



Redesign For Filling State Officers In Indonesia

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Abstract. The discussion in this paper discusses the Shift in Filling of Post-Indonesian State Officials. There are at least 5 serious problems involving the House of Representatives (DPR) involvement in filling state officials after the reform, firstly, the unclear criteria for State Officials that require the DPR to be involved in filling state officials, so that the DPR wants to be involved in filling state officials, not only for positions that have qualifications as state officials. Second, there are differences in legal products that regulate the procedures for involving the DPR in filling state officials in the form of legal products of the 1945 Constitution, Laws, Government Regulations and even Presidential Regulations. Third, there are differences in the language used in the involvement of the DPR in filling state officials, some of which carry out elections, considerations/recommendations, and submissions and even consultations in filling state officials. Fourth, there are differences in the involvement in filling state officials, some are through the selection committee, some are directly through the DPR and some are even promoted by the President. Fifth, the potential for Corruption, Collusion and Nepotism in filling state officials involving the DPR. This paper uses a normative legal writing method, by combining three approaches at once, namely the literature research approach and the conceptual approach and the comparative approach, supported by 3 (three) legal materials at once, namely the consists of primary legal materials, secondary legal materials and tertiary legal materials, with qualitative inductive analysis method. The results of this paper suggest that there is an alignment of the function of the right to confirm by the DPR in Filling State Officials, namely by only providing confirmation of the appointment of certain public officials by the DPR (right to confirm). So that the DPR does not do technical things, namely "the right to elect", "right to select" and even "right to test". In addition, the involvement of the DPR in filling state officials needs to be limited to positions that have the category of State Officials. In addition, it is necessary to establish an Appointment Commission which is authorized to conduct selection and provide input notes regarding ethical violations and the track record of candidates/candidates before being appointed as state officials or before being submitted to the DPR for approval (right to confirm), to be later determined by the President. In addition, the Appointment Commission has other powers in the context of maintaining and upholding the honor, dignity, and behavior of state officials.

Keywords : Redesign, Change of State Officials, House of Representatives

1 Introduction

After the reform, there was a pattern of involvement of the House of Representatives (DPR) in filling state officials. The DPR's main powers, namely Legislation, Budgeting and Controlling, have now shifted to filling in public positions in government. The emergence of the DPR's interference in filling the positions of state officials in

Indonesia still creates many obstacles and problems. The constraints that exist are generally centered on the extent of the DPR's authority in determining public positions in the field, so that the filling of state officials tends to lead to the domination of political interests rather than objectivity in determining positions in government.[1]

In some cases, the involvement of the DPR in filling in state officials is interpreted as very technical so that the DPR tends to repeat various kinds of powers that have actually been carried out by the selection committee, even the misappropriation of this authority results in the DPR being unproductive and a lot of time being spent on unnecessary purposes. important thing that can be done by other agencies to do so. The authority of the DPR has transformed itself into an institution that is a super body/super power in filling in state officials, resulting in the abandonment of the main authorities that must be carried out by the DPR such as Legislation, Budgeting and Controlling. We know that there are still many laws that should receive serious attention but have not been discussed.[2]

In the field of control over the implementation of laws, for example, there are still many statutory regulations under laws that actually conflict with laws that should receive serious attention by the DPR in order to carry out the DPR's oversight function. In the budget sector, for example, the DPR should have selected unproductive budgets that have the potential to waste the state budget. Budget items that are not important should also become a serious concern for the DPR so that there are no more budgets that do not function properly by promoting the DPR's budgeting function on budgets that are discussed together with the government.[3]

Based on that, it is important for the author to conduct research and studies related to redesigning the involvement of the DPR in filling state officials, so that the productivity of the DPR is getting more productive day by day, not being spent on administrative technical needs so that the roles and functions of the DPR are correct. - can truly have an impact on national development which is the need of all the nation's children in order to meet sustainable development. Apart from that, it is also hoped that with the DPR's productivity getting better, public trust in this institution is expected to bring a positive aura so that the DPR can become a part of connecting people's aspirations in every interest.

2 Research Method

The writing used in writing this research is the normative legal method, normative legal writing[4], namely the way of writing which is based on an analysis of the Theory of Separation of Powers, Theory of Government Systems, Theory of State Institutions, Theory of Functions of Parliament, Functions of Parliament in Filling State Officials, Positions and Officers, Completion of State Officials and State Officials as well as laws and regulations that are appropriate and related to the problems in this paper.

While the approach to the problem used in writing this research consists of two approaches, namely the literature approach (*library research*)[5] and the conceptual approach (*conceptual approach*)[6] and the comparative approach (*comparative approach*). [7] As for the legal material in the writing of this research, it consists of three parts, namely primary, secondary and tertiary legal materials. Primary legal material is legal material that is authoritative, meaning it has authority. Primary legal

materials consist of statutory regulations, official records or treatises in the making of laws and judges' decisions.

Secondary legal materials are legal materials that provide an explanation of primary legal materials. The secondary legal materials used to provide an explanation of the material contained in the primary legal materials come from several literatures, textbooks, law journals, scientific essays and other books that are directly related to the theme of this research. Tertiary legal materials are legal materials that provide instructions and explanations of primary and secondary legal materials. This legal material is a tool in writing this research.

In this study, a qualitative inductive analysis method was used,[8] namely an analytical method by analyzing laws and regulations related to problems (problem formulation) regarding the function of parliament in filling state officials contained in this study to then be correlated with several principles and theories. which is the basis or knife of analysis in writing this research as a step to find conclusions, solutions and ideal conceptions about the function of parliament in filling state officials in Indonesia

3 Research Results

Patterns of DPR Involvement in Filling State Officials

During the enactment of the 1945 Constitution several times, namely the 1945 Constitution, the 1949 United Republic of Indonesia Constitution, the 1950 Provisional Constitution and after the Amendments to the 1945 Constitution, there were differences regarding the function of parliament in filling State Officials. When examined closely, in the 4 (four) times the Constitution has been enacted in Indonesia, there have been different patterns and characters regarding the function of parliament in filling in State Officials. Of course the function of parliament in filling the State Officials is closely related to the history and development of the enactment [9] of the Constitution in accordance with the period and the legal politics that were to be carried out at the time.

In some existing debates, there are at least two views regarding the function of parliament in filling State Officials, the first is of the view that the function of parliament in filling State Officials post-reform is in accordance with the ideals of reform which place the role of parliament as a representation of people's representatives to contribute in every the main policy making is in filling the leadership positions of State Institutions as part of limiting the President's authority which prior to the Reformation placed the President as the center of administering the State (*concentration of power and responsibility upon the President*).[3] However, the second view is that many criticize the involvement of parliament in charging state officials. This is mostly due to both the regulation and the practice of filling in State Officials which tend to be problematic.

At the regulatory level, for example, there are several filling in for state officials in the amendments to the 1945 Constitution which require Parliament to be involved in filling out state officials. As for the filling in of several state officials in the amendments to the 1945 Constitution which required the involvement of Parliament, they are as follows:

- a. Duta Negara lain
- b. Anggota Badan Pemeriksa Keuangan
- c. Hakim Agung
- d. Anggota Komisi Yudisial
- e. Hakim Konstitusi

From the elaboration of the DPR's authority in filling state officials in amendments to the 1945 Constitution, the DPR's authority is very significant in filling state officials, and reducing the President's authority in filling state officials. In addition, there is also the use of different languages in each authority given to the DPR in filling in state officials, in the author's note there are at least four languages used by the amendments to the 1945 Constitution, namely proposing, selecting, giving approval and giving consideration.

Not only in the changes to the 1945 Constitution, but the involvement of the DPR in filling state officials is also regulated in legal norms in the form of laws. The DPR's involvement in filling state officials is regulated in legal products in the form of laws, including:

1. Pimpinan KPK
2. Panglima TNI
3. Kapolri
4. Kepala BIN
5. Komisioner Ombudsman
6. Komisioner OJK
7. Gubernur, Deputy Gubernur Senior, dan Deputy Gubernur BI
8. Anggota dan Pengawas Komisi Penyiaran Indonesia Pusat
9. Anggota Komisi Informasi Pusat
10. Anggota KPU
11. Anggota Bawaslu
12. Anggota DKPP
13. Anggota Komnas HAM
14. Anggota LPSK
15. Anggota BAZNAS
16. Anggota KPPU
17. Anggota Komisi Perlindungan Anak

If you look at the authority of the DPR in filling state officials regulated in several of the laws above, it can be said that the authority of the DPR in filling state officials can be in the form of elections, considerations, recommendations and submissions.

Not only in the legal products in the form of the 1945 Constitution or the Act, the authority given to the DPR in filling state officials. Throughout the research conducted by the author, it also develops and regulates the authority of the DPR in filling state officials as well as in legal products in the form of Government Regulations and Presidential Regulations. This is reflected in the involvement of the DPR in filling state officials which are regulated in legal products in the form of Government Regulations and Presidential Regulations including:

1. Anggota Badan Perlindungan Konsumen Nasional
2. Anggota Lembaga Sensor Film
3. Anggota Dewan Energi Nasional

If examined carefully, the authority of the DPR in filling state officials in amendments to the 1945 Constitution, takes the form of proposing, electing, giving approval and giving considerations, while the authority of the DPR in filling state officials in the Act can take the form of elections, considerations, recommendations and submission, a fifth form appears as stipulated in Government Regulations and Presidential Regulations relating to the authority of the DPR in filling state officials, namely as a place for consultation. The language used by the Laws and Regulations in granting authority to Parliament in the framework of filling State Officials. One of them is the words of approval, due diligence, proper test, fit and proper test, consideration, choosing, setting and even consultation.

From the description above, there are at least four problems regarding the powers of the DPR in filling in State Officials. *First*, which institutions are categorized as State Officials still do not have clear criteria, so that in practice there is often a tug-of-war between the wishes of every state institution that wants to be recognized as a state official, besides being closely related to the mechanisms and procedures for recruitment, it is also closely related to facilities and allowances attached to the position of state institutions that are domiciled as state officials.

Second, there are differences in the basic legal products governing the mechanisms and procedures for involving the DPR in filling in state officials which are currently scattered at least in the form of legal products, both the 1945 Constitution (UUD 1945), which are regulated in laws (UU), and some are regulated in the form of legal products in the form of Government Regulations (PP) and Presidential Regulations (Perpres).

Third, there are differences in the language or form of activity of the authority granted by laws and regulations to the DPR in filling state officials. There are at least four forms mentioned in several laws and regulations, namely election, consideration/recommendation, and submission. A fifth form even emerged, namely the DPR as a place for consultation. It is from these various forms that the question arises whether there are dimensions or criteria for the DPR in terms of having the authority to elect, consider/recommend, and propose and even consult in filling state officials.

Fourth, there are differences in the involvement of the institutions involved in filling out state officials, for example the involvement of the DPR in filling in state officials is that some are directly submitted by the President, some go through a selection process through the Selection Committee, and some even have to get a recommendation from the DPR. The existence of the Selection Committee indicates that there has been an election process which is usually open where the public is also involved, so this will affect the mechanism for the involvement of the DPR. In this condition, is there a need for a fit and proper test mechanism in the form of an interview by the DPR.

Concrete Cases That Arise to the Magnitude of the Authority of the DPR in Filling State Officials

Some of the problems and problems with the function of parliament in filling state officials in Indonesia are one of them caused by the drafters of amendments to the 1945 Constitution not reading in depth the potential problems that will arise, and preferring to leave the process to legislators which in fact really depend on the situation and

interests. politics at the time the formation of statutory regulations was formed.[10] Some examples of facts that can be used as references in recent years regarding several issues regarding the recruitment system for public officials in Indonesia include: *First*, the example of the Traveler Checks case involving several members of the DPR during the election of the Senior Deputy Governor of Bank Indonesia in 2004. The case began the existence of bribery in the election for the election of the Senior Deputy Governor of Bank Indonesia in 2004 which involved at least 26 (twenty six) members of the DPR for the 1999-2004 period. The Corruption Eradication Commission (KPK) on Wednesday named 26 new suspects in the traveler's check case in the election of the senior deputy governor of Bank Indonesia who won Miranda S Goeltom in 2004 as stated in the Supreme Court's Cassation Decision Number 545 K/Pid.Sus/2013.[11]

Second, there is an evaluation and control of the DPR's authority in filling in the Supreme Court Justices, where the Constitutional Court through Decision Number 27/PUU-XI/2013[12] which essentially states the meaning of 'elected' and 'election' in Article 8 paragraphs (2), (3) , (4) the Supreme Court Law is contrary to the 1945 Constitution and does not have binding legal force as long as it does not mean "approved" and "approval". Apart from that, the phrase 'three names of candidates' in Article 8 paragraph (3) of the Supreme Court Law and Article 18 paragraph (4) of the Judicial Commission Law is contrary to the 1945 Constitution and does not have binding legal force as long as it does not mean '1 (one) candidate'. The Court considered that the arrangements for selecting the CHA proposed by the KY in Article 8 paragraph (2) of the Supreme Court Law were not in sync with Article 24A paragraph (3) of the 1945 Constitution which stated that the proposal for candidates for Supreme Court justices was to obtain approval. In fact, the DPR did not give CHA approval, but chose the name CHA that was proposed by the KY by holding it as the KY had done. Plus an interview to test his mastery of law. With this MK decision, it means that the DPR only has the authority to approve the candidates for Supreme Court justices submitted by KY. So that KY only needs to submit the number of candidates for supreme justices according to what is needed by the Supreme Court to get the DPR's approval.

Third, there is a judicial review of the DPR's authority in selecting KY and KPK members proposed by the Chancellor of the Indonesian Islamic University (UII) Edy Suandi Hamid and UII Jogjakarta Law Faculty lecturer Sri Hastuti Puspitasari. Through the decision of the Constitutional Court number 16/PUU-XII/2014, the Court eliminated the authority of the DPR in 'choosing' members of the KY, this is because the position of the DPR which is only limited to agreeing is intended to guarantee the independence of KY which cannot be influenced by political forces or branches of state power Either way, this is in line with the considerations in the decision regarding the authority of the DPR in the consideration of decision number 27/PUU-XI/2013, where the DPR only approves or disapproves of the candidates proposed by the Judicial Commission. The Constitutional Court in its decision stated that Article 28 paragraph (6) of the KYC Law, the phrase "obliged to vote and..." is contrary to the 1945 Constitution and does not have binding legal force as long as it is not interpreted as having the authority to approve or disapprove.[13] However, regarding the review of Article 30 paragraph (1), paragraph (10), paragraph (11) of the KPK Law regarding the selection of the KPK leadership, the Constitutional Court refused because the constitution does not regulate the pattern for filling the KPK leadership positions. The Constitutional Court considers that the mechanism for filling the KPK leadership

positions is a demand from socio-political dynamics in law enforcement that is included in the realm of law-forming policies.

Fourth, there is a Constitutional Court decision number 22/PUU-XIII/2015 relating to the authority of the DPR in giving approval to the selection process for the National Police Chief and TNI Commander as stipulated in Law Number 2 of 2002 concerning the Police and Law Number 3 of 2002 concerning Defense State and Law Number 34 of 2004 concerning the TNI.[14] The request for judicial review was filed by Denny Indrayana (Petitioner I), Feri Amsari (Petitioner II), Hifdzil Alim (Petitioner III) and Ade Irawan (Petitioner IV). The applicants believed that the DPR's interference in filling the positions of TNI Commander and National Police Chief was contrary to the 1945 Constitution. However, in its decision the Constitutional Court rejected the applicant's petition because of a request for approval from the President to the DPR in terms of appointing the Indonesian National Police Chief and TNI Commander as a form of checks and balances mechanism. According to the Court, one of the constitutional powers of the President is to appoint state ministers. In addition, the President also has the prerogative to appoint other very strategic positions which have major implications for the achievement of national goals. Although the petition was rejected by the Constitutional Court, Constitutional Justice I Dewa Gede Palguna received a dissenting opinion. According to Palguna, doctrinally, prerogative rights or powers are discretionary rights or powers that arise from the demands of public interest and goodness so that their legitimacy is judged based on public interests and goodness. Historically, continued Palguna, prerogative rights or powers came from the authority or absolute power possessed by the Crown (king/queen) in the form of monarchy, especially in England, but as time went on, the content and scope diminished when England changed to monarchy with a parliamentary system of government. In addition, said Palguna, prerogative rights or powers have never been explicitly stated in the Constitution as an inherent characteristic of a presidential system of government. According to him, even though in practice this is recognized and accepted, the basis for acceptance is solely the interests and benefits of the public and its legitimacy is obtained politically.

Such a condition, of course, broadly speaking, granting great authority to the DPR in filling in state officials must be avoided considering at least there are a number of things that can affect the DPR, including:

1. The DPR's performance may be disrupted by the DPR's heavy burden in selecting State Officials;
2. There are political interests which tend to be more dominant as a result of the DPR's granting of authority in filling state officials;
3. DPR's work is more technical, to the point where it conducts selections and even fit and proper tests for state officials;
4. Requires quite a long time so it is not efficient;
5. Inadequate capacity so that the elected candidate may not be as expected;
6. Enables Corruption, Collusion and Nepotism.

For this reason, based on the brief description above, apart from the need to provide clear criteria for state officials, it is also necessary to regulate which state officials require the involvement of the DPR in filling them out. It saves that the writer does not need to be all state officials whose filling requires confirmation (right to confirm) by

the DPR. In fact, not only that, there are several positions whose actual position and position are not as state officials but continuously involve the DPR in filling the positions of these institutions, even though these institutions are hierarchically not a state institution whose position and position can be said to be state officials, because indeed is under the Ministry of State, but in terms of filling in the officials concerned they still need the involvement of the DPR through consultations as happened in filling the positions of Members of the National Consumer Protection Agency, Members of the Film Censorship Agency and Members of the National Energy Council.

Responding to this problem, the authors propose that it is necessary to regulate the involvement of the DPR in filling state officials, not all state officials, besides adding to the burden on parliament it will also reduce the productivity of the DPR in carrying out its roles and functions. The author proposes that in filling state officials, the role of the DPR is not only to confirm (right to confirm) assisted by the Selection Commission which conducts the selection of candidates for state officials, it also needs to be limited to the involvement of the DPR in filling state officials only to officials who hierarchical is not subordinate to other State officials.

4 Conclusion

From the explanation above, there are substantive problems in filling state officials by the DPR, namely First, there is confusion regarding the criteria for institutions that are categorized as State Officials. Second, there are differences in the basic legal products governing the mechanisms and procedures for involving the DPR in filling state officials. Third, there are differences in the language or form of activity of the authority granted by laws and regulations to the DPR in filling state officials. Fourth, there are differences in the involvement of institutions involved in filling state officials.

From this mutilation problem, there are impacts that result, including the DPR's performance can be disrupted by the heavy burden of the DPR to select state officials, the presence of political interests that tend to become more dominant due to the granting of authority to the DPR in filling state officials, the work of the DPR is more technical to the point of making selections and even fit and proper tests for state officials, Requires quite a long time so it is inefficient, Inadequate capacity so that the elected candidates are not as expected and Allows Corruption, Collusion and Nepotism to occur.

It is with this problem that the authors propose that it is necessary to regulate the involvement of the DPR in filling state officials, not all state officials. In addition, the author proposes that in filling state officials, the role of the DPR is not only to confirm (right to confirm) with the assistance of the Selection Commission.

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