



***POTENTIAL FOR THE USE OF QUESTIONNAIRE RIGHTS BY THE
DPR TOWARDS CONTROVERSY ON JUDGES' DECISIONS (CASE
STUDY OF CONSTITUTIONAL COURT RULING NO. 90/PUU-
XXI/2023)***

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ABSTRACT

This study aims to examine the potential use of questionnaire rights by the DPR in response to controversies that arise after the Constitutional Court (MK) decision, focusing on the Case Study of Constitutional Court Decision No. 90/PUU-XXI/2023. This research involves an in-depth analysis of the dynamics of the relationship between the people's representative institution (DPR) and the judicial institution (MK), especially in the context of conflicting views related to controversial legal decisions. This research methodology uses a qualitative approach by extracting data from various sources, including official documents, interviews with DPR members, and analysis of the text of the Constitutional Court ruling. The research will explore the extent to which the DPR questionnaire right can be utilized as an effective instrument in uncovering and responding to dissatisfaction with the Constitutional Court's rulings, as well as their impact on the balance between executive, legislative, and judicial powers. The research findings are expected to provide a deeper understanding of the role of DPR questionnaire rights in responding to the controversy over judges' decisions, taking into account political, legal, and constitutional aspects. The implications of this research are expected to contribute to the development of control mechanisms and the balance of power within the Indonesian political and legal system.

Keywords: *Angket Rights, DPR, MK*

INTRODUCTION

Indonesia is a constitutional state, which means that state power is limited by the constitution, and also adheres to a democratic system, which means that all people participate in government, even through intermediaries. The constitution adopted in Indonesia is a type of written constitution commonly known as the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) which has undergone four changes or amendments from 1999 to 2002. These changes were not made without reason. Social problems in society are increasingly developing and weak checks and balances mechanisms between constitutional institutions are some of the backgrounds for these changes. The result of these changes is the constitutional reform that we can experience today.

One of the most prominent constitutional reforms is the second amendment to the 1945 Constitution of the Republic of Indonesia which has major implications for government administration, especially state institutions, more specifically the People's Representative Council of the Republic of Indonesia (DPR). RI) which acts as an institution that represents the

people. One of the implications is the strengthening of one of the functions of the DPR RI itself, namely the supervisory function as a form of control over government (control of the executive).

Supervision or control is an effort aimed at ensuring the implementation of state plans. If taken according to the scope of government law, then supervision can be interpreted as an effort to ensure that the government's attitude is by applicable law. However, in constitutional law, supervision means efforts aimed at ensuring that state affairs carried out by state institutions are by applicable law.

Constitutionally, the supervisory function is attached to the legislative institution as mandated in pasal 20A of the 1945 Constitution of the Republic of Indonesia. Furthermore, the supervisory function is also regulated in Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the People's Representative Council Regional (MD3 Law). In carrying out its duties and functions, the DPR RI carries out its supervisory function, its duties, and authorities as explained in the 1945 Constitution of the Republic of Indonesia regarding the duties of the DPR RI, namely to supervise the performance of government (control of Government Performance) by using its rights and obligations.

In pasal 20A ayat (2) which reads "In carrying out its functions, apart from the rights regulated in other pasal of this Constitution, the People's Representative Council has the right of interpellation, the right of inquiry, and the right to express opinions. opinion." which explicitly states three rights of the DPR in carrying out its functions, one of which is the right to inquiry. The right to the inquiry is one of the rights of the DPR in carrying out its supervisory function and is regulated in pasal 79 ayat (3) of the MD3 Law which reads "The right to the inquiry as intended in ayat (1) letter b is the right of the People's Representative Council of the Republic of Indonesia to investigate the implementation of a law and/or government policies relating to important, strategic and broad impacts on the lives of the community, nation, and state which are alleged to conflict with statutory regulations."

The right to vote by the People's Representative Council of the Republic of Indonesia is proof of the implementation of the supervisory function of other branches of power and a checks and balances mechanism to achieve a balance of power. The House of Representatives of the Republic of Indonesia uses the right of inquiry to conduct investigations into the implementation of laws or government policies that are suspected of conflicting with statutory regulations. However, in practice, the use of this right gives rise to many new legal problems within the scope of current constitutional law. One of the problems that arises from the application of the right to inquiry by the DPR RI is related to the case of the DPR RI's right to inquiry to the Corruption Eradication Committee to request survey results. recording of the investigation into the Miryam S Haryani case in 2017. The Corruption Eradication Commission (KPK) is an independent state institution and free from the influence of any power as stated in pasal 3 of Government Regulation instead of Law Number 1 of 2015 concerning Amendments to Law Number 30 of 2002 concerning the Corruption Eradication Commission (Perpu 1/KPK (KPK 2015), and according to Hifdzil Halim, the right of inquiry carried out by the DPR RI is used to supervise the executive (President and/or Vice President), not the judiciary (judicial

power), nor the authorities. The fourth branch of state power (apart from the legislative, executive, and judiciary) like the Corruption Eradication Commission.

However, in October 2023, the public was shocked by the scandal of Constitutional Court (MK) Decision number 90/PUU-XXI/2023 concerning the minimum age limit for presidential and vice presidential candidates. The controversy was that the Chairman of the MK and MPR at that time was Anwar Usman who was the President's brother-in-law and the contents of the decision threw Gibran Rakabuming Raka (son of President Jokowi and nephew of Anwar Usman) into running for the 2024 Presidential Election. This matter has been resolved by the Honorary Council of the Constitutional Court (MKMK) which stated that Anwar Usman was proven to have committed serious violations as stated in MKMK Decision Number 2/MKMK/L/11/2023. One of the reasons the MKMK gave this decision was that Anwar Usman was proven to have opened up space for outside intervention. This decision certainly violates the constitution and weakens the concept of democracy, as well as disrupting the independence and impartiality principle of the judge's judiciary. Judges must be independent and impartial in a democratic rule of law (democracy). rechtsstaat) or a democratic state based on law (constitutional democracy).

In this description, it is not stated who the parties were who intervened by the judge in the determination of the Constitutional Court Decision Number 90/PUU-XXI/2023. Many journalists, political observers, practitioners, and academics have speculated that it could be the President's envoy or perhaps the President himself who is the brother-in-law of the Chief Justice and father of Gibran Rakabuming Raka who intervened.

With this description, a question mark arises regarding the scope and object of this questionnaire. Regarding the extent to which the DPR RI can use its rights to investigate state issues, especially the Constitutional Court scandal.

RESEARCH METHODS

This writing uses normative research methods, namely by viewing law as a regulation (norm). To collect data, the author used library research methods, namely a series of activities related to library data collection methods, reading and taking notes, and processing research materials. Library data collection takes the form of statutory regulations, legal papers, supporting books, and YouTube podcasts. The collected materials were analyzed using qualitative analysis methods, the results of which were then compiled in journal form.

RESULTS AND DISCUSSION

Position and Function of the People's Representative Council of the Republic of Indonesia (DPR RI)

In the constitution, it is emphasized that the Indonesian state is a state of law, not a state of power, in a state of law the law holds the highest command in the administration of the state. The characteristics of a rule of law are:

1. There is a Basic Law or constitution which contains written provisions regarding the relationship between the authorities and the people.
2. Separation of powers
3. Recognition and protection of community rights.

To run a harmonious government and minimize conflict within the government, Indonesia adheres to a separation of powers system with the Trias Politica concept. Trias Politica is a concept of separating power into 3 parts, namely legislative power, executive power, and judicial power.

The People's Representative Council of the Republic of Indonesia, often called the People's Representative Council (abbreviated as DPR-RI or DPR) is one of the highest state institutions which includes legislative power. In the Indonesian constitutional system, the DPR is an institution that represents the people in legal participation. The DPR consists of members of political parties who are elected through general elections.

The DPR is regulated in Chapter VII Pasal 19, pasal 20, and pasal 22 of the 1945 Constitution of the Republic of Indonesia. Pasal 19 ayat (1) contains the determination of the composition of the DPR as determined by law. Furthermore, ayat (2) states that the DPR holds a session at least once a year. Based on the second amendment to the 1945 Constitution of the Republic of Indonesia, the provisions of pasal 19 were changed so that it consists of three ayat, namely: "(1) members of the DPR are elected through general elections; (2) the composition of the members of the People's Representative Council is selected through general elections; (2) the composition of DPR members is selected through general elections; The House of Representatives is regulated by law; (3) The House of Representatives convenes at least once a year ."

Furthermore, based on the second amendment to the 1945 NRI Constitution, pasal 20 consists of 5 ayat which before the amendment consisted of 4 ayat. The formulation of ayat 5 of pasal 20 is :

1. The House of Representatives holds the power to form laws;
2. Each draft law is discussed by the DPR and the President for mutual agreement ;
3. If the draft law does not receive mutual approval, then the draft law cannot be submitted again in the session of the House of Representatives at that time.
4. The President supports the jointly agreed legal plan to become law.
5. If a mutually agreed draft law is not ratified by the president within thirty days of the draft law being approved, then the draft law becomes law and is promulgated.

Apart from that, the second amendment also adds provisions to pasal 20A which contains the following 4 ayat:

1. The DPR has a legislative function, a budget function, and a supervisory function.
2. In carrying out its functions, apart from the rights regulated in other pasal of this constitution, the People's Assembly has the right to interpolation, market rights, and the right to express opinions ;
3. In addition to the rights regulated in other pasal of this Constitution, every member of the DPR has the right to convey statements, suggestions, and opinions, and is entitled to immunity;
4. Further provisions regarding the procedures for forming laws are regulated by law.

Furthermore, pasal 22B produces a second change which reads: "Members of the DPR can be dismissed from their positions, the conditions and procedures for which are regulated by law."

Among these important changes, there was a fundamental shift in legislative functions from the hands of the President to the hands of the DPR. Pasal 5 ayat (1) of the 1945 Constitution of the Republic of Indonesia before the amendment stated that *"the President has the power to form laws with the approval of the House of Representatives"* and pasal 21 ayat (1) stated that *"members of the DPR have the right to advance draft laws"*. Now after the first and second amendments, pasal 20 ayat (1) confirms that *"the DPR holds the power to form laws,"* and pasal 5 (1) confirms that: *"The President has the right to submit draft laws." submit the draft law to the DPR.* To ensure the strong position of the DPR, in the second amendment to the 1945 Constitution of the Republic of Indonesia, ayat (5) was added which states: *"A bill that has been jointly agreed upon must not be ratified by the President within 30 days. If the draft law is approved, then the draft law is valid and must be promulgated."*

The House of Representatives has a function that carries out the framework of representing the people, namely the function of statutory regulations whose implementation is a manifestation of the holder of the power to form laws. As a legislator, the DPR is also given the mandate to supervise the implementation of a law and/or government policy that has an important, strategic, and broad impact on the life of the community, nation, and state which is alleged to conflict with statutory regulations. as mandated in pastoral 20A ayat (2) which we know as the right of inquiry.

Right Questionnaire

The judge is the right given by the constitution to the People's Representative Council of the Republic of Indonesia to conduct research and investigations into certain problems. This research and investigation was carried out without the involvement of the government (executive agency). Before holding a questionnaire, parliament must first determine the aims and objectives of the research that needs to be conducted, then form a research committee (questionnaire committee).

The inquiry committee has the right and authority to research, investigate, and ask for information from all parties deemed necessary, both public agencies and government agencies or more specifically ministerial agencies. The results of the study will later be reported by the committee to parliament to be announced. The right to inquiry is usually carried out to research and investigate alleged violations of the law, alleged neglect of the fate of workers in factories, the danger of starvation, natural disasters, corruption, chaos, and so on.

As stated in the background above, the right to inquiry is used to supervise executive institutions (President and/or Vice President), not the Judiciary (judicial power), nor the four branches of state power (apart from the legislative, executive and judicial) such as the Corruption Eradication Committee.

According to the author, the right of inquiry to correct and supervise the government (executive) and as a partner in administering this government can support the successful performance of the cabinet or ministers and help the President's implementation, role, and responsibilities as President. chairman of the MPR, namely based on the political points outlined by the MPR.

Constitutional Court Decision

A case examination process in court always ends with the issuance of a decision, including the Constitutional Court which has the authority to adjudicate at the first and final level whose decision is final to review laws against the Constitution, deciding disputes over authority. State institutions whose authority is granted by the Constitution, decide on the dissolution of political parties and disputes over general election results, based on pasal 24C ayat (1) of the 1945 Constitution of the Republic of Indonesia.

In a decision, the judge states his opinion regarding what has been considered in his decision, and each decision can be subject to legal remedies such as appeal, cassation, or judicial review. However, these legal remedies do not apply to Constitutional Court Decisions. The Constitutional Court's decision is final and binding and does not require law enforcement to force the decision to be implemented (*declaratory-constitution*). Final means having permanent legal force without any prohibition from any institution, and means binding and applies to anyone (*erga omnes*) without exception. As a result of the birth of this binding characteristic (*verbindende kracht*), there are no other legal remedies such as appeal, cassation, or judicial review, unless there is a Constitutional Court decision declaring the quo decision null and void.

According to Soedikno, the Constitutional Court applies the principle of *res judicata pro veritate habetur* which means that the judge's decision must be considered correct, even if the witnesses presented are fake, the judge decides based on fake witnesses, or there is an error in the decision.

In essence, even though the Constitutional Court's decision *causes judicial corruption*, errors, or violations of the judge's code of ethics, it does not make the judge's decision invalid, wrong, or void. Because the principle of *res applies judicata pro veritate habetur* and the final and binding nature of the decision, the Constitutional Court's decision is still considered correct and valid.

The DPR cannot use its voting rights against the Constitutional Court regarding its decisions

Judicial power is independent (*judicial independence*), and can be intervened or prohibited by any party or institution (binding concept). And as is the nature of the right to inquiry, it only applies to executive institutions, not judicial institutions or other independent institutions. However, according to the author, if there are allegations of violations committed by the executive (President, Vice President, Minister, or below) regarding the results of the Constitutional Court Decision, then the DPR can use its right of inquiry to investigate these allegations using the right of inquiry. The Constitutional Court's decision which deemed there were allegations of legal violations committed by the executive agency was the main basis for the problem.

For example, in Constitutional Court Decision Number 90/PUU-XXI/2023, MKMK through MKMK Decision Number 2/MKMK/L/11/2023 considers at least 2 things as follows:
1. MKMK wrote, "The Reported Judge is not working and also does not appear to be working independently and impartially, especially in handling case 90/PUU-XXI/2023."

Both “impartial” and “ *apparently impartial*” are self-explanatory. Because in fact, Anwar Usman as the Reported Judge did not back down in handling case Number 90/PUU-XXI/2023. Even though "it is clear that there is a conflict of interest because case 90/PUU-XXI/2023 is directly related to the interests of the family of the Reported Judge, namely Gibran Rakabuming Raka."

2. The results of a journalistic investigation conducted by Tempo found that there was involvement of outside parties in the birth of Decision 90/PUU-XXI/2023 because the results were disseminated via YouTube. "If Tempo's report is true, then this shows an indication of external influence in the decision-making process which should be independent."

With this Decision, it is clear that the Reported Judge provides room for intervention from outside parties as described in point 1 above. Thus disturbing the independence and *impartiality principle of the Judge's judiciary*. Judges must be independent and impartial in *a democratic rule of law (democracy). rechtsstaat) or a democratic country based on law (constitutional democracy)*.

With the allegations of interference from outside parties, this should be enough reason for the DPR to form an inquiry committee to examine these allegations. If the allegation is true, it must have been carried out by the executive, even more extreme under the President because it is directly related to the results of the Constitutional Court's decision.

The results of the committee's questionnaire can be reported to the MPR with evidence of legal violations. Later, the MPR will assess whether the appropriate punishment for the person concerned is a violation of the law it made, and the most severe punishment is dismissal.

CONCLUSION

Based on the discussion, it can be concluded that the People's Representative Council of the Republic of Indonesia cannot use its right of inquiry to the Constitutional Court regarding alleged violations in its decisions. However, the DPR can use its voting rights against executive institutions that are suspected of intervening in Constitutional Court decisions. The consequence of the President or the President's envoy being proven to have intervened in the Constitutional Court, which is an independent institution in making decisions, is the imposition of sanctions by the MPR. The most severe sanction given by the MPR is impeachment or impeachment if it is proven that they have violated the law as stated in pasal 7A of the 1945 Constitution of the Republic of Indonesia.

As for suggestions regarding various problems that occur, the DPR should be more precise in exercising its supervisory rights in maintaining the smooth performance of the government. If there is an allegation of a violation of the law, the DPR must act to address the allegation. The right to inquiry is a DPR privilege mandated by the Constitution. It would be better to listen and immediately respond to accusations in the face of new legal status and legal conflicts that arise as a result of being illegal and/or violating the law, which is of course very detrimental to society.

BIBLIOGRAPHY

- Asshiddiqie, Jimly. (2006). *Development and consolidation of Post-Reform State Institutions/Prof. Dr. Jimly Asshiddiqie, SH.*
- Boboy, Max. (1994). *DPR RI; In Historical and Constitutional Perspectives.* Sinar Harapan Library.
- Charity, May Lim. (2017). Implications of the Right to Inquiry of the House of Representatives of the Republic of Indonesia towards the Corruption Eradication Commission. *Indonesian Journal of Legislation*, 14 (03), 245–254.
- Huda, Ni'matul. (2018). *Executorial Power of Constitutional Court Decisions.* Yogyakarta: FH UII Press.
- Lubis, M. Solly. (2008). *Constitutional law.* Bandung: Mandar Maju.
- Mertokusumo, Sudikno, & Law, Discovery. (2012). Yogyakarta: Atma Jaya University, 2010. *Bambang Sunggono, Legal Research Methodology, Jakarta: Rajawali Pers .*
- Radjab, Dasril. (2018). Shifting the Function of DPRD Legislation in Forming Regional Regulations to Strengthen the Position of DPRD in the Implementation of Regional Government. *The Face of Law*, 2 (1), 9–28.
- Soemantri, Sri. 1993. Indonesian Constitution in Indonesian Political Life: 30 Years Back to the 1945 Constitution. Jakarta: Pustaka Sinar Harapan.
- Bima, Muhammad Rinaldy, Muhammad Kamal, and Hardianto Djanggih. 2019. Legitimacy of the House of Representatives' Right to Inquiry Against the Corruption Eradication Commission. *Kertha Patrika Journal*, pasal Vol. 41(1).
- Ippih, Andi. 2014. The Existence of the Right to Inquiry in Carrying Out the Supervisory Function of the House of Representatives Against the Government. *Journal of Legal Studies Legal Opinion*, Vol. 3(2).
- Maulidi, M Agus. 2019. Questioning the Executorial Power of Final and Binding Decisions of the Constitutional Court. *Constitutional Journal*, Vol. 16(2).
- Naswar. 2012. The Right to Inquiry in the Indonesian Constitutional Constellation. *Constitutional Journal*, Vol. 1(1).
- Panggabean, Daniel. 2022. Implementation of the House of Representatives' Right to Inquiry in Controlling Government Policy. *Nommensen Journal of Legal Opinion*, Vol. 3(1).
- Parinding, Risman Marten. 2018. Juridical Review of the House of Representatives (DPR) Right to Inquiry According to Law Number 17 of 2014. *Lex Administratum Journal*, Vol. 6(1).