

Legality and Legitimacy of the Questionnaire Rights of the House of Representatives in Indonesia

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ABSTRACT

The manifestation of People's Sovereignty based on democracy led by solemn wisdom in representative deliberations, it is necessary to have a people's representative institution that can absorb and fight for the aspirations of the people to achieve national goals for the interests of the nation and the Republic of Indonesia optimally. For this purpose, a supervisory institution that is credible, honest, brave, and has the spirit of knights and statesmen is required. Supervision is intended as a means of governance that is formulated both philosophically and in the normative formulation so that the administration of government runs and achieves the stated goals. One of the characteristics of a modern (classical) state is the existence of supervision, in addition to the distribution of power and protection and a guarantee of human rights. Article 20A of the 1945 Constitution of the Republic of Indonesia (the result) of the second amendment states that the House of Representatives has a legislative function, a budget function, and a supervisory function.

KEYWORDS: legality; Legitimacy; Questionnaire Rights

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I. INTRODUCTION

Questionnaire rights in the context of state life in Indonesia are the rights of the House of Representatives to investigate the implementation of laws and / or government policies that are important, strategic, and have a broad impact on the life of the community, nation and state that are alleged to be contrary to laws and regulations (Bima, Kamal & Djanggih, 2019)

The oversight function of the House of Representatives is carried out through supervision of the implementation of laws and state expenditures. The form of oversight by the House of Representatives is to exercise the Questionnaire Right (Solihan & Witianti, 2016). Both the functions and rights of the House of Representatives positions are different, but it is difficult to separate them because they are positions for which authority is attached (Muin, 2020).

The three functions of the House of Representatives, in essence, have a close and always touching relationship. When the House of Representatives forms a law with the agreement of the president, the House of Representatives must supervise the implementation of the law by the Executive, in this case, the President (Purnamawati, 2019). The role of the House of Representatives is defined as activities carried out by various qualifications of the House of Representatives, for example as a member, as a leader, as a faction, as a commission, and as an auxiliary body of the House of Representatives individually or collectively carried out to carry out its functions. these agencies (Ansori, 2019). Thus the activities of the elements of the House of Representatives which aim to carry out the Representative Function, Legislation and the Supervision Function fall under the authority of the House of Representatives (Newman & Keaton, 1953).

In carrying out its duties and functions, the House of Representatives carries out its functions by using the powers it possesses as referred to both in the 1945 Constitution of the Republic of Indonesia and the law concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council and the Regional People's Representative Council. and provisions on the rules and regulations of the House of Representatives and various laws relating to the duties and functions of the House of Representatives (Mietzner, 2010).

II. DISCUSSION

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Among academics, even all observers in the field of constitutional law, politics, and observers in the field of constitution and government have not stopped discussing the legality and legitimacy of the Inquiry Rights of the House of Representatives in countries that adhere to the Presidential Government System, especially in Indonesia with the post-constitutional reform Indonesia, which has the philosophy of Pancasila in a democratic constitutional state, is based on Democratization and the Supremacy of Law (Peters, 2006). Together with these things, a new phenomenon emerged by the Constitutional Court through Decision Number 36 / PUU-XV / 2017 which states that an Independent Institution is part of the Government so that it can become the subject of the Inquiry Right of the House of Representatives. About these descriptions, it is interesting to observe the Constitutional Court Decision Number 36 / PUU-XV / 2017 because how the panel of constitutional judges constructs the consideration of whether the Corruption Eradication Commission can be the subject of the House of Representatives' Inquiry Rights or not, by the Petitioner's petition that the Corruption Eradication Commission is an Independent Institution excluding the Government so that it cannot be the subject of the Inquiry Right of the House of Representatives.

In the construction of thinking of Constitutional Court Judges in this context (Ludwikowski, 2001), it is not wrong that the presence of *auxiliary state organs* whose development is formed by order of the Law (not born from the Law let alone the Constitution of the Republic of Indonesia 1945, was due to the encouragement of the achievement of increasingly complex state goals for the realization of effectiveness and efficiency in the implementation of public services, however, it was very macro that the essence of the existence of the Independent Institution was neglected to be considered, namely for professional and proportional law enforcement which demanded the assessment of reformists at that time. that the institution that carries out these functions cannot function properly formed Independent Institution is that an *ad hoc* with a very special function, thus the essence of the existence of the Independent Institution is enforcement to build the morale of state administrators. to anyone who collaborates to bear the mentality of state administrators (Chimni, 2004)

From these considerations, the majority panel of constitutional judges said that the existence of supporting state institutions was formed based on the functions of the main state institutions that carry out the legislative, executive and judicial functions. Because of this, the majority panel of constitutional judges called the Corruption Eradication Commission an institution in the Executive realm, because it carries out functions in the Executive domain, namely investigations, investigations and prosecutions, in the context of *triggering mechanisms* for Police and Prosecutors' agencies which are deemed to lack credibility. (*public distrust*) in eradicating criminal acts of corruption (Whittington, 2005). "At that time," according to the author's opinion, the Constitutional Court Council neglected to continue his opinion that the task of the Corruption Eradication Commission is with special authority and is given by law if the opinion is completed as I have stated, then the conclusion is another, namely "the Corruption Eradication Commission is part of the Executive but it is independent. so that it becomes a legal problem so that the law needs to be corrected because it tends to break through the pillars of the Government System so that the improvement of norms and the application of *checks and balances* remains the spirit of the Presidency as in the Constitution of the Republic of Indonesia.

According to some theories, the Inquiry Right is suitable for governments that adhere to a Parliamentary system and not a Presidential system. In some literature, these theories do say that this is indeed an instrument that was born in the Parliamentary system. However, this theory for some constitutions already has deviations. Now it is checked, for example in the United States it is now in the process of *impeachment*. As part of a monitoring instrument.

One of the goals of amending the Constitution of the Republic of Indonesia is because we want to maintain the Presidential system by purifying it by verifying it. So the non-presidential elements were discarded. For example, in the past, the President was responding to the MPR, now he is no longer responsible to the people. In the past, the President was elected by the MPR. Now the people must be directly elected because if he is elected by the MPR, he cannot help but be accountable to the MPR, thus meaning Parliament again.

According to Saldi, the elements of Parliament were removed. But are all the characteristics of the Parliamentary system lost in the post-amendment constitution? It turns out that both constitutionally and in practice still exist, such as legislative rights, inquiry rights and even the relationship between the Minister and the House of Representatives. In the book entitled "The Shift in Legislative Function," it is stated that in general, it is already a Presidential system but for the Function, *Legislative is* even closer to the legislative model in the Parliamentary system. In general, direct elections and all kinds of things are indeed the presidential systems. But there are still some inherent features of the Parliamentary system. One of them is the Questionnaire Right. Because it's a right that exists in the Parliamentary System. The Legislation Function is closer to the Legislative Function model in the Parliamentary System. In the perspective theory *of oversight* government that is practised by the DPR, it appears that there are elements of supervisory practice known in the Presidential Government System Theory, especially:

1. Use of the DPR's Inquiry Rights
2. The process of forming legislation by the DPR and the President
3. The partnership between DPR Commissions and Government Agencies.

In Prof. view. DR. According to MuinBagir Manan, supervision is a government instrument so that governance runs well according to planning. The right of the House of Representatives' Inquiry is the supervision of the House of Representatives of the Government so that the Government in all its policies that are strategic and have a broad impact for the benefit of the wider community does not conflict with the Law. So the object is policy, but the government often takes action, not in the form of policy, but because of *errors, omissions, or lack understanding* of which are also predicted to have a wide impact on society, so it must be controlled normally by the House of Representatives based on its Supervisory Function by using **Questionnaire Rights** even though the Questionnaire Rights are the object. **is a policy** non-administrative work. Such occurrences should be the right of interpellation. Because of that, it needs to be regulated with good and correct regulations separately so that there is no misunderstanding between the meaning of the Inquiry Right of the House of Representatives and the Supervision Function of the House of Representatives.

Among the House of Representatives Questionnaire Rights that have been proposed by the House of Representatives since Indonesia's independence, the best is the one submitted by MargonoDjojohadikusumo at the end of 1954 when Indonesia adopted a Parliamentary system of government because its implementation is regulated by the Law on the implementation of Questionnaire Rights (Law Number 6 of 1954), after that to date, the basis for implementing the Questionnaire Right is the Law on the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council, the Rules of Procedure which also regulate the Questionnaire, not the implementation of Questionnaire Rights.

In the perspective of government oversight, the relation to the implementation of DPR supervision is not the same as the main mission of government supervision but tends to be a politicized instrument. The causative factor is that because the applied norms are not clear, the object and subject of the supervision are greys. Since it was proclaimed on August 17, 1945, based on the 1945 Constitution (original), it has embraced the Presidential system of government, although in the history of Indonesian constitutionality it shows that Indonesia has adopted a Parliamentary system of government, namely when the Constitution of the Republic of Indonesia (RIS) came into effect in 1949 and at the time the Provisional Basic Law of 1950 comes into effect until the enactment of Basic Law 45 (original) through Presidential Decree dated July 5, 1959.

Following the principles, nature and characteristics of the government system (Presidential and Parliamentary), at the time of the enactment of the 1949 United Republic of Indonesia Constitution and the 1950 Provisional Basic Law in Indonesia, it was possible to have an Inquiry Rights for the House of Representatives of the Republic of Indonesia States even though its term of office was only six months. exercise) its authority.

When the 1950 Provisional Basic Law came into effect, Indonesia returned to being a Unitary State even though the government system remained Parliamentary, the House of Representatives of the Republic of the United States of Indonesia was dissolved and replaced with the Provisional People's Representative Council. The formation of the Provisional People's Representative Council is based on Article 77 of the Provisional Constitution of 1950. Article 77 of the Provisional Basic Law of 1950 stipulates that the members of the Provisional People's Representative Council come from various elements, namely 148 from the members of the People's Representative Council of the Republic of Indonesia. (which has been dissolved), 29 members from the Senate of the Republic of the United States of Indonesia, 46 members from the Central Indonesian National Committee (KNIP) Worker Agency, and 13 members from the Supreme Balancing Council. The total members of the Provisional People's Representative Council are 236 members.

During the term of office of the Provisional People's Representative Council, the rights of the Provisional People's Representative Council are recognized and practised, namely:

1. Interpellation Rights;
2. Questionnaire Rights, and;
3. Right to Express an Opinion.

Specifically regarding the Questionnaire Rights, during the period of the Provisional People's Representative Council, a Law on the determination of the Inquiry Rights of the House of Representatives was formed in 1954, namely Law Number 6 of 1954. At the end of 1954, an application for Inquiry Rights had been submitted by MargonoDjojohadikusuma at the end of 1954. at the end of 1954 to investigate the pros and cons of maintaining the "foreign exchange regime" based on the 1940 Law on foreign exchange control. The results of the questionnaire could not be used because BaharuddinHarahap's cabinet term ended his term.

Based on the description of the Government Supervision Theory, it shows that the object and subject of government supervision is laden with only the political dynamics that surround the atmosphere of the

Indonesian state and for the realization of ideal supervision, political will is very much determined in the formation of laws and the *track record* of administrators to be consistent with the interests of the nation. .

There are three subjects examined in the writing of this dissertation:

1. The Nature of the Right to Questionnaire of the House of Representatives in the Indonesian State Administration System
2. The Right to Questionnaire of the House of Representatives as a Solution of Government Policies that are Important, Strategic to the Community and Deviate or Violate Legislation
3. Ideal Questionnaire Rights in the Indonesian State Administration System. The results of the research on the first subject were analyzed using the rule of law theory, the theory of sovereignty and the theory of representation.

The results of the study show that in the perspective of **law**, the rule of Indonesian constitutional arrangement is relevant to the theory that stipulates the necessity of having four minimum standard elements that must be met in a rule of law, namely:

1. Protection of human rights,
2. Separation or division of state powers.
3. Government based on statutory regulations.
4. Free justice for all groups.

In the perspective of the Theory of Sovereignty (the highest power based on the ideals of the Republic of Indonesia, namely **Pancasila**), it shows that Indonesia recognizes four models of sovereignty, namely:

1. God's Sovereignty
2. State Sovereignty
3. Kedaulatan Rakyat
4. The basis of the four philosophies is experiencing dynamics through the concept of democracy (Pancasila, Guided, Liberal).

In the perspective of theory **Representative**, it explains that even though the DPR is called the House of Representatives, but after the enactment of the 1945 Constitution of the Republic of Indonesia, there are four components of government elected by the people (MPR, DPR, DPD and President) but they are **not** declared as organizers. the sovereignty of the people but politically they are the holder of the people's mandate, **but** the flow of political responsibility is unclear in Promovendus' view, the four components of government can be "referred to as holders of people's sovereignty". The foundation of its philosophy is "Sovereignty is in the hands of the people and is implemented according to the constitution".

The results of research on the **Right to Questionnaire of the House of Representatives** as a Solution of Important, Strategic Government Policies to the Community and Deviating or Violating Legislative Provisions were analyzed using theory **Government Systems**. From the Government System Theory known in the literature (Parliamentary, Presidential and Quasi Systems) each has the characteristics and characteristics of the state power relationship (centre) of power of state power.

Indonesia in its State Administration System has practised and is currently practising the Government System. When the 1945 Constitution came into effect, the DPR's Inquiry Rights were not known, but at the time the RIS 1949 Constitution and the 1950 RIS Constitution came into effect, Indonesia adopted a Parliamentary System so that the DPR Questionnaire Rights were constitutional, and even a Law on Questionnaires was formed which regulates the implementation of the DPR Inquiry Rights.

When the 1945 Constitution came into effect through the Presidential Decree on July 5, 1959, the Questionnaire Rights no longer had a constitutional basis until the end of the Old Order government (1959-1965) even until the end of the New Order government in 1998 which was marked by a fundamental change in the Indonesian constitutional administration, namely the government. under the name Reformation Period from 1999 to the present.

The Reform government made amendments to the 1945 Constitution (original) and included the constitutional basis for the DPR's Inquiry Rights through Article 20A of the 1945 Republic of Indonesia Constitution. Its function is to **empower the DPR**, which during the New Order government under President Soeharto's regime, the DPR was powerless, and no more than stampsmith. The thinking of the reformists when 1999 was very *anomalous* because, on the one hand, it stated that Indonesia adheres to the system, **Full Presidential**, on the other hand, it provides a constitutional basis for the right of inquiry which characterizes and characterizes a country that adheres to a Parliamentary Government System.

At this level, the results of research, show that the strict separation of the constitutional power relations system (Presidential or Parliament) follows the dynamics **political** and of a country, of course, with regulations that reflect the basic ideas of the state for the Indonesian nation and its implementation should not be *royal* and may not be *politicking*. Regarding the ideal questionnaire rights as the third subject to be examined in this dissertation, it is analyzed using the theory **Supervision**. Supervision Theory has been presented in Chapter II subchapter C of this dissertation.

Government Supervision is an instrument of government administration (administrative supervision and supervision *policy*). The results of the research show that the use of the DPR Inquiry Rights after the enactment of the Amendment of the 1945 Constitution has become a debate about **objects** and **subjects** and there is no clear distinction between political supervision and administrative supervision (Suparto & Gusniawan, 2020). The results showed that the cause was because the basis of its implementation was not in an ideal legal form.

III. CONCLUSION

The ideal right of the House of Representatives Questionnaire is the right of inquiry to strengthen the drafting of laws and not to frighten or corner the government. Since the Right to Questionnaire is recognized constitutionally in Article 20A paragraph (2) (4) of the 1945 Constitution of the Republic of Indonesia, it is emphasized that the House of Representatives has the right to interpellation, the right to inquiry and the right to express an opinion.

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