

# The Authority of the People's Consultative Assembly and the Discourse of the Limited Amendment of the Constitution

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**ABSTRACT**—Indonesia is a state of law and is based on popular sovereignty based on the 1945 Constitution, as determined in Article 1 paragraph (2) and paragraph (3). The People's Consultative Assembly is the executor of people's sovereignty. The shifting of the position of this institution from the highest institution to a higher institution also had an impact on the position of other institutions. This research aims to analyze the concept of limited changes in the Basic Law related to re-entering the State Outlines into the authority of the People's Consultative Assembly and its implications. This study uses a doctrinal (normative) legal approach. Primary legal material, namely the 1945 Constitution of the Republic of Indonesia, Law Number 12 of 2011 as amended by Law Number 15 of 2019 concerning Formation of Legislation. Based on analysis and discussion of the problem, the results of this study can be stated, namely: First, the conception of limited changes to the Constitution. Second, the consequence of the re-inclusion of the concept of compiling Outlines of State Policy as the territory of the People's Consultative Assembly's authority.

**Keywords:** people's consultative assembly, authority, limited change

## I. INTRODUCTION

Two decades after the change in the state administration, there appears some nuances of romanticism to return to the past, one of which is to give to the People's Consultative Assembly (MPR) to regain its optimum authority in the state administration. The authority of the state institution is closely related to the government system. The government systems that has been known so far are the presidential and parliamentary government systems (certainly it is also identified that there are other government system out of the systems).

Experts in the state administration must understand that in the presidential government system, the President is placed as the state institution with great power. Moreover, the President plays his role as the head of state and of the government. The representative body in the presidential government system serves as a counterweight so that the President as the executor of the executive power will not dominate the power in order to avoid becoming an absolute government. This thought was proposed by a French thinker Montesquieu as stated in his book *The Spirit of Laws*[1].

In the parliamentary government system, there must be an accountability from the Head of the Government,

in this case, the Prime Minister, to the Parliament, according to Mahfud MD[2], in the parliamentary system, the Cabinet is responsible for the parliament and may be brought down by the parliament through the Motion. Therefore, the position of the executive is lower than the parliament.

When the Constitution would be changed, agreements occurred among fractions in the People's Consultative Assembly, one of which is the reinforcement of the presidential government system. The reinforcement is proved by the implementation of the Presidential and Vice Presidential election directly, the mechanism of the dismissal of the President through a judicial mechanism by the Constitutional Court, and the reinforcement of the legislative power through the drafting of laws. These are the realization of the *checks and balances*[3] of the state power. Therefore, the position of the People's Consultative Assembly, which is one of the pillars of the representative institution, is "demoted" from the highest state institution to become a state institution which is parallel with other state institutions.

This present research was conducted using legal materials with doctrinal (normative) legal approach. Normative analysis was employed by reviewing the changes of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to the 1945 Constitution of the State of the Republic of Indonesia) where the result of the amendment is related to the limiter authority of the People's Consultative Assembly of the 1945 Constitution of the State of the Republic of Indonesia. Citing the writing made by Janedriji M. Gaffar states that it has been a long time that this nation had a dream of a government form on the basis of the people's choice. Indonesia expects democracy and a real republic of state.[4]

The objective of this research is to know what implications arise from the enactment of the limited changes of the 1945 Constitution of the State of the Republic of Indonesia and what instrument may be used to make limitations and indicators of the limited changes. This research is descriptive in nature namely a research that may answer the research problems, and therefore a statute approach was employed. On the basis of the source, the type of data used is secondary data covering various regulations, books, articles, and scientific journals and dictionaries. To obtain comprehensive results, there are also primary, secondary, and tertiary legal materials. The primary legal materials used are written documents in

the form of the Law number 12 year 2011 in the Formation of Legislation as amended with the Law Number 15 year 2019 on the Formation of Legislation.

## II. RESEARCH METHOD

This research was conducted using legal materials with a doctrinal (normative) legal approach. This analysis uses normative analysis by reconstructing the authority of the People's Consultative Assembly and the discourse of limited changes to the 1945 Constitution. The nature of this research is descriptive. To be able to answer the problem formulation, the statute approach is used. Based on the source, the type of data used is secondary data which includes laws, books, articles and scientific journals and dictionaries. To get comprehensive results there are also primary legal materials, secondary legal materials and tertiary legal materials. The main legal material used is a written document in the form of the 1945 Constitution.

## III. FINDINGS AND DISCUSSION

### A. *Shifts of the Authority of the People's Consultative Assembly Before and After the 1945 Constitution of the State Of the Republic of Indonesia*

Before the amendment of the 1945 Constitution of the State of the Republic of Indonesia, the position of the People's Consultative Assembly was the highest institution with great power. The People's Consultative Assembly was the holder of the people's sovereignty as stated in the 1945 Constitution of the State of the Republic of Indonesia that the sovereignty is under the hand of the people and is fully executed by the People's Consultative Assembly. The People's Consultative Assembly is the embodiment of all the Indonesian people" who have an authority to establish the Constitution and the Broad Guidelines of State Policy, and to appoint the President and the Vice President. It can be stated that the People's Consultative Assembly is the embodiment of all Indonesian citizens' opinions.

The membership structure consists of the members of the House of Representative, and the local representative and also the group representative appointed, including the army/police. Principally, the authorities of the People's Consultative Assembly are among others as follows. First, it makes decisions that cannot be canceled by other state institutions, including stipulating the Broad Guidelines of State Policy of which the implementation is given to the President as its mandatory. Second, it gives explanations with interpretations about the nature of its decisions. Third, it completes the selection and then appoints the President and the Vice President. Fourth, it asks for responsibility from the President and Vice President about the implementation of the Broad Guidelines of State Policy and appraises the responsibility. Fifth, it revokes the mandate and dismiss the President in his administrative period if the President/Mandatory really breaks the Broad Guidelines of State Policy and/or the Constitution. Sixth,

it changes the 1945 Constitution. Seventh, it stipulates the Rules and Regulations of the Assembly. Eight, it determines the Head of The Assembly elected from and by the members. Ninth, it takes/gives decisions to the members breaking the members' oath/promises.

As a whole, the authorities concerned may show how great is the power attached to the People's Consultative Assembly before the amendment of the 1945 Constitution of the State of the Republic of Indonesia.

After the amendment of the 1945 Constitution, the People's Consultative Assembly has not possessed a position as the highest state institution, but as the state high institution where its position is parallel with other state institutions, this according to Ni'matul Huda[5] is caused by the change in the state administration system from the hierarchical-vertical system to the principles of supremacy and mutual supervision among state institutions. The juridical-logical consequence from the change of the position of the People's Consultative Assembly from the change in Article 1 verse (2) from "Sovereignty is under the hand of the people and is fully implemented by the People's Consultative Assembly" into "The sovereignty is under the hand of the people and is implemented in accordance with the Constitution. The change in this article according to Harjoni as stated by Valina Singka Subekti is as follows:

"With such a concept (Article 1 verse 2 of the 1945 Constitution of the State of the Republic of Indonesia), what is understood about the people's sovereignty before the amendment of the 1945 Constitution is that the People's Consultative Assembly as the highest state institution would be left since sovereignty is not implemented anymore and is linearly ordered, but it is not distributed to the People's Consultative Assembly but also to other state institutions".[6]

This confirms that the People's Consultative Assembly is not the only institution which implement the people's sovereignty, but each institution given task as the state politics is the implementer of the people's sovereignty and should obey and be responsible to the people.[7]

The implications of the change of the position paradigm of the People's Consultative Assembly when it is more deeply observed principally result in the followings. First it changes and determines the Constitution. Second, it inaugurates the President and Vice President on the basis of the results of the general election in the plenary session of the People's Consultative Assembly. In terms of the execution of this authority, legal products from the People's Consultative Assembly either in the form of the Decisions or Decrees are not needed, because the inauguration mechanism is merely ceremonial in nature. The People's Consultative Assembly does not have any other choice except inaugurating the candidate of the President and the vice President that have been determined by the General Election Commission as the valid winner in the

Presidential and the Vice Presidential election. Third, it decides the proposal of the House of Representatives about the dismissal of the President and the Vice President after being decided by the Constitutional Court that the President has proven to have broken the laws as stipulated in the Article 7B verse (5) of the 1945 Constitution of the the State of the Republic of Indonesia. Fifth, it chooses the Vice President when the vacuum of the Vice President occurs from two candidates proposed by the President, verse (2). Seventh it selects the President and the Vice President if they resign at the same time from two packages of the candidate of President and Vice President proposed by political parties or a combination of political parties of which the package of the candidate of President and Vice President get the first and second highest vote in the full election.

The tasks and the authority of the People's Consultative Assembly in the post period of the 1945 Constitution amended are the incidental authority of the People's Consultative Assembly namely they merely may be implemented in a certain time or in a five year period to inaugurate the President and the Vice President.

Another matter with the authority of the People's Consultative Assembly is an idea to give an authority to interpret the Constitution in terms of testing the laws being conducted by the Constitutional Court. It is necessary to understand that concerning with the judicial review, the theory prevailed is that if a law is made by the holder of the people's sovereignty, the law cannot be proceeded, if a law is made by the the holder of the people's sovereignty, the law may be changed or proceeded. Hence, the legislators are the House of Representative together with the President, which as parts of the institutions hold the people's sovereignty. In order to avoid any violence to the people's rights and to guard the Constitution, each law may be tested through material testing. The People's Consultative Assembly as the high state institution actually possesses an authority to change and determine the Constitution. But the authority of the People's Consultative Assembly is to interpret the Constitution. When a request for the material testing of the Constitution occurs, it is under the domain of the authority of the Constitutional Court.[8] The interpretation actually has been "represented" by the House of Representative and the President when the process of the examination is being proceeded in the Constitutional Court, the institution giving information dealing with the examined laws is made by the Constitutional Court. If the legislation is fully under the hand the House of Representative and the Regional Representative Council, meaning it they are made by the People's Consultative Assembly, it is the legislators that have an authority to amend and determine the Constitution.

Actually regulations will be effective if they are applied in the state of which the power is centrally implemented. It is greatly difficult to avoid various regulations which are "considered" to be contradictory with regulations at the upper level. In 2015 there were about 3000 Local Regulations which are considered to be

problematic and canceled by the Minister of Domestic Affairs.

It can be stated that sooner or later the hierarchic model of the legislation will be flatter, where at last they are allowed to be contradictory with the Constitution. Dealing with the matter of the Law that erases the existence of the Decision of the People's Consultative Assembly in the Law No. 10 year 2004, it has been restored by entering in the hierarchy of the legislation namely the Law No. 21 year of 2011, regarding the Formation of Legislation. It should understood that in the Constitution, the form of the legislation in the nomenclature of the Decision of the People's Consultative Assembly is not explicitly stated. But in Article 2 Verse (3) it is implicitly determined that "All decisions of the People's Consultative Assembly are determined on the basis of the most votes." This matter may also be understood that there are legal products of the People's Consultative Assembly of which their mechanism is through the support from the most votes. For instance, it occurs when the People's Consultative Assembly asks for responsibility from the President after the impeachment mechanism. The House of Representative might state that the President has violated the Constitution, and the statement made by the House of Representative is supported by the decision made by the Constitutional Court, then the President may be declared to have broken the law. The mechanism also occurs in determining the result of the amendment of the Constitution. But the product of the regulations made by the People's Consultative Assembly are limited in certain matters and situations.

Dealing with less number of the decisions of the People's Consultative Assembly, it is a logical and juridical consequence from the amendment of the Constitution, placing the People's Consultative Assembly as a high state institution. The concept of the people's sovereignty is implemented based on the Constitution. But if a socio-political situation requires the reinforcement of the authority of the People's Consultative Assembly, the legal and legitimate step is through the process of re-amendment of the Constitution. Without such a re-amendment, it is rather difficult to give more authority to the People's Consultative Assembly besides those being stated in the Constitution. A convention of the state administration may become an alternative way to rise the authority of the People's Consultative Assembly which is not regulated in the Constitution, but this needs a greater energy to assure other state institutions and also the people as a whole.

#### *B. Limited Amendment of the 1945 Constitution of the State of the Republic of Indonesia*

Twenty one years ago, exactly in 1998, was a milestone for the dynamics of this nation, known as the reformation. One of the results of the reformation is the change in the mechanism of the election of the President and the Vice President. This amendment is the consequence from the change of the position of the

People's Consultative Assembly, which at first served as the highest institution in this unitary state of the Republic of Indonesia. The result of the amendment of the 1945 Constitution places the People's Consultative Assembly on the parallel position with other state institutions.

Before the amendment of the 1945 Constitution it is stipulated that the national development system was conducted in a planning system, where it was described in the Broad Guidelines of State Policy,[9] in the Five-Year Development Plan and annual budget or the National Budgeting in the practice of the state management during the New Order State policy for five years and the materials for the long-term direction for 25 years called the Long-term Development. This Long-term Development was determined on the basis of the assumption that there would not be any changes in the balance of political power during the time period.[10]

At present some dynamics of state administration take place. There is a nuance of romanticism to return to the past one of which is to give (again) the People's Consultative Assembly a chance to play roles in the state administration namely in making the Broad Guidelines of State Policy and then it is almost certain that the state administration would be guided by the stipulations stated in the Broad Guidelines of State Policy.

But all parties should realize that constitutionally, giving an authority to the People's Consultative Assembly to set the Broad Guidelines of State Policy has been stopped since the Article regarding the authority of the the People's Consultative Assembly is not stated anymore in the Constitution after its amendment is conducted at the beginning at the reformation. It should also be remembered that one important point in the amendment of the Constitution at that time was to reinforce the Presidential government system considered to represent the people's sovereignty. Whereas authorities in state institutions is closely related to the government system. If the Broad Guidelines of State Policy made by the People's Consultative Assembly and executed by the President are implemented, the desire to reinforce the presidential system explicitly stated in the Constitution amended at the beginning of the reformation cannot come true. It should be recognized that it is a part of the parliamentary government system.

It should also be understood that the existence of the Broad Guidelines of State Policy must need a legal basis and it is being conceptualized by the People's Consultative Assembly (2014-2019) namely articles regarding the authorities of People's Consultative Assembly to make the Broad Guidelines of State Policy. That is why a limited amendment to the Constitution is recommended to the People's Consultative Assembly in the 2019-2024 period. But is difficult to determine the extent of such an amendment.

Anyone who once studied law, especially in drafting regulations must know that legal implications of a verse, instead of an article verse, is taken into account. Internally in a regulation or in other regulations with parallel position, or even higher positions, General legal

principles must become the foundation of thinking in determining decisions either in the form of verses, articles, or chapters in a regulation.

### *C. Political and Legal Implications of the Presence of the Broad Guidelines of State Policy*

Lets suppose that the People's Consultative Assembly agrees with the Constitution amendment, producing a stipulation as follows: "The People's Consultative Assembly determines the Broad Guidelines of State Police" returning in the Constitution. Will it stop here? It should be understood that this article gives various implications, among others as follows.

First, it will give the following implication: what mechanism may become the reference to give an authority to the People's Consultative Assembly to order the President to execute the Broad Guidelines of State Policy since the President is not the subordinate of the People's Guidelines of the State Police? Will it also contain the authority of the People's Consultative Assembly to oblige the President to execute the Broad Guidelines of State Policy? State complexity will occur, since the President is elected by the people, and the people elect the President with one of the considerations of the presentation of the vision and missions of the candidate of the President, so when working on the basis of the Broad Guidelines of State Policy, it probably happens that between the work programs offered during the campaign will not be found in the Broad Guidelines of State Policy.

Second, what legal and or political implications will happen if the President is elected by the People, as a result, the President is responsible for other institutions, but constitutionally for his voters?

As a result, if the President does not seriously implement the Broad Guidelines of State Policy and his performance is not in line with the content existing in the Broad Guidelines of the State Policy, nothing may explain the rationality of the responsibility that should be accepted by the President, either politically or legally.

From this point, it is necessary to rethink the desire of the People's Consultative Assembly to make limited amendment of the Constitution oriented into giving authorities to the People's Consultative Assembly to make laws. Because, the problem does not merely add an article regarding the authority of the People's Consultative Assembly in adding the authorities of the People's Consultative Assembly in adding the Broad Guidelines of State Policy. No rational and logical argument may explain the reasons to regain the authorities of the People's Consultative Assembly.

It is better at present to focus on organizing the country based on the existing Constitution, although there is a desire to have a blueprint of the state direction, it may be conventionally done by involving all existing state institution to make the vision of the country. In line with the goal of the country stated in the paragraph IV of the Preamble of the 1945 Constitution namely making the

life of the nation smart, advance public welfare, and taking part in and implementing the world order on the basis of Pancasila (Five Basic Principle). Remember Article 33 verse 1 of the 1945 Constitution states that "The economy shall be organized as a common endeavour based upon the principles of the family system." This article shows an order that the President is not alone but together in organizing the economy, but why is this Article not made as the basis for the widened model that the Broad Guidelines of State Policy are set together for the sake of the advancement of the state and the nation.

#### IV. CONCLUSION

The position of the People's Consultative Assembly shifts into a state high institution from the highest one as the result from the amendment of the 1945 Constitution of the State of the Republic of Indonesia. The authority to set the Broad Guidelines of State Policy which at first under the hand of this institution is also nullified. At the moment, the discourse of the limited amendment of the 1945 Constitution of the State of the Republic of Indonesia appears to start in 2018 to put the authority back under the jurisdiction of the People's Consultative Assembly.

The legal and political implications if the Broad Guidelines of State Policy is reentered into the jurisdiction of the People's Consultative Assembly are among others what legal basis may be used by the People's Consultative Assembly to force the President to implement the Broad Guidelines of State Policy and what mechanism of responsibility is used if the President refuses or does not execute the country direction in line with the Broad Guidelines of the State Policy.

#### REFERENCES

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