

Design of The Position Consultative Assembly Before and After The Amandement of State Constitution of The Republic Indonesia

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Abstract, Indonesia's political system changed after the amendment of the state's constitution. As a consequence, significant changes in the system are inevitable, one of which is the paradigm of its governing body. The amended constitution states that all governing bodies are level, not placing its people's consultative assembly at the highest position of the people sovereignty manifestation at the fullest. The changes in the state's governing bodies' position causes transposition of their tasks and authorities. The previous assembly's authority, bestowed by the constitution, limits itself into not having regular authority except inaugurating selected president and vice president according to the statutes of the General Election Commission once in five years. Nevertheless, a further discussion may lead to a finding that, in practice, the assembly's authority is substantively fundamental for Indonesia's political life. It has the right of amending and ordaining the constitution, for example, which is crucial for the politic since 1945 State Constitution of the Republic of Indonesia is the highest of all laws and regulations.

Keywords Position, Consultative Assembly, Amandment

1. Introduction

Indonesia's reformation development requires alterations in terms of constitution, which must be carried out constitutionally and democratically (Soimin, 2004). Along with the changes in Indonesia's political system after the amendment of 1945 State Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), significant changes in the system are inevitable, one of which is the paradigm of its governing body. The amended constitution states that all governing bodies are level, not placing Majelis Permusyawaratan Rakyat (People's Consultative Assembly, hereinafter referred to as MPR) at the highest position of the people sovereignty manifestation at the fullest. The changes in the state's governing bodies'

position causes transposition of their tasks and authorities. Another consequence is the changes in the position of the legal product made by the governing bodies. The legal products of MPR, which has previously been the highest governing body, are of the higher position over those of other governing bodies. The amendment, which places MPR level with other bodies and bestows it with limited authority, also affects MPR's statutes. The 1945 Constitution does not provide MPR with the authority of making regulatory statutes.

After the amendment, MPR only carries out a quinquennial routine of inaugurating the president and vice president. This statehood ceremonial task only takes, more or less, one and a half hour. However, although institutionally the authority of MPR has reduced, no longer the highest governing body, an interesting fact remains; its existence is still strong in the citizen's heart.

The polemic in public domain is about the position and authority of MPR that is no longer in a strategic spot in Indonesia's political system. In fact, Article 3 paragraph 1 of the 1945 Constitution states that MPR has the authority to amend and ordain the constitution. Thus, MPR is the supreme position because it is the only institution with the duty of amending and ordaining state's constitution. In regards to constitution, according to Herman Finner, as the autobiography of power relationship (Majda Mujtaj, 2009), it is inappropriate to place MPR level with other governing bodies since it has the authority to amend and ordain the state's constitution.

2. Result and Discussion

a. MPR Before the Amendment of 1945 Constitution

MPR is the holder of the highest state power (*Die gesamte Staatsgewalt liegt allein bei der Majelis*). In addition, it is also the holder of people's sovereignty and the manifestation of all Indonesian citizens (*Vertretungsorgan des Willens des Staatsvolkes*). As the highest governing body in its era, it is bestowed with remarkably enormous authority, sending president and vice president on and off the administration. Hence, almost no one does not know this institution. Indonesian reformation also includes constitutional reformation, which aims to improve the political system including rearranging the position, task, authority, and structure of the governing bodies. The amendment of the 1945 Constitution undermines MPR's authority, in which they are no longer have the authority to choose president and/or vice president.

President and vice president are now directly selected by the citizens through general election (1945 Constitution, Article 6A paragraph 1). The deletion of this essential point of duty is one of the causes which makes MPR no longer the state's highest governing body. The significant reduction of its authority left MPR only inaugurating the publicly elected president and vice president through general election. Their right to terminate president and/or vice president's tenure is active after the Constitutional Court assess, try, and conclude the proposal from DPR (the house of representatives) that the president and/or vice president have violated the law by betrayal of the state, of corruption, of bribery, of any other felony, or because of disgraceful behavior.

After the amendment of the 1945 Constitution, with DPD (Regional Representative Council) and DPR in membership, MPR becomes a joint-session institution, not the highest sovereignty holder. This is caused by the amendment of Article 1 paragraph 2 of the 1945 Constitution, which now reads "Sovereignty is vested in the people and implemented pursuant to the Constitution". The elimination of highest governing body system is a logical effort to escape from ambiguous political design to create checks and balances between the bodies (Sulardi, 2012). According to Slamet Effendi Yusuf, the reposition of MPR starts from the design of the 1945 Constitution amendment, departing from reconstructing sources of power in Indonesia, in which in the political system the power is in people's hands mandated to MPR

(Sulardi, 2012). After the change into that sovereignty is vested in the people and implemented pursuant to the Constitution, the supremacy is no longer in MPR but the 1945 Constitution instead.

The pre-amended Article 2¹³ paragraph 1 of the 1945 constitution, which states that MPR shall consist of the members of the DPR augmented by the delegates from the regional territories and groups, was changed into that MPR consists of the members of the DPR and the members of the DPD. Such changes imply that now MPR is another governing body, a merely DPR-DPD joint session. The fourth amendment of the 1945 Constitution makes MPR, which was previously the highest state governing body, experience a substantial change, but it still exists so that the system in the 1945 Constitution is neither bicameral nor unicameral but tricameral (Asshiddiqie J. , 2015). The fact significantly changes the structure of MPR due to the omission of regional territories' delegates, who reflect the functional representative principle of MPR's membership elements. Hence, MPR only consists of DPR members, as the reflection of political representatives, and DPD members, as the reflection of regional representativeness principle. Further, the assembly does not function as a supreme body with the highest authority and without control, so the changes are really fundamental. Before the amendment, MPR has the authority of

- a. ordaining and amending the constitution,
- b. ordaining GBHN (The Guidelines of State Policy),
- c. electing president and vice president, and
- d. asking and assessing president and vice president's accountability.

The adoption of strict power separation principles between legislative and executive functions in the amendment of Article 4 Paragraph 1 in conjunction with Article 20 Paragraph 1 and Article 20 Paragraph 5 of the 1945 Constitution, Indonesia does not follow the system of power division by MPR to the subordinating state governing bodies (Asshiddiqie J. , 2015). Following the amendment, aside from MPR becoming a DPR-DPD joint session, the regulation concerning MPR becomes the followings.

- 1) MPR is no longer the highest state governing body that fully bears the citizens' sovereignty.
- 2) MPR consists of DPR and DPD members selected through the general election (Article 1 Paragraph 1).

MPR is only authorized to amend and to ordain the Constitution and to install the president and/or the vice president (Article 3 Paragraph 1 and 2), to dismiss the president and/or vice president during their term of office in accordance with the Constitution (Article 3 Paragraph 3 in conjunction with Article 7A and 7B), to select a Vice President among candidates nominated by the President in case the position of the Vice President falls vacant (Article 8 Paragraph 2), to elect a president and a vice president for the remainder of the term if during their term they are simultaneously and permanently unavailable (Article 8 Paragraph 3). The enormous changes make MPR no longer the full bearer of citizen's sovereignty nor the highest governing body (Harjono, 2007). Before the amendment, MPR as the highest governing body has limitless power. Its authority as the fullest people's sovereignty implementor based on Article 3 and Article 6 Paragraph 2, and Article 37 of the 1945 Constitution are as follows.

- a. MPR shall determine the constitution and GBHN (Article 3 of the 1945 Constitution)
- b. The President and the Vice-President shall be elected by the MPR by a majority vote (Chapter 6 Paragraph 2 of the 1945 Constitution)
- c. In order to amend the Constitution, not less than two thirds of the total number of members of the MPR shall be in attendance. Decisions shall be taken with the approval of not less than two thirds of the number of members in attendance (Article 37 of the 1945 Constitution).

b. The Position of MPR After the Amendment of 1945 Constitution

After the amendment of the 1945 Constitution, with DPD and DPR in membership, MPR becomes a joint-session institution, not the highest sovereignty holder. This is caused by the amendment of Article 1 paragraph 2 of the 1945 Constitution, which now reads “Sovereignty is vested in the people and implemented pursuant to the Constitution”. The elimination of highest governing body system is a logical effort to escape from ambiguous political design to create checks and balances between the bodies. According to Slamet Effendi Yusuf, the reposition of MPR starts from the design of the 1945 Constitution amendment, departing from reconstructing sources of power in Indonesia, in which in the political system the power is in people’s hands mandated to MPR. After the change into that sovereignty is vested in the people and implemented pursuant to the Constitution, the supremacy is no longer in MPR but the 1945 Constitution instead.

Article 2 paragraph 1 of the 1945 constitution, which states that MPR shall consist of the members of the DPR augmented by the delegates from the regional territories and groups, was changed into that MPR consists of the members of the DPR and the members of the DPD. Such changes imply that now MPR is another governing body, a merely DPR-DPD joint session. The fourth amendment of the 1945 Constitution makes MPR, which was previously the highest state governing body, experience a substantial change, but it still exists so that the system in the 1945 Constitution is neither bicameral nor unicameral but tricameral (Asshiddiqie J. , 2015). The fact significantly changes the structure of MPR due to the omission of regional territories’ delegates, who reflect the functional representative principle of MPR’s membership elements. Hence, MPR only consists of DPR members, as the reflection of political representatives, and DPD members, as the reflection of regional representativeness principle. Further, the assembly does not function as a supreme body with the highest authority and without control, so the changes are really fundamental. Before the amendment, MPR has the authority of

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After the amendment of the 1945 Constitution, the revision of Article 1 Paragraph 2 changed Indonesia's political system, from MPR supremacy to people's sovereignty pursuant to the 1945 Constitution. The Constitution is the foundation and the main reference in implementing people's sovereignty. Such revision causes reduction of MPR's authority. The omitted authorities are selecting and inaugurating president and vice president, determining GBHN, and issuing regulating statute.⁴ According to Article 3 of the amended 1945 Constitution, MPR bears the authority of (1) amending and ordaining the Constitution, (2) installing the president and/or the vice president, (3) dismissing the president and/or vice president during their term of office in accordance with the Constitution. Based on the authorities, MPR is not an institution with regular activities, not permanent but ad hoc instead. Although legally speaking MPR still exists, MPR's actual existence will only be material if it is in action with its function (Jimly Asshiddiqie, 2006: 86). Its tasks are ad hoc. Based on the remaining authority, its tasks that are regular and plannable is sessions to inaugurate president and vice president every five years, in which the session is facultative.

According to Article 9 Paragraph 1 and 2 of the 1945 Constitution, prior to taking office,¹⁵ the President and the Vice President shall take oath accordi¹² to their religion, or to make a solemn pledge before the MPR or the DPR (Indrati, 1998). In the event that the MPR or the DPR is unable to convene, the President and the Vice President shall take oath according to their religion, or make a solemn pledge before the leadership of the MPR witnessed by the leadership of the Supreme Court. Other tasks are not permanent. Amendment and ordainment of the constitution will only be made by MPR whenever necessary. After four amendments in four consecutive years (1999, 2000, 2001, and 2001), the next amendment will be not in the near future. Before the amendment of the 1945 Constitution, MPR is the highest state governing body, but it became "another" body with equal position with other bodies such as DPR, president, and MA (Supreme Court). Further⁸re, MPR, who had enormous authority, is reduced into not having the authority to select president and vice president, to dismiss them during their term of office, and to determine GBHN. In Indonesia, people's sovereignty formulated in the pre-amended 1945 Constitution is materialized into representative institutions, i.e. MPR and DPR. People sovereignty is frequently understood as merely a misleading political concept where the principle of people sovereignty is constructed as the concept of representativeness. It was perceived that people's power moves to the representative institutions. In theoretical perspective, the understanding is inappropriate because the highest power which lies in people's hands is not gone; it is still in people's hands, and representative institutions are only the implementing organs. The underlying reasons of legitimizing the amendment of the 1945 Constitution to return the basic authority from MPR are, first, that the check-and-balance system among the governing bodies does not run as it should; second, that the overwhelming executive powers prevents control from other institutions; third, that fundamental and ideological development policies that must be implemented by the executive must exist; and fourth, that privileges enjoyed by MPR provides the institution with an important role as the balancing element for executive power through constitution amendment (Asshiddiqie, 2006).

Legal reformation in Indonesia, which started in 1998, has brought the spirit of change in the practice of politic, particularly related to the amendment of the 1945 Constitution, which has been made four time. The first amendment was ratified on October 19 of 1999, the second was ratified on August 18 of 2000, the third was ratified on November 10 of 2001, and the fourth was ratified on August 10 of 2002. The amendment in the early reformation era has fundamentally changed Indonesia's political system, including MPR. Following the constitutional changes, MPR is not the highest governing body that fully bears people's sovereignty, which means that MPR is no longer the highest source or institution of state's

power that distribute its power to other state governing bodies (Rohmat, 2016). Aside from reducing MPR's position from the highest governing body into an ordinary governing body, the constitutional reformation also reduces MPR's authority so that it is not as strong as it was before the amendment of the 1945 Constitution. It cannot ordain GBHN and appoint president and vice president. Prior to the 1945 Constitution amendment, MPR was constructed as the manifestation of all sovereign citizens, a place where president has to account for his constitutional duties. The explanation of the 1945 Constitution states that president shall be subordinate and accountable to MPR. Based on such construction, MPR is perceived as the highest governing body into which the sovereignty of all citizens is manifested. Therefore, all of its statutes have a higher position than other legal products produced by other governing bodies such as president, DPR, and Supreme Court. Hence, the statutes of MPR or MPRS, predecessor, are hierarchically higher than any other laws and regulations (Jimly, 2011). In Indonesian legal system, Pancasila is considered as one of the sources of all legal system, which is also called as the fundamental of the Republic of Indonesia. The legal order in Republic of Indonesia is based on the view of life, consciousness, legal ideals, and moral ideals which encompass the mentality and characteristics of Indonesian people. (Flambonita, 2019)

It has been sixteen years since the constitutional reformation had started. After thirteen years, an idea to return the function and position of MPR as the highest governing body, to reactivate GBHN as the guideline for long-term national developments as produced by MPR, and to improve the role of MPR as a governing body with special authority incomparable with other governing bodies (MD, 2010). Indonesia's political story is inseparable from political law, which is a way to attain expectable state's objective as mandated by the preamble of the 1945 Constitution. According to Padmo Wahjono, political law is the basic policy that shapes the direction, form, and the content of the law to be created. According to Satjipto Rahardjo, political law is an activity of choosing methods to achieve certain social and legal objective in the society (Thohari, 2004). The politics of law is useful to find laws suit expectations and reality (das sein das sollen) (Flambonita, 2019)

Even though MPR is expected to be the manifestation of all Indonesians, to which extent the essence of its existence, whether as an institution or merely a forum, is widely debated (Jimly A. , 2010). As in the agenda of dismissing president and/or vice president and selecting president and/or vice president to fill the vacant position, we cannot predict when such agendas will take place (Asshiddiqie, 2006)

Table 1
The Position and Authority of MPR Before and After the Amendment of the 1945 Constitution

MPR	Before the Amendment of the 1945 Constitution	After the Amendment of the 1945 Constitution
Position	The highest state governing body	Level with other state governing bodies
Composition	DPR members augmented by delegates from the regional territories and groups	DPR and DPD members
Membership	DPR members who are proposed by political parties and elected in the general election and who are appointed from ABRI (Indonesian Armed Forces) Appointed regional representatives	DPR members who are proposed by political parties and elected in the general election DPD members elected in the general election from independent candidates

	Appointed group representatives	
Authority	As the highest governing body, MPR has the authority of the following. <ol style="list-style-type: none"> 1. ordaining the constitution 2. ordaining GBHN 3. electing president and vice president by a majority vote 4. dismissing president and/or vice president (without legal process) 	Limited to the following. <ol style="list-style-type: none"> 1. amending and ordaining the Constitution, 2. installing the president and/or the vice president, 3. dismissing the president and/or vice president during their term of office in accordance with the Constitution (following the political process in DPR and legal process in Constitutional Court)

¹ The previous MPR's authority, bestowed by the 1945 Constitution, limits itself into not having regular authority except inaugurating the selected president and vice president according to the statutes of the General Election Commission once in five years (Ayunita, 2016). Nevertheless, a further discussion may lead to a finding that, in practice, the assembly's authority is substantively fundamental for Indonesia's political life. It has the right of amending and ordaining the constitution, for example, which is crucial for the politic since 1945 State Constitution of the Republic of Indonesia is the highest of all laws and regulations. It means that the substance of laws and regulations produced by other governing bodies than MPR must not contradict the 1945 Constitution ordained by MPR, despite the fact that after amending and ordaining the constitution, MPR subordinate itself to and comply with the constitution that it has ordained (Asshiddiqie, 2006).

Referring to discussions and debates from the general assembly of MPR on October 1999 to the annual assembly of MPR on November 9 of 2001, there are at least five discussed main issues; they are, first, the necessity to strengthen the role of MPR as the highest governing body; second, the interpretation of the term "sovereignty is in people's hands and will be fully implemented by MPR", which sparks the idea to empower all state governing bodies so that the sovereignty is distributed not only to MPR but also to other governing bodies; third, ² the necessity to consider that all MPR members are elected through general election because the number of appointed members is higher than the number of elected members; fourth, the composition of MPR members particularly representatives of regional territories, groups, and Indonesian Armed Forces and Police Department; and fifth, the design of MPR as an Institutions whether unicameral, bicameral, or tricameral (Harjono, 2007).

In the development of constitution in Indonesia, there is one problem: people's sovereignty related to the position of MPR. According to the theory of Indonesia's administrative law, MPR is the only institution that enjoys supremacy. It consists of two principles, i.e. legal power and no rival authority. The former means that MPR is a sovereign body that holds power based on law to ordain any matters stated in the 1945 Constitution, and the latter means that there is no individual or institutional authority that has the power to violate or to put aside anything that has been ordained by MPR (Nazriyah, 2017).

As it has been understood that prior to the amendment of ⁴ Article 1 paragraph 2 of the 1945 Constitution, MPR is the locus of people's sovereignty. It is the manifestation of all Indonesians, which runs the power of the citizens at the fullest. Position here is seen from two ⁵ perspectives: as compared to other governing bodies and as its main function. The pre-amended Article 2 Paragraph 1 of the 1945 constitution states that "MPR shall consist of the members of DPR augmented by the delegates from the regional territories and groups as provided for by statutory regulations". The explanation of the article mentions that all citizens, groups, and territories must be represented in the assembly in order to reflect people's manifestation (Atmadja, 2010). Based on the explanation that MPR is the manifestation of the citizens and related to the regulations of the pre-amended Article 1 Paragraph 2 of the 1945 Constitution,

the doctrine of MPR supremacy emerged, making it the highest governing body. After the amendment, it is obvious that MPR is not the highest governing body; it is now level with other governing bodies, whose authority is bestowed by the 1945 Constitution (Indrati, 1998).

The improvement of MPR's role to be a state institution with prominent position is an effort to make the assembly has respectable power. The underlying thought is that (a) as stated by (Ayunita, 2016), MPR still has key authorities in Indonesian political system. The view that MPR is no longer the highest governing body after the amendment of the 1945 Constitution is not accurate. Based on the authorities bestowed to the institution, MPR still holds a special authority not given to other state institutions. However, measures must be taken to realign the perceptions regarding the position of MPR in Indonesian political system. One of the reasons to improve the real privilege that actually been inherent in MPR is that MPR is the only governing body whose members are all DPR and DPD members directly elected by the people in the general election, implying that MPR is comprised of people's representatives, the highest bearer of sovereignty in Indonesia. Another underlying thought is that, (b) since MPR is the assembly of people's representatives, it is only MPR who is given the mandate by the 1945 Constitution to amend and ordain the constitution (Harjono, 2007).

This authority is not given to other governing bodies because MPR is regarded as the most complete representation of citizens and territories in Indonesia's governance system. It is positioned as the highest governing body because it is the only body authorized to make Indonesia's basic law. This is relevant with the well-known legal principle, *Lex superior derogate lex inferior*, which means that laws made by a higher power also have a higher position. It can also be understood that higher laws must be made by institutions with a higher position. Although the pre-amended Article 1 Paragraph 2 of the 1945 Constitution stating that "Sovereignty shall be vested in the people and shall be exercised in full by MPR has been amended into "Sovereignty is vested in the people and implemented pursuant to the Constitution", the amendment does not simply level MPR down with other governing bodies, nor it places MPR higher than other bodies, not to mention that Indonesia is adherent to distribution of power system as if the power of other bodies is derived from MPR's power.

Using *ius constituensum* idea, the first key thoughts of this article is (1) placing MPR as a supreme institution because it is only MPR who has the authority to amend and ordain the 1945 Constitution. Furthermore, this is an urgent matter since one of the pillars of a strong unitary state according to the founding fathers is by placing MPR as the manifesting institution and sovereignty implementor. Therefore, the founding fathers put the locus of sovereignty on MPR. The second key thought is that, to strengthen the role and position of MPR in Indonesia's political system, it is important to return the authority of MPR to ordain regulating statutes, particularly those related to GBHN, which bears the concept of state administration, to be used as a binding guideline for state administrators and must be implemented by president and other institutions. The third key thought is related to whether or not it is necessary to give MPR the authority to make constitutional interpretation over laws currently assessed by Constitutional Court. Referring to Article 24C Paragraph 1 of the 1945 Constitution that the authority is in the Constitutional Court, it is not necessary to give MPR the authority to interpret the constitution. Nevertheless, in order to maintain the quality and integrity of Constitutional Court's verdict to be accountable to public, MPR should participate in such interpretation in the sense that MPR must be asked to give opinion concerning the interpretation over the assessed laws although the final verdict is on Constitutional Court.

3. Conclusion

MPR's authority has been limited as stated by the amended 1945 Constitution. However, a further discussion may lead to a finding that, in practice, the assembly's authority

is substantively fundamental for Indonesia's political life. It has the right of amending and ordaining the constitution, for example, which is crucial for the politic since 1945 State Constitution of the Republic of Indonesia is the highest of all laws and regulations. Furthermore, the position of MPR is supreme because Article 3 Paragraph 1 of the 1945 Constitution strictly states that MPR has the authority to amend and to ordain the Constitution. It means that it is only MPR who has the obligation to amend and ordain the state's institution. It is inappropriate to position MPR level with other governing bodies while it still has the authority to amend and to ordain the 1945 Constitution. Based on the history before and after the amendment of the 1945 Constitution, it is evident that MPR has become the joint session between DPR and DPD. The regulation concerning MPR becomes the following: a) no longer be the highest state governing body that fully bears the citizens' sovereignty; b) consisting of DPR and DPD members selected through the general election (Article 1 Paragraph 1). Further, MPR's authorities are amending and ordaining the Constitution and installing the president and/or the vice president (Article 3 Paragraph 1 and 2), dismissing the president and/or vice president during their term of office in accordance with the Constitution (Article 3 Paragraph 3 in conjunction with Article 7A and 7B), selecting a vice president among candidates nominated by the President in case the position of the Vice President falls vacant (Article 8 Paragraph 2), to elect a president and a vice president for the remainder of the term if during their term they are simultaneously and permanently unavailable (Article 8 Paragraph 3). The enormous changes make MPR no longer the full bearer of citizen's sovereignty nor the highest governing body.

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