



Arrangement of the Right of Interpellation of the House of Representatives of the Republic of Indonesia According to the 1945 Constitution of the Republic of Indonesia

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Abstract. The right of interpellation is one of the rights of the House of Representatives that aims to control the course of government. In various laws and regulations, the provisions related to the right of interpellation of the House of Representatives are actually unclear, causing legal uncertainty. This research is a normative legal research by putting forward the approach, conceptual, historical, and legislation. The results confirm that the authority of the House of Representatives in exercising the right of interpellation is the realm of political supervision. The effectiveness of the right of interpellation will also be determined by the choice of government system adopted by a country. In a country that adopts a parliamentary system, the right of interpellation will be very effective to be used by the parliament. If the right of interpellation is used by parliament, it can lead to a parliamentary vote of no confidence in the cabinet and can result in the dissolution of the cabinet. The implications of the use of the right of interpellation are determined by the legal politics adopted and implemented by a country. The legal politics of the right of interpellation prior to the enactment of the 1945 Constitution as amended was primarily to oversee the implementation of the state direction that had been determined by the People's Consultative Assembly. Meanwhile, the legal politics of the right of interpellation after the enactment of the 1945 Constitution as amended is to oversee the implementation of Government policy in order to realise a democratic rule of law.

Keywords: House of Representatives, The Right of Interpellation, Politics of law.

1 Introduction

The Constitution of Indonesia stipulates that one of the functions of the House of Representatives is to oversee the policies and performance of the executive branch [1]. The supervisory function of the House of Representatives is needed to control the course of a powerful government, because a powerful government will tend to misuse

its power. This is underscored by Lord Acton's assertion that the function of oversight is crucial in preventing the emergence of corrupt and potentially arbitrary power. [2].

The function of the House of Representatives to oversee various policies and legal actions of the executive branch is intended as a means to balance power, as stipulated in the 1945 Constitution of the Republic of Indonesia [3]. This aligns with the concept of constitutionalism, which posits that all power must be limited to ensure accountability and prevent authoritarianism. [4].

Oversight by the House of Representatives is a critical area of study in democratic nations, as it is the duty of this representative body to counterbalance executive power through scrutiny of its actions and policies [5]. Given the extensive authority vested in the government, it is imperative that such power is subject to optimal oversight, both through political supervision by the House of Representatives and judicial oversight by the courts. The difference between the supervision by the House of Representatives and the judicial power institutions on the power of the Government, lies in its nature. Supervision by the House of Representatives is more active, while supervision by the judiciary is more passive[6].

The strong reason for the House of Representatives to supervise the powers of the Government is because, from an administrative law perspective, the powers of the Government are broader than the other two branches of power, namely the House of Representatives and the judiciary[7]. The authority of the House of Representatives is only in the form of forming laws, overseeing the course of government and carrying out budgetary functions[8]. Meanwhile, the judicial power only processes legal disputes and makes judgements[9]. The residue or remainder of the powers of the two branches of power, both legislative power and judicial power is the power of the Government[10].

Following the amendment of the Indonesian Constitution, the role of the House of Representatives in oversight has been explicitly articulated in the 1945 Constitution of the Republic of Indonesia. This development represents a progressive step to ensure that the House of Representatives functions optimally as a representative body of the people. [11]. This is in contrast to the New Order era, during which the House of Representatives was frequently referred to as a "rubber stamp," merely serving as a formal body for endorsing the wishes and decisions of the executive branch.[12].

Article 20 paragraph (1) of the 1945 Constitution of the Republic of Indonesia states "The House of Representatives has a legislative function, a budgetary function and a supervisory function." This regulation is further reinforced by Article 20, paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which stipulates that in performing its functions, the House of Representatives possesses three rights: the right to express opinions, the right of inquiry, and the right of interpellation. These rights are employed to enhance the House's function in optimizing oversight by the representative body.

Further regulation regarding the right of interpellation by the House of Representatives is subsequently provided in Law No. 17/2014 on the People's Consultative Assembly, the House of Representatives, the Regional Representatives Council, and the Regional Representatives Council (MD3 Law), specifically in Article 79, paragraph (1). The provisions of Article 79, paragraph (1) of the MD3 Law,

however, create legal ambiguity, particularly concerning the phrase "important and strategic Government policies that have a broad impact on the life of society, nation, and state." The authority to interpret unclear phrases from the formulation of Article 79 paragraph (1) is the House of Representatives. The House of Representatives is a political institution, so that the interpretation of the formulation of an Article is certainly not only legal considerations, but political considerations take precedence[13]. Therefore, an objective study is needed related to the regulation of the right of interpellation of the House of Representatives in a juridical perspective.

From the background of the above problems, a problem formulation can be drawn as follows, namely: How is the regulation of the right of interpellation of the House of Representatives based on the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945)?

2 Research Method

The type of research in this paper is normative research using a statute approach and conceptual approach[14]. The types and sources of legal materials in this research are primary legal materials consisting of The UUD NRI Tahun 1945 and Law No. 17/2014 on the People's Consultative Assembly, the House of MD3 Law), secondary legal materials consisting of literature related to the research discussion. The technique of analysing legal materials is carried out using analytical prescriptive analysis. Prescriptive analytics is used to analyse problems using legal interpretation, legal concepts, legal values and legal norms[15].

3 Result And Discussion

3.1 The right of interpellation of the House of Representatives

In a country that adheres to the rule of law, one of its characteristics is that all power must be limited. The limitation of power can only be limited by law[16]. This limitation of power is done not only to one branch of power, but also to all branches of power.

Since the enactment of the 1945 Constitution, Indonesia has firmly embraced the notion of the rule of law. Prior to the amendment of the 1945 Constitution, the notion of the rule of law was stipulated in the Explanation, which stated "The State of Indonesia is based on law, (*rechtsstaat*), not based on mere power (*machtsstaat*)." This Explanation was later integrated into Article 1 paragraph 3 of the 1945 Constitution, which states "Indonesia is a state of law."

According to Mahfud MD, the integration of the notion of the rule of law from the Explanation into the Articles of the 1945 Constitution of the Republic of Indonesia is not just a technical matter of amending the 1945 Constitution. However, the integration has theoretical consequences[17]. In the Explanation of the 1945 Constitution, it is affirmed that the Indonesian state is based on law (*rechtsstaat*) ..., while in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia it is only stated that "Indonesia is a State of Law."

The rule of law system in the world is broadly divided into two major systems[18]. The first is the rule of law with a tradition based on the Continental European legal system. This tradition is better known as the concept of rechtsstaat[19]. The second is the rule of law with a tradition based on the Anglo American legal system. This tradition is better known as the concept of the rule of law[20].

Both of these legal systems have traditions that are influenced by the history of each tradition. The rechtsstaat tradition was born from a revolutionary history. Meanwhile, the rule of law was born from an evolutionary history. The characteristic of rechtsstaat is administrative, while the tradition of the rule of law is court[21].

In any understanding of the rule of law, a form of limitation of power over institutions or agencies is in the form of supervision. In a modern era that emphasises certainty in all aspects, be it legal, political, or economic aspects, the authority to conduct supervision is not only carried out by certain institutions to conduct internal supervision. Supervision is also carried out by external institutions from the institution to be supervised [22].

The House of Representatives is also given the authority to supervise the performance of the government. According to Jimly Asshidiqie, the dominance of the legislative authority of the parliament began to be replaced by the authority of the House of Representatives in conducting supervision[23]. Still according to Jimly Asshidiqie, supervision by parliament can be divided into[24]:

1. Supervision of policy determination;
2. Supervision of policy implementation;
3. Oversight of state budgeting;
4. Oversight of government performance;
5. Oversight of the appointment of public officials.

The authority of the House of Representatives in conducting oversight is considered as political oversight. Thus, the authority of the House of Representatives in exercising the right of interpellation is the realm of political oversight. The right of interpellation is a form of supervision over the implementation of government policies and performance.

According to Miriam Budiardjo, the right of interpellation is the right of the House of Representatives to request information from the Government regarding policies in a particular field[25]. In countries that adhere to the parliamentary system, the use of the right of interpellation can be used as a basis for filing a motion of no confidence. In the French Republic III (1870-1940) and IV (1946-1958) interpellation often put the cabinet in a corner[2].

The effectivity of the right of interpellation will also be determined by the choice of government system adopted by a country. In a country with a parliamentary system, the right of interpellation will be very effective to be used by the parliament. If the right of interpellation is used by parliament, it can lead to a parliamentary vote of no confidence in the cabinet and can result in the dissolution of the cabinet.

3.2 The Implications of the Use of the Right of Interpellation of the House of Representatives

The implication of the use of parliament's right of interpellation to the cabinet is so strong, because in countries that adhere to the parliamentary system, the position and authority of parliament is higher than the cabinet. The strong position and authority of parliament over the cabinet will make the supervision carried out by this parliament effective. In contrast to countries with a parliamentary system, in countries with a presidential system the exercise of the right of interpellation is not as effective as in countries with a parliamentary system.

A key characteristic of the presidential system is that the powers of each state institution are distributed equitably, ensuring that no single branch of power dominates over the others [26]. The orientation of the 1945 Constitution of the Republic of Indonesia actually emphasizes the separation of powers rather than the division of powers. [27]. This underscores that the separation of each branch of power is intended to create a system of mutual oversight and checks and balances, ensuring that each power is accountable and preventing the emergence of authoritarianism concentrated in a single branch of government.

The Ad Hoc Committee I of the People's Consultative Assembly made five agreements to amend the 1945 Constitution. The five agreements were[28]:

1. Not to change the Preamble of the 1945 Constitution;
2. To maintain the Unitary State of the Republic of Indonesia;
3. Reinforcing the presidential system;
4. Explanation of the 1945 Constitution that Contains Normative Matters is Incorporated into Articles; and
5. Make changes by way of addendum.

The people can be interpreted that in essence the 1945 Constitution before the amendment adhered to the presidential system. Therefore, the second point of the above agreement states that the presidential system is emphasised. The phrase "emphasising," implies that the system of government adopted by the 1945 Constitution before the amendment was a presidential system, but the presidential system adopted in the 1945 Constitution before the amendment was still not pure. Thus, the purpose of the amendments to the 1945 Constitution was to purify the presidential system[29].

Evidence that the 1945 Constitution before the amendment adhered to the presidential system can be seen in its Explanation which states "The position of the House of Representatives is strong. It cannot be dissolved by the President (in contrast to the parliamentary system). Except that the members of the House of Representatives are all concurrently members of the People's Consultative Assembly." Thus, the 1945 Constitution before the amendment did not embrace a parliamentary system.

While the 1945 Constitution before the amendment explicitly refused to say that it did not adhere to a parliamentary system, it did not mean that Indonesia under the 1945 Constitution adhered to a pure presidential system. Some experts in constitutional law have argued that the system of government under the 1945 Constitution before the amendment was a quasi-presidential system or an impure presidential system. The impurity of the presidential system as adopted in the 1945 Constitution before the

amendment is related to the existence of the highest state institution, namely the People's Consultative Assembly[30].

The existence of the People's Consultative Assembly in the 1945 Constitution before the amendment, not only has implications for the position of the People's Consultative Assembly, but also related to relations between state institutions. The position of the People's Consultative Assembly as the highest state institution, when viewed in the context of its relationship, is actually only limited to the relationship between the People's Consultative Assembly and the President[31]. The Consultative Assembly as the highest state institution has the authority to elect and appoint the President and Vice President.

In this 1945 Constitution, the President's position is as the mandate of the People's Consultative Assembly. Therefore, the President has the obligation to implement the state policy that has been determined by the People's Consultative Assembly, as well as to be accountable for the implementation of the state policy before the People's Consultative Assembly at the end of each term of office. This system of accountability of the President to the People's Consultative Assembly is a distinctive feature of the parliamentary system.

This system of accountability of the President to the People's Consultative Assembly is actually very relevant to the concept of supervision of the House of Representatives, in this case the right of interpellation. The state direction set by the People's Consultative Assembly is a political policy that must be implemented by the President. Therefore, to oversee the implementation of this political policy, the House of Representatives can use the right of interpellation.

The supervision of the House of Representatives, especially the right of interpellation, cannot be solely assessed from the legal aspect alone. The political configuration at the time of the law underlying the right of interpellation was also very decisive. In the period before reform, the role of legislative control over the executive was very weak[32].

At the beginning of reform, the role of the legislature became stronger, because it was able to carry out its supervisory function to the maximum of the President[33]. The most famous use of the right of interpellation at the beginning of reformasi was the right of interpellation regarding the dissolution of the Department of Information and the Department of Social Affairs and the right of interpellation regarding the dismissal of Jusuf Kalla and Laksamana Sukardi as Ministers. Both rights of interpellation were exercised during the Abdurrahman Wahid administration.

The use of these two rights of interpellation can be said to be very extraordinary, because during the New Order period it can be said that the right of interpellation was never used. The supervisory function during the New Order was almost never used by the House of Representatives at that time, because almost all political forces in the House of Representatives had been co-opted by power. The Work Group as the main supporter of the New Order always won the five-year contestation. Likewise, other components such as the ABRI Faction, were the main supporters of the New Order.

Therefore, the success or failure of a supervisory function of the House of Representatives will be determined by the political composition in the House of Representatives. If the political composition in the House of Representatives is the

majority of supporters of the President, then certainly, the House of Representatives will not use its oversight function. Although the supervisory system carried out by the House of Representatives during the New Order era and during the reign of Abdurrahman Wahid can be said to be the same, because Abdurrahman Wahid and Soeharto were both elected and appointed by the People's Consultative Assembly, the use of the right of interpellation both in quality and quantity was better than the Soeharto era, because Soeharto was able to co-opt all components in the House of Representatives.

Meanwhile, Abdurrahman Wahid failed to co-opt all the political components in the House of Representatives, and even failed to maintain his political communication with the centre axis coalition as his supporting coalition. Therefore, at that time Abdurrahman Wahid also lost the support of his supporting coalition. Conceptually, the right of interpellation is very effective if used from the perspective of the 1945 Constitution before the amendment.

The use of the right of interpellation will be more effective if these two variables are fulfilled. The first variable is the legal variable. Juridically, the use of the right of interpellation can only be used on political policy issues. Although the perspective of this political policy is also very broad [34]. The second variable is the political variable. However, the use of the right of interpellation must get majority support in the House of Representatives.

The amendment to the 1945 Constitution has changed the supervisory paradigm of the House of Representatives. The supervision paradigm of the House of Representatives after the amendment of the 1945 Constitution has shifted from the paradigm of the President's responsibility from political responsibility to legal responsibility. Thus, the effectiveness of the right of interpellation after the amendment of the 1945 Constitution is not as strong as during the enactment of the 1945 Constitution before the amendment.

In the period before the enactment of the amendments to the 1945 Constitution, the responsibility of the President was emphasised more on political responsibility. Political responsibility in the period before the enactment of the amendments to the 1945 Constitution, because at that time the President was elected and appointed by the President. Therefore, at the end of each term of office the President had to give political accountability to the People's Consultative Assembly.

After the enactment of the amendments to the 1945 Constitution, the President's responsibility is emphasised more on legal responsibility. This shift in the concept of the President's responsibility is due to the purification of the presidential system. The system of filling the positions of President and Vice President no longer uses the model of election by the People's Consultative Assembly, but uses the model of direct election by the people. Thus, because the President and Vice President are directly elected by the people, the President and Vice President get a direct mandate from the people, so the political responsibility of the elected President and Vice President is directly to the people.

As a consequence of the shift in the concept of the President's responsibility from political responsibility to legal responsibility, the amendment to the 1945 Constitution regulates the mechanism for the dismissal of the President and Vice President in

Articles 7 A and 7 B. In Article 7 A, it can be seen that the requirements to dismiss the President are at least 3 reasons. First, the reason for violation of criminal law. Second, moral reasons and third is administrative reasons, where the President and/or Vice President no longer fulfils the requirements as President and/or Vice President.

The use of the right of interpellation cannot reach alleged violations of criminal law and moral violations as stipulated in Article 7 A. The type of supervision of the House of Representatives that can reach Article 7 A of the Constitution of the Republic of Indonesia is only the right of inquiry. The right of inquiry is the right of the House of Representatives to conduct an investigation. Therefore, if the House of Representatives wishes to uncover allegations of corruption committed by the President or Vice President, the appropriate type of supervision of the House of Representatives is the right of inquiry, not the right of interpellation.

4 Conclusion

Constitutionally, the right of interpellation remains regulated in Article 22 A paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Thus, the right of interpellation is still recognised in the current Indonesian constitutional system. The legal politics of the right of interpellation at the time before the enactment of the 1945 Constitution as amended and after the enactment of the 1945 Constitution as amended is certainly different. The legal politics of the right of interpellation before the enactment of the 1945 Constitution was primarily to oversee the implementation of the state direction that had been determined by the People's Consultative Assembly. Meanwhile, the legal politics of the right of interpellation after the enactment of the 1945 Constitution as amended is to oversee the implementation of Government policy in order to realise a democratic rule of law.

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