's direction not just a form of a work system based on planning (planning system), but as a means of exercising people's sovereignty directed and guided. With the various considerations that have been mentioned above, it becomes logical that a new, more precise nomenclature will be used again.

Thus, several issues will be discussed that will be discussed in this paper. First, what is the urgency to reconstruct the status and material content of the People's Consultative Assembly legal products in the statutory system? Second, what are the implications of the reconstruction of status and material content of the People's Consultative Assembly legal products for the constitutional system?

B. DISCUSSION

Urgency To Reconstruct The Status And Material Content Of The People's Consultative Assembly Legal Products In The Legislative Regulations System

Philosophically, the existing People's Consultative Assembly legal product has a foundation based on *Pancasila* as the philosophical foundation of the nation and state through the 4th principle which states that society is led by wisdom in representative deliberations. This means that in exercising their sovereignty, the people must have certain representative institutions. Thus, the People's Consultative Assembly as the holder of people's sovereignty is more appropriate than other state institutions because it

represents all elements of the people, namely the House of Representatives (DPR) as the people's representative and the Regional Representative Board (DPD) as an element of regional representation. It becomes logical when bodies that represent the people and regions have the authority to issue legal products as a form of aspiration.

The juridical review of the People's Consultative Assembly authority to issue the People's Consultative Assembly legal products is often based on Article 2 paragraph (3) of the 1945 Constitution which states that "all decisions in the MPR are determined by majority vote". Although it is not explicitly explained in the article, the "stipulated" clause is often interpreted as the People's Consultative Assembly authority to issue a legal product in the form of an MPR Decree. In line with Bagir Manan's thought, that the presence of the MPR Decree in the past was based on the express provisions of the 1945 Constitution and was a constitutional practice or constitutional custom⁷ which since 1960 was issued at the first MPRS session. The constitutional convention is recognized as one of the sources of constitutional law as recognized in various literatures.

Sociological conception views that the development of community needs changes according to the times, it is necessary to legitimize basic regulations which are one level above the Law and one level below the 1945 Constitution in order to guarantee legal certainty with certain content material. Community groups initiated several agendas to make this happen through activities supported by academics, politicians and state institutions, such as seminars, outreach, and Forum Group Discussions (FGD) which were

⁶ Mei Susanto, "Wacana Menghidupkan Kembali GBHN Dalam Sistem Presidensial Indonesia," *Jurnal Penelitian Hukum De Jure* 17, no. 3 (2017): 431.

⁷ Bagir Manan, *Dasar-Dasar Peraturan Perundang-Undangan Indonesia* (Jakarta: Ind-Hill.Co, 1992), 31-32.

concluded with the desire to form a planning state so that the implementation of the state have a definite and stable goal orientation and restructure the People's Consultative Assembly so that it can issue legal products.

Projection Of Position And Material Content Of The People's Consultative Assembly Legal Products

Currently the position of the MPR Decree as a legal product of the MPR is placed under the 1945 Constitution and is above the Law.⁸ The position of the MPR Decree is appropriate because the MPR Decree, according to Hamid S. Attamimi and Maria Farida Indrati, is a *staatgrundgezet* or the basic rule of the state which is higher than the formal law (based on Hans Nawiasky's theory).⁹ Since its issuance in 1960, the MPR Decree has been used to refer to the People's Consultative Assembly decisions, both *regelling* and *beschiking*. This MPR decree also regulates the internal and external nature of the MPR. However, the MPR legal products that are included in the hierarchy of statutory regulations should only be legislative or regulates in general because theoretically a norm can be said to be a statutory regulation that must meet several requirements. According to D.W.P. Ruiter, what is meant by statutory regulations or *wet in material zin* contains three elements, namely legal norms (*rechtsnorm*), applies to the outside (*naar buiten werken*), and is general in a broad sense (*algemeenheid in ruime zin*).¹⁰

The logical ratio is that MPR Decrees which are concrete, individual, and internally binding cannot be

categorized as statutory regulations. Such as the MPR Decree which contains the appointment of the president and vice president, the MPR Decree which contains the rules of the People's Consultative Assembly, and so on. Meanwhile, the legal product of the existing MPR Decree as referred to in Article 7 paragraph (1) of Law Number 12 Year 2011 is deemed no longer necessary for further restructuring because some of the content has been elaborated and implemented through the relevant law and some of the content is *einmalig*.

As for the testing of legal norms on the People's Consultative Assembly legal products, it does not provide an opportunity for the testing mechanism (*toetsingrecht*) other than to be carried out by the People's Consultative Assembly institution itself, which means that the test is carried out using a legislative review system. The existence of a testing mechanism for a legal product is necessary to ensure the conformity of all legal systems. When referring to Hans Kelsen's theory of norm-level theory, a legal norm gets its validity or the validity of the legal norm above, so that an inferior norm if it contradicts a more superior norm becomes invalid because it loses its validity. Looking at future prospects, the system of testing the product People's Consultative Assembly law is rightly given to the the People's Consultative Assembly itself (legislative review), because the conception of constitutional law provides an opportunity for the MPR to be seen as a no rival authority institution in accordance with the original intent of its formation.¹¹ The original intention of forming the People's Consultative Assembly institution wanted to place the People's Consultative Assembly as a 'common house' institution with a

⁸ Article 7 Republic Of Indonesia Law Number 12 of 2011 concerning the Formation of Laws and Regulations.

⁹ Soeprapto, *Ilmu Perundang-Undangan 1: Jenis, Fungsi, Dan Materi Muatan*, 49.

¹⁰ Soeprapto, 35.

¹¹ Ismail Suni, *Mekanisme Demokrasi Pancasila* (Jakarta: Aksara Bani, 1978), 16.

structural position as the highest state institution, unlike the current concept which almost made the People's Consultative Assembly an imaginary institution by trimming its various powers, it was also inappropriate to place it as a joint session.

The author has the idea that the legislative review testing system is carried out by the People's Consultative Assembly through the formation of a special body that is given the authority to test the People's Consultative Assembly legal products against the 1945 Constitution, which in this proposal is named "People's Consultative Assembly (MPR) Regulatory Review Board" and was formed through MPR Regulations. This mechanism is an idea to answer the weaknesses of the judicial review both in the Constitutional Court (MK) and the Supreme Court (MA) which are passive and confined to the negative construction of legislators, unlike the legislative review initiated by this writer because it is carried out by positive legislators. Apart from that, granting the right to test the People's Consultative Assembly legal products to the Constitutional Court was illogical, because the main test stone of the Constitutional Court was the 1945 Constitution, which in fact could be changed and also stipulated by the People's Consultative Assembly.

The term material content was first introduced by Hamid S. Attamimi as a translation of *het eigenaarding onderwerp der wet*. The existence of content material in every statutory regulation is a vital and fundamental part because the content material is closely related to the type of legislation and is related to the delegation of regulations. Apart from being related with types and delegations, related content material by formulating norms. The formulation of regulatory norms must be aimed directly at regulating the scope of the respective fields of duty originating from the higher level

delegation of laws and regulations.¹² Bagir Manan¹³ said that the MPR Decree in terms of its content contained: provisions regarding the position, duties and responsibilities of state institutions, provisions containing general policy lines to be carried out by the state through state institutions, especially the president, provisions containing certain principles and not regulating, and provisions whose material is directly binding in general.

Based on Bagir Manan's opinion, the author has the idea that what could be the content material of the MPR law product which is forward regulating, among others :

- a. Determining the content of the People's Consultative Assembly legal product itself, this content material is important so that the People's Consultative Assembly does not freely regulate all things that are not right in its legal products;
- b. Determination of the broad outlines of state direction (GBHN);
- c. Basic rules that have not been regulated in the 1945 Constitution;
- d. The Constitutional Court decision which contains the basic rules of the state.

The Constitutional Court decisions contain a lot of material substance which is closely related to the basic principles of the state. There is an important reason to be accommodated in the MPR Decree, as has been discussed by many parties, that the content of the MPR Decree must contain the main dimensions of the rules in the constitution. Decision The Constitutional

¹² Academic Paper on the Bill on Amendments to Republic Of Indonesia Law Number 12 of 2011 concerning the Formation of Laws and Regulations, 30.

¹³ Bagir Manan, Mashudi, and Kuntana Magnar, *Pertumbuhan Dan Perkembangan Konstitusi Suatu Negara* (Bandung: Mandar Maju, 1995), 29.

Court which is an interpretation of the articles of the constitution is clearly closely related to the subject matter of the constitution as intended so that it becomes relevant to be accommodated in the form of an MPR Decree, rather than having to look for other material which is feared that it will deviate from the ideal content material of an MPR Decree or maybe even co-opting the material that falls within the scope of the law.

Furthermore, so that the material contained in the provisions is not sporadic, follow up all the Constitutional Court decisions. The qualifications for the Constitutional Court ruling are as follows:

- a. The types of Constitutional Court decisions that deserve to be used as material for the MPR Decree are only the types of Constitutional Court decisions that contain the basic rules of the state;
- b. The Constitutional Court decision is not a type of decision which is technically implementable in nature but a type of decision which is a general direction or global view which is closely related to the basic substance of the state (constitution); and
- c. The Constitutional Court's decision must reflect the spirit of Pancasila and the Indonesian State Constitution which at least accommodate the principles of protection, humanity, nationality, kinship, nationality, diversity, justice, equality in law and government, order and legal certainty.

As a consideration for the content, in the future the MPR Decree will be given the nomenclature of the People's Consultative Assembly Regulation (MPR Regulation). The author has formulated the right argument when the People's Consultative Assembly legal product is

called the MPR Regulation because theoretically according to Jimly Asshiddiqie, provisions (*beschikking*) are generally always individual and concrete, while the regulations (*regeling*) are always general and abstract in nature, that is, their enforcement is addressed to anyone who is subject to the formulation of general principles.¹⁴ It is in line with Maria Farida Indrati's thought that a provision (*beschikkiking*) is once-finished (*einmalig*), while regulations (*regeling*) always apply continuously (*dauerhaftig*).¹⁵ In addition, another reason why the MPR Regulation is more appropriate to use for the People's Consultative Assembly legal products that are regulatory is because the presidential legal product is also referred to as Presidential Regulation as referred to in Article 7 of Law Number 12 of 2011, so that there is uniformity in the use of the nomenclature.

Implications Of The Reconstruction Of The People's Consultative Assembly Legal Product On The State Administration System

As an effort to restore the People's Consultative Assembly authority to issue legal products which in this paper were conceived as MPR regulations, it is inevitable to place the People's Consultative Assembly back as the highest state institution. The nomenclature of the highest state institutions and high state institutions is a term that will be used later as a concretization of Sri Soemantri's aspirations. In fact, it is natural that a state institution makes rules, especially those that are its competence and related to issues that are within its jurisdiction, the People's Consultative Assembly has

¹⁴ Jimly Asshiddiqie, *Hukum Acara Pengujian Undang-Undang* (Jakarta: konstitusi Press, 2006), 2.

¹⁵ Soeprapto, *Ilmu Perundang-Undangan 1: Jenis, Fungsi, Dan Materi Muatan*, 78.

that competence.¹⁶ The legis ratio refers to the placement of the MPR Decree as a legal product that is directly domiciled under the 1945 Constitution, because it is illogical if the People's Consultative Assembly¹⁷ legal product is abstract and general are placed parallel to other legal products as is the case with laws or even under it, especially the MPR Regulation which is a direct translation of the 1945 Constitution, because the construction will be ambiguous when the MPR Regulation is placed above the Law which is the legal product of two other state institutions (House of Representatives and President),¹⁸ except for the People's Consultative Assembly as the highest state institution. Likewise, it aims to carry out several constitutional arrangements, especially regarding what entities can be said to be state institutions.

The author's idea rests on Bagir Manan's opinion, who says that the change in the mechanism and membership of the People's Consultative Assembly is at least to cover deviations from the practice of the will of the Constitution to eliminate the MPR because the political duties of the state and government relating to the sovereignty of the people are no longer absolutely under its institution.¹⁹ So as a response to this thought, repositioning the People's Consultative Assembly as the highest state institution of the state was deemed appropriate, especially with regard to its authority to issue MPR

regulations. According to Prajudi Atmosudirjo, the existence of the People's Consultative Assembly as a state institution holding constitutional power²⁰ is complete, which is a common house with authority to change and stipulate the Constitution, inaugurate the president and vice president, dismiss the president and vice president during their term of office, and hold positions in the event of a presidential and vice presidential vacancy (in certain circumstances) and issue MPR regulations.

C. CONCLUSION

The re-placement of the MPR Decree through Law Number 12 of 2011 brings legal consequences that at least cannot yet be implemented into the practice of immigration and cannot just be eliminated, considering that the revocation of the MPR Decree can only be revoked through the MPR Decree. This is because only the MPR Decree can interpret and interpret the form and concept of the MPR Decree itself, particularly the purpose of the MPR Decree itself. This is also in line with the urgency of the state to establish a planning system as was held in the past using the GBHN model and to restructure the country's fundamentals which have begun to move away from their respective original intentions of formation.

The MPR Decree, which was later changed its nomenclature to an MPR Regulation, brought the necessity to replace the People's Consultative Assembly as the highest state institution that has constitutive authority to direct the administration of the state and strengthen the concept of a constitutional law state as desired by the constitutional framework. Thus the MPR regulations will be included in the statutory

¹⁶ Soeprapto, 36.

¹⁷ Ranggawidjaja H Rosjidi, *Pengantar Ilmu Perundang-Undangan Indonesia* (Bandung: Mandar Maju, 1998), 41.

¹⁸ Hernadi Affandi, "Prospek Kewenangan MPR Dalam Menetapkan Kembali Ketetapan MPR Yang Bersifat Mengatur," *Jurnal Hukum Positum* 1, no. 1 (2016): 44.

¹⁹ Bagir Manan, *Dpr, Dpd, Dan Mpr Dalam Uud 1945 Baru* (Yogyakarta: FH UII Press, 2003), 74-76.

²⁰ Soeprapto, *Ilmu Perundang-Undangan 1: Jenis, Fungsi, Dan Materi Muatan*, 123.

regulations and have a salvage and binding power as a statutory regulation that is regulatory in nature. Based on the above discussion, there are several recommendations that are very important to be realized, such as amending the 1945 Constitution of the Republic of Indonesia in relation to the People's Consultative Assembly authority to issue legal products in the form of MPR regulations; revise Law Number 12 of 2011 concerning the Formation of Legislative Regulations and Laws on the People's Consultative Assembly (MPR), House of Representatives (DPR), Regional Representative Board (DPD) and Regional House of Representative (DPRD) so that the People's Consultative Assembly is normalized in a separate Law; issue and stipulate the first MPR Regulation to regulate the contents of the MPR Regulation in the future; and establishing the MPR Regulatory Review Board to carry out a legislative review mechanism.

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