

REVITALIZATION OF THE ROLE AND FUNCTIONS OF THE PEOPLE'S CONSULTANCY ASSEMBLY (MPR RI) THROUGH ADDITIONING THE AUTHORITIES OF THE PEOPLE'S CONSULTANCY ASSEMBLY AFTER AMENDMENTS TO - 1, 2, 3, & 4 TO THE 1945 STATE ACT OF THE REPUBLIC OF INDONESIA

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ABSTRACT

In this modern era, where competition between individuals, groups and countries is getting tougher, it is imperative for the Indonesian nation and state to always be prepared to face all possibilities that will happen to the Indonesian nation and state. Indonesia must not be complacent, even at the safest times, it must remain vigilant. Every thing can be a trigger for the imbalance of the nation and state. the government must be able to amputate all possible crises that could trigger domestic turmoil, including the possibility of a constitutional crisis. The occurrence of a constitutional crisis will be the most powerful trigger for domestic chaos. National resilience both in terms of security and economy will be threatened. Therefore, ideas and ideas related to strengthening state institutions, especially the MPR RI institution, must continue to be discussed and discussed publicly. These ideas and ideas are in the context of anticipating a constitutional crisis that is very likely to occur against the nation and state of Indonesia caused by regional and non-regional geopolitical competition, or may also be caused by the situation in the country itself. In essence, the nation and state of Indonesia must be able to prevent a constitutional crisis from occurring. There are no answers to all these questions, because there are no regulations in the Indonesian constitution. If these things happen, then Indonesia will experience what is called a constitutional crisis, which at the next level, the crisis will cause chaos that can endanger the life of the nation and state. therefore, the only way to prevent this constitutional crisis from occurring is to revitalize the Role and Functions of the People's Consultative Assembly (MPR RI) through the Addition of the Authority of the MPR RI After the 1st, 2nd, 3rd, & 4th Amendments to the 1st, 2nd, 3rd & 4th Constitution of the Republic of Indonesia 1945.

Kay words: evitalization, Role, Function, People's Consultative Assembly, Authority, and Amendment

ABSTRAK

Di era modern seperti sekarang ini, dimana persaingan antar individu, kelompok, dan negara semakin ketat, sudah menjadi keharusan bagi bangsa dan negara Indonesia untuk selalu bersiap diri menghadapi segala kemungkinan yang akan terjadi kepada bangsa dan negara Indonesia. Indonesia tidak boleh lengah bahkan pada saat paling aman sekalipun harus tetap waspada. Setiap hal dapat menjadi pemicu ketidak seimbangan bangsa dan negara. pemerintah harus dapat mengampulasi segala kemungkinan krisis yang dapat memicu gejala dalam negeri, termasuk kemungkinan krisis konstitusional. Terjadinya krisis konstitusional akan menjadi pemicu yang paling ampuh untuk terjadinya kekisruhan dalam negeri. Ketahanan nasional baik dari segi keamanan dan ekonomi akan terancam. Oleh karena itu, gagasan-gagasan dan ide-ide terkait dengan penguatan kelembagaan negara khususnya lembaga MPR RI harus terus dibicarakan dan didiskusikan secara publik. Gagasan dan ide-ide tersebut dalam rangka mengantisipasi krisis konstitusional yang sangat mungkindapat terjadi terhadap bangsa dan negara Indonesia yang disebabkan oleh persingan geopolitik kawasan dan nonkawasan, atau mungkin juga dapat disebabkan oleh situasi dalam negeri sendiri. Intinya, bangsa dan negara Indonesia harus bisa mencegah terjadinya krisis konstitusional. Semua pertanyaan tersebut belum ada jawabannya, karena memang belum ada aturannya dalam konstitusi Indonesia. Apabila hal-hal tersebut terjadi, maka Indonesia akan mengalami yang nama krisis konstitusional, yang pada taraf berikutnya, krisis tersebut akan menyebabkan kekacauan yang dapat membahayakan kehidupan bangsa dan negara. oleh karena itu, satu-satunya jalan mencegah terjadinya krisis konstitusional tersebut adalah dengan merevitalisasi Peran Dan Fungsi Majelis Permusyawaratan Rakyat (MPR RI) Melalui Penambahan Kewenangan MPR RI Pasca Amandemen Konstitusi Ke- 1,2,3, & 4 Undang-Undang Dasar RI Tahun 1945.

Kata Kunci: Revitalisasi, Peran, Fungsi, Majelis Permusyawaratan Rakyat, Kewenangan, dan Amandemen

1. Introduction

Indonesia is a modern country that was born and became independent in the 20th century. Where science and technology is developing rapidly. The founding fathers of the State of Indonesia were the best graduation in their respective schools. So it is not surprising that later an independent Indonesia was built with a constitutional system of government or a state based on the constitution, namely the 1945 Constitution of the Republic of Indonesia.

The constitution as the basis of the state government system is a must for every country that recognizes the sovereignty of the people and rejects the absolute monarchy system that places the king as the owner of sovereignty. Such a system of government is then known as a democratic system of government, whose main characteristic is placing the people as the owner of sovereignty.

Therefore, Indonesia firmly declares that it recognizes that sovereignty is in the hands of the people. So based on these principles, the government of the country is essentially a government of the people, namely a government formed from and by the people.¹ . With a democratic government system, it is hoped that the basic rights of the people can be guaranteed.

However, the recognition of people's sovereignty by the state alone is not enough to actually realize the rights as owners of sovereignty, so the people as owners of sovereignty need rules that are beneficial to themselves and protect the rights attached to them as citizens. So that "a joint regulation is needed that supports and becomes the foundation in the life of the state to guarantee and protect people's rights. These regulations are known as the Constitution".²

James Bryce defines the Constitution as "a framework of political society (the State) organized by and through law. In other words, the law provides for the existence of permanent institutions with recognized functions and assigned rights".³ The constitution can also be said to be a collection of principles governing the power of government, the rights of those who are governed (the people) and the relationship between the two.⁴ Simply put, the Constitution is a set of basic rules that regulate the basic things of a country and its government.

¹ Janedri m. Gaffar, *Politik Hukum Pemilu*, Jakarta, Konstitusi Press (Konpress), 2012. Hal.98

² Cora Elly, *Demokrasi dan sistem pemerintahan*, *Jurnal Konstitusi*, Volume 10, Nomor 2 Juni 2012. Hal. 334

³ Ibid.

⁴ C.F. Strong, *Konstitusi-Konstitusi Politik Modern, Kajian Tentang Sejarah & Bentuk-Bentuk Konstitusi Dunia*, Bandung, Nusamedia, 2004. Hal. 15

In the context of Indonesia, the constitution that serves as a guideline is the 1945 Constitution of the Republic of Indonesia, which is abbreviated as the 1945 Constitution. If you look closely, the 1945 Constitution regulates people's sovereignty twice, first in the opening of the fourth paragraph which states, "then the Indonesian national independence was formulated in a Constitution of the Republic of Indonesia which has the sovereignty of the people."⁵ With the affirmation in the 1945 Constitution regarding the people's sovereignty, it is clear that Indonesia as a nation and a state adheres to or implements a democratic system as a system of government..

Because the Indonesian state has chosen to implement a democratic system as the basis for administering the state and government, it is not surprising that later the Indonesian constitution regulates the mechanisms for implementing people's sovereignty which are inherent in the constitution or the 1945 Constitution. In the Indonesian constitution, namely the Constitution of the Republic of Indonesia Indonesia in 1945 has regulated explicitly and in detail the institutions that are the manifestation of the people's sovereignty, in this case the legislative institutions (MPR, DPR and DPD), or in other words parliamentary institutions.

However, even though Indonesia implements a democratic system in administering its government, the legislative institutions implemented in Indonesia are different from most other democratic countries in the world. In the world democratic constitutional system, these countries generally only implement two variants of legislative institutions in their constitutional system, namely a one-chamber parliament known as unicameral such as Britain, Malaysia and France. In these countries only apply one legislature only. And then the two-chamber parliament or what is known as Bicameral, such as America, Australia, Argentina and Brazil. These countries implement a two-chamber parliamentary system, which means that there are two legislative institutions in their constitutional system.

Meanwhile, in the Indonesian constitutional system, there is a three-chamber parliament / three assemblies of the legislature or the so-called Tricameral, the three institutions have different functions and authorities in carrying out their functions as a legislative body. The three legislative bodies are the People's Consultative Assembly of the Republic of Indonesia (MPR RI), the People's Representative Council of the Republic of Indonesia (DPR RI), and the Regional Representative Council of the Republic of Indonesia (DPD RI). The existence of the MPR RI as one of the legislative institutions in the Indonesian constitutional system has its

⁵ Ibid, Hal. 335

own uniqueness and is a differentiator from the world's democratic constitutional systems. Because only Indonesia has implemented a three-chamber or tricameral parliamentary system. In general, the parliamentary system of world countries only implements a single-chamber/unicameral legislature or two-chamber/bicameral legislature. Therefore, the existence of the MPR RI as one of the legislative institutions is proof that Indonesia has a variant of democracy that is different from the democracy adopted by the United States and European countries.

In the early days of Indonesian independence until the New Order era, the People's Consultative Assembly (MPR) had a very fundamental role and function in the Indonesian Constitution (1945 Constitution). In Article 1 paragraph (2) of the 1945 Constitution before the Amendment stated "sovereignty is in the hands of the people, and is carried out entirely by the People's Consultative Assembly".⁶ With the provisions as stated in Article 1 paragraph (2) of the 1945 Constitution, one can imagine how the supremacy of the MPR RI institution .

Therefore, the MPR as a people's mandate institution before the amendment to the 1945 Constitution, the MPR RI has the authority to appoint the President and Vice President, can revoke the mandate given to the President and Vice President (can dismiss the President and Vice President), and make and / or establishing the Outlines of State Policy (GBHN), making and amending the Constitution, and finally issuing the MPR Decree whose position is above the Law.

With this enormous function and authority, the MPR RI is transformed into the people and the State itself. Basically it is the MPR that regulates how the country should be run and who can become what, everything is under the authority of the RI MPR before the amendment.

Then, after the people became aware of the unfavorable Constitution which they felt only hindered the democratic process. The people are moving to demand major reforms in the ongoing government system. The people demand that a real democratic process be carried out in every change of leadership and also in determining public policies relating to people's lives. The people's movement that demanded reforms was finally successful by removing President Suharto from his position as President who was considered a dictator and hampered the process of democratization in every line of national and state life..

⁶ Panduan Pemasarakatan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Dan Ketetapan Majelis Permusyawaratan Rakyat Republik Indonesia, Jakarta, Sekretariat Jendral MPR RI 2018, edisi revisi. Hal. 65

After the fall of President Suharto, reforms began in all aspects of Indonesian national and state life, including amending the 1945 Constitution, which previously during the New Order era the 1945 Constitution was seen as a sacred document that seemed to be sanctified. It is so sacred and holy that it is rarely touched.⁷ As stated by Yusril Ihza Mahendra "There is no reform without an amendment to the Constitution".⁸

With the amendment process, many changes will automatically occur in the provisions of the Indonesian Constitution, including the authority possessed by the People's Consultative Assembly which is not spared from the amendment. After the amendment to the 1945 Constitution was carried out, the authority of the MPR RI as a high state institution weakened in such a way, even as stated by the former chairman of the MPR RI Amein Rais, the existence of the MPR RI is no longer needed, because the authority it has is no longer functional and tends to be useless. very. Apart from prof. Amein Rais, there are still many people from academics or the political community who share the same view as what was conveyed by Amein. However, regardless of the existence of the MPR RI after the 1st, 2nd, 3rd and 4th amendments, the MPR RI, in fact the existence of the MPR RI as one of the state institutions that carry out legislative functions is still maintained in the Indonesian constitutional system..

2. The Focus of Problems

1. How are the Roles and Functions of the Indonesian MPR Before and after the amendment?
2. What is the urgency of increasing the authority of the People's Consultative Assembly in revitalizing the MPR RI.
3. What is the Mechanism for Adding the Authority of the MPR RI.

3. Research Methodology

1. Type of Research

This type of research is normative juridical research. The normative research method is data collection that will be carried out by examining library materials which are secondary data which is also called library law research.⁹ This research refers to all data which includes

⁷ Yusril Ihza Mahendra, *Dinamika Tatanegara Indonesia*, Jakarta, Gema Insani, Hal. 44

⁸ Yusril Ihza Mahendra, *nge-Blog ala Professor*, Jakarta, Pustaka Ar-rayhan, 2010, Hal. 7

⁹ Ronny Hanitijo Soemitro, *Metodelogi Penelitian Hukum Dan Jurimetri*, (Jakarta, Ghalia Indonesia, 1990), hal. 194

primary legal materials (binding legal materials), secondary legal materials (legal materials that provide explanations of primary legal materials), and tertiary materials (materials that provide instructions and explanations of secondary raw materials).¹⁰

2. Techniques Data Collection

In normative juridical law research, the data collection method used in this research is library research (Library Research). Sources of data in normative legal research such as :

- a. Secondary legal materials, namely those that provide explanations regarding primary legal materials, such as the Constitution, laws, the results of the analysis of legal experts, as well as regulations governing the authority of the MPR RI;
- b. Secondary legal materials, namely legal materials that provide explanations regarding primary legal materials, such as literature written by legal experts in their field, magazines, papers, journals, articles, newspapers, data via the internet network, and related research results;
- c. Tertiary legal materials are materials that explain primary and secondary legal materials, such as legal dictionaries, language dictionaries, and encyclopedias..

Previous studies taken by the author are the work of Fitri Amalia entitled “*The Powers of the MPR RI in the Post-Reform 1945 Constitution (Review of Islamic Constitutional Law)*” There is an institution MPR consisting of DPR, does not lead to a parliamentary structure Indonesia is referred to as a two-chamber or bicameral parliament, because the MPR itself does not carry out a legislative function in the sense of being involved in the process of forming laws. But to say that it is a pure unicameral parliament is also not quite right because considering the existence of the MPR itself as a separate institution outside of and even above the DPR, because of that the system adopted by the 1945 Constitution before the amendment can also be referred to as “quasi monocameral” or semi-unicameral.

In the membership of the MPR there is no longer an element of functional group delegation. There is only membership that reflects political representation and regional regional representatives. In terms of its development, political representation is embodied in DPR membership and territorial representation or regional representation is embodied in DPD membership. To preserve the idea of functional representation, its realization can only be

¹⁰ Soerjono Soekanto dan Sri Mamuji, penelitian hukum normative suatu tinjauan singkat, (Jakarta, PT. Raja Grafindo Persada, 2001), hal. 194

institutionalized through the membership system of the people's representatives and the DPD, for example, by giving certain rations, such as to women's groups. This kind of idea is considered important as a positive special treatment to help certain groups in society who are classified as very disadvantaged in their role in the formal system of political representation.¹¹

Research conducted by Fitri Amalia focuses on the existence of the MPR RI as a state institution that carries out its function as a legislature after the amendment to the 1945 Constitution. And links the position or existence of the MPR RI institution with the deliberation system in Islamic syari'at. However, there is still a connection with the Indonesian constitutional system. According to the Islamic scientist Ibnu Khaldun, the existence of social organizations (*ijtima'i wal insani*) is a must. Philosophers and jurists have given birth to this fact with their words "human beings are political according to their nature (*al insanu madaniyyun'biath-thab'i*). this means that it needs a social organization which according to the philosophers is called "city", and that is what is meant by civilization. So, in the view of religious experts, the formation of a social organization to regulate society is a must.

4. Finding & Discussion

a. The existence of MPR RI

Indonesia was born and independent as a nation and state in the early 20th century, or to be precise on August 17, 1945. Where the world began to enter a new chapter in its civilization, namely industrialization civilization or also known as the modern world, where the life of the world's people has entered its heyday.

Human civilization continues to develop in such a way, the relationship between human beings is getting closer to one another. The distance between individuals with other individuals begins to open. And at a higher level, namely at the level of relations between countries, they are getting closer and even inseparable from each other. In other words, space and time are no longer a problem for the life of the world community to build a relationship.

At that time, the thinking of mankind has also experienced such rapid development. This is marked by the awareness of the rights possessed by each individual which is then known as the existence of Human Rights (HAM) inherent in every human being. The influence of human self-awareness causes changes in the governance system of power or the state. These independent countries in the 20th century have implemented a democratic modern state system

¹¹ Jimly Asshidiqie, *Pergumulan Peran Pemerintah dan Parlemen Dalam Sejarah*, (Jakarta, UI Press, 1996), Hal. 157

including the Unitary State of the Republic of Indonesia. A democratic constitutional state system is considered a manifestation of government from the people and for the people.

The hallmark of a modern democratic state is a state that recognizes and upholds the sovereignty of the people. In his book *Modern Political Constitutions, Studies on the History & Forms of World Constitutions* C.F. Strong said “The most important part in the organs of government of a modern constitutional state is the legislature or the legislature making body.”¹²

As one of the countries that was born in the modern era, the State of Indonesia since its inception has adhered to the ideology of sovereignty in the hands of the people. This gives an understanding that Indonesia is a democratic country that upholds people’s sovereignty. This gives the understanding that the State of Indonesia does not belong to individuals or groups, but this State belongs to all Indonesian people who have equal rights to each other towards their nation and country, regardless of their skin color, religion, ethnicity, culture, all of them have rights. Under the auspices of the sky of Indonesia and on the earth of Indonesia.

Then, as mentioned above, in order to exercise the people’s sovereignty in a system of government, an institution is needed that functions to carry out people’s sovereignty in an Indonesian constitutional system. Therefore, in the Indonesian Constitution, namely the 1945 Constitution of the Republic of Indonesia (1945 Constitution), the founding fathers drafted a Constitution in which there is an institution that has the function of exercising people’s sovereignty, namely the People’s Consultative Assembly of the Republic of Indonesia (MPR RI).

“The constitutional system of the Republic of Indonesia according to the 1945 Constitution is a system that is unique according to the personality of the Indonesian nation. According to the 1945 Constitution, besides being the head of state, the president is also the head of government”.¹³

In Indonesia’s power-sharing system, “The 1945 Constitution establishes six state institutions as follows,

1. People’s Consultative Assembly.
2. President.
3. House of Representatives.

¹² C.F. Strong, *Konstitusi-Konstitusi Politik Modern, Kajian Tentang Sejarah & Bentuk-Bentuk Konstitusi Dunia*, Bandung, Nusamedia, 2004. Hal. 94

¹³ *Materi Sosialisasi Empat Pilar Mpr Ri*, diterbitkan di Jakarta, Oleh Sekretariat MPR RI, 2018, Hal. 134-135

4. Supreme Advisory Council.
5. Supreme Court.
6. Supreme Audit Board”.¹⁴

In the Indonesian constitution, namely the 1945 Constitution before the amendment, placed the People’s Consultative Assembly as an institution that has a legislative function in a position as the most important institution compared to other state institutions, as contained in Article 1 Paragraph (2) of the 1945 Constitution before the Amendment which states “sovereignty is in the hands of the people, and is carried out entirely by the People’s Consultative Assembly”. This shows how high the state’s recognition of people’s sovereignty is. Apart from that, this indicates that Indonesia is a very democratic country, which upholds the rights of its people.

However, after the constitutional amendment to the 1945 Constitution was carried out, the MPR of the Republic of Indonesia no longer held the position as the highest state institution that had the power to fully implement people’s sovereignty. After the amendment to the 1945 Constitution, the MPR was regulated in Articles 2 and 3 which basically explained that “The People’s Consultative Assembly consists of members of the People’s Representative Council and members of the Regional Representatives Council who are elected through general elections and further regulated by law”.¹⁵

Basically, the existence of the MPR RI as a state institution that has legislative power, is a differentiator and has its own uniqueness from the modern constitutional system of governance. By continuing to adhere to the MPR RI as one of the state institutions that carry out legislative functions, Indonesia is the only country that adheres to the “Trikameral” parliamentary system (three-chamber parliament). Generally, in a modern constitutional system, only adheres to two types of legislature, namely unicameral and bicameral.

Unikameral is a one-door parliamentary system, meaning that the country concerned only establishes the House of Representatives as the only institution that carries out legislative functions. Meanwhile, bicameral is a two-chamber parliamentary system, meaning that the country concerned determines that its parliament consists of two institutions that both have legislative authority, although with different proportions. For example, America has a bicameral parliamentary system. In the American constitutional system there are two

¹⁴ Moh. Kusnardi dan Harmaily Ibrahim, *Pengantar Hukum Tata Negara*, Jakarta, CV Sinar Bakti, 1988, Hal. 182

¹⁵ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

legislative institutions that both exercise legislative power, namely the Congress of the United States and the House of Representatives.

Therefore, with the uniqueness or distinctiveness of the MPR RI in the Indonesian constitutional system, it is imperative to strengthen the existence of the MPR RI as a state institution. Because it is recognized or not, the existence of the MPR RI after the fourth amendment has become non-functional or if you use the Arabic term “wuwuhu ka’adamihi, which means its presence is the same as its absence.”.

The existence of the MPRI in the Indonesian constitutional system is ironic, because the existence of the MPR RI does not have a strategic function and not only that, the MPR RI has almost no authority that can affect the life of the nation and state. The MPR RI is no different than an ad hoc institution whose job is to serve once every five years as the committee for taking the oath of the President and Vice President..

b. Roles and functions of the People’s Consultative Assembly of the Republic of Indonesia (MPR RI) Before and After the 1st, 2nd, 3rd, & 4th Amendment.

The existence of the legislature in the modern constitutional system as mentioned above, some experts place the legislature as the basis for the classification of a democratic government. Which is the main characteristic of democratic government is the existence of an institution that is the representative or executor of people’s sovereignty, namely the legislature. Therefore, C.F. Strong said that the most important part of the organs of modern constitutional state government is the legislature or legislature.¹⁶

In democratic government or modern constitutional government, two legislative institutions are generally known, namely the Lower House or the Upper House.¹⁷ The classification of the two forms of legislative institutions depends on the electoral system and the authority possessed by the two legislative institutions. The United States of America has two legislative bodies, namely the House of Representatives and the Congress of the United States. The two American legislatures have different functions or powers and election mechanisms. Meanwhile, in the United Kingdom, only using one legislature or using a unikameral parliamentary system.

Unlike the United States, Indonesia has a legislative system that is quite unique when compared to modern constitutional countries in the world, where Indonesia is the only country

¹⁶ C.F. Strong, *Konstitusi-Konstitusi Politik Modern, Kajian Tentang Sejarah & Bentuk-Bentuk Konstitusi Dunia*, Bandung, Nusamedia, 2004. Hal.94

¹⁷ ibid

that implements a three-chamber parliamentary system (trikameral), namely the People's Representative Council (DPR), the Regional Representatives Council (DPR), DPD) and the People's Consultative Assembly (MPR).

Another uniqueness of the Indonesian constitutional system is not only related to its parliamentary system which uses three chambers / Tricameral but also "The constitutional system of the Republic of Indonesia according to the 1945 Constitution is a system that is unique according to the personality of the Indonesian nation. According to the 1945 Constitution, besides being the head of state, the president is also the head of government. The President holds the highest governmental power under the MPR RI, the President is the mandate of the People's Consultative Assembly" (before the amendment to the 1945 Constitution).

The People's Consultative Assembly is the first regulated institution compared to other state institutions. Either before the amendment to the 1945 Constitution was made or after the amendment was made. Prior to the amendment, the MPR institution was regulated in Article 1 paragraph 2 of the 1945 Constitution of the Republic of Indonesia (1945 Constitution) which stated, "sovereignty rests with the people, and is fully exercised by the People's Consultative Assembly". Then after the amendment was made, the MPR RI institution was regulated in a separate chapter, namely in Chapter II which consisted of 2 articles, namely Article 2 with 3 paragraphs and Article 3 with three paragraphs as well.

c. Structure and Authorities of the MPR RI before the Amendment

As mentioned in the previous section, the position of the People's Consultative Assembly of the Republic of Indonesia (MPR RI) before the amendment was carried out held the position of a high state institution. With the authority to fully implement people's sovereignty or in other words, the MPR RI has absolute authority in exercising or implementing people's sovereignty. Therefore, basically the people no longer hold their sovereignty because their sovereignty has been delegated to the MPR RI. So you can imagine how much supremacy or authority the MPR RI institution has. Because everything related to people's power is in the hands of the MPR RI.

The supremacy of the MPR RI is further emphasized in the elucidation of the 1945 Constitution which states "As the embodiment of all the Indonesian people (Vertretungsorgan des Willens des Staatsvolkes). This assembly establishes the Constitution and determines the outlines of state policy. This assembly appoints the Head of State (President) and Deputy Head of State (Vice President). It is this assembly that holds the highest state power, while the

President must carry out state policy according to the outlines set by the assembly. The President appointed by the Assembly is subject to and responsible to the Assembly. He is the “mandatarist” of the Assembly. He is obliged to carry out the decisions of the Council. The President does not “neben”, but “intergeordnet” to the Assembly”.¹⁸ From the elucidation of the 1945 Constitution it is very clear and firm how big the role and function and high position of the Indonesian MPR are in the Indonesian constitutional system before the amendment.

In Chapter II Article 2 of the 1945 Constitution before the amendment consists of 3 paragraphs, which basically regulate the position and working mechanism of the MPR RI as follows;

- (1) The People’s Consultative Assembly consists of members of the People’s Legislative Assembly, plus delegates from the regions and groups, according to the rules stipulated by law. The membership of the MPR before the amendment was quite unique and representative because within the body of the MPR RI it did not only consist of members of the DPR, but also consisted of class representatives whose voices needed to be accommodated within the body of the MPR RI. With the delegates from this group, the MPR RI as a very representative and collective institution. All parties and groups have their voices represented. Furthermore, in the next paragraph, it regulates the following;
- (2) The People’s Consultative Assembly meets at least once every five years in the state capital. . At least once every five years the MPR RI must convene in the context of electing the President and Vice President. Then the next verse;
- (3) All decisions of the People’s Consultative Assembly shall be stipulated by a majority vote. Voting remains an alternative in every decision that will be taken or decided by the MPR RI if the institution cannot reach a consensus. Then, as explained above that before the amendments to the 1945 Constitution were carried out, the supremacy of the MPR RI was very large, this can be seen from the authority which is so large that is regulated in the constitution of the 1945 Constitution.

There are several very central authorities possessed by the MPR RI so that the MPR RI is a very supreme institution in the Indonesian constitutional system as follows;

¹⁸ Penjelasan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 sebelum Amandemen

1. The most fundamental supremacy of the MPR is the MPR as an institution that fully exercises people's sovereignty as stated in Article 1 paragraph (2).
2. The Indonesian People's Consultative Assembly has the authority to stipulate the Constitution and outlines of the state policy (Article 3 of the 1945 Constitution).
3. The MPR RI has the authority or power to elect and determine the President and Vice President as Article 6 paragraph (2) of the 1945 Constitution.
4. Then the MPR RI with the DPR's proposal can dismiss the President and/or vice president as explained in the 1945 Constitution.
5. And other authorities that are very likely to occur in the context of exercising people's sovereignty. Because the main function of the MPR RI is to fully exercise the sovereignty of the people.

d. The structure and Powers of the MPR RI after the amendment to the 1945 Constitutional

After the amendment to the constitution of the 1945 Constitution of the Republic of Indonesia, the position and authority of the MPR RI in the Indonesian constitutional system underwent a very fundamental change in terms of its position and authority. The position of the MPR RI, which was originally the highest state institution, was changed to become an ordinary state institution equivalent in position to other state institutions.

Then, if in the 1945 Constitution before the amendment the MPR RI was an institution that fully exercised people's sovereignty, then in the 1945 Constitution after the amendment, the MPR RI was no longer an institution "incarnation of all the Indonesian people (Vertretungsorgan des Willens des Staatsvolkes)". So that it is domiciled as an ordinary state institution with very minimal authority or is not functional.

The composition of the membership of the People's Consultative Assembly after the amendment to the 1945 Constitution is regulated in Chapter II which consists of two articles, namely Article 2 and Article 3, each of which consists of 3 paragraphs as follows;

In Article 2 paragraph (1) states "The People's Consultative Assembly consists of members of the People's Legislative Assembly and members of the Regional Representatives Council who are elected through general elections and further regulated by law". If in the 1945 Constitution before the amendment, the membership of the MPR RI consisted of members of

the DPR RI and group representatives, then after the amendment to the 1945 Constitution, the membership of the MPR RI consisted of the People's Representative Council (DPR RI) and the Regional Representative Council (DPD RI). Group delegates whose membership through appointment is removed are replaced with DPD elected directly by the people. The Regional Representatives Council (DPD) is a new institution in the Indonesian constitutional system. He was born after the amendment to the 1945 Constitution, which also has legislative powers, although the legislative authority of the DPD differs from that of the DPR RI.

In paragraph (2) it states "The People's Consultative Assembly meets at least once every five years in the state capital". The obligation to convene the MPR RI is the same or does not change, namely once every five years. At least convene to inaugurate the President and Vice President.

Furthermore, in paragraph (3) it states "All decisions of the People's Consultative Assembly are stipulated by a majority vote". The decision-making mechanism of the MPR RI is through voting if it does not reach an agreement among the members of the MPR RI.

As the position and composition of the membership of the MPR RI changed after the amendment, the authority of the MPR RI also changed. And these changes are so fundamental that the role and function of the MPR RI is no longer functional. The MPR RI is no different from ad hoc institutions which are only present at certain times. This situation makes the existence of the MPR RI very ironic, which at first as a superior institution has become a weak institution in terms of institutional roles and functions..

With the amendment to Article 3 of the 1945 Constitution of the Republic of Indonesia, the MPR has three powers, namely.

1. Amend and stipulate the Constitution;
2. Appoint the President and/or Vice President;
3. Dismissing the President and/or Vice President during their term of office according to the Constitution.¹⁹

¹⁹ Panduan pemasyarakatan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 dan ketetapan Majelis Permusyawaratan Rakyat Republik Indonesia, Jakarta, Penerbit Sekretariat Jendral MPR RI, Tahun 2018, Hal. 75

The other MPR RI authorities are also regulated in Article 8 paragraph 2 and paragraph 3 of the 1945 Constitution of the Republic of Indonesia concerning filling vacancies for the positions of President and vice president jointly or when the Vice President is permanently absent. Thus, the MPR has five powers, such as :

1. Amend and stipulate the Constitution;
2. Appoint the President and/or Vice President;
3. Dismissing the President and/or Vice President during their term of office according to the Constitution.
4. Choose the vice president from the two candidates proposed by the President if there is a vacancy in the position of Vice President during his term of office.
5. Choose the president and vice president if both stop simultaneously in their term of office, from the two pairs of candidates for President and candidate for Vice President proposed by a political party or coalition of political parties whose candidate pair for President and Vice President won the first and second most votes in the general election earlier, until the end of his term of office.²⁰

Almost none of the five MPR authorities have ever been exercised by the RI MPR except for authority No. 2 namely inaugurating the President and Vice President every five years. Therefore, the authors say in this paper, that the post-amendment MPR RI functions and authorities are not functional. Because none of these can be carried out by the MPR RI.

Example, the authority to change the constitution of the 1945 Constitution. Nowadays it is very difficult politically to amend the 1945 Constitution, because these changes will always be considered as the political interests of a few people, whose goal is only to perpetuate their political power. And zero interest of the people.

Then the authority to dismiss the president and vice president. This authority is as difficult as carrying out changes to the 1945 Constitution. Because it is almost impossible for the president and vice president to be dismissed from the point of view of the dismissal process..

Therefore, it would not be wrong to state that the existence of the MPR RI is like an ad hoc institution that is needed only once every five years, and even then only to inaugurate the

²⁰ Ibid, Hal. 75-76

President and Vice President. Apart from that, Amein Rais, the former chairman of the MPR RI for the 1999-2004 period, had quite radical views regarding the MPR RI, he considered that “the MPR leadership should just be abolished. The leadership of the MPR is sufficient from the leaders of the DPR and DPD. The leadership of the MPR is the leadership of the DPR and DPD, because the MPR is a joint session of the DPR and DPD where each leader is a culture man”.²¹

What was conveyed by the former chairman of the MPR RI for the 1999-2004 period was very based and rational, considering that the composition of the membership of the MPR RI was members of the DPR and DPD, so basically the MPR RI was a combination of the DPR and DPD. This strengthens the argument that the MPR RI is not just an ad hoc institution that is formed when needed. When its interests are finished, then the existence of the MPR RI will also be finished. So therefore. It is very important for the Indonesian people to revitalize the existence and role and authority of the Indonesian People’s Consultative Assembly for the benefit of institutional strengthening.

e. The Urgency of Adding the Authority of the MPR RI After the 1st, 2nd, 3rd, & 4th Amendment.

As mentioned above, that after the amendment to the constitution of the 1945 Constitution of the Republic of Indonesia, the authority possessed by the People’s Consultative Assembly of the Republic of Indonesia (MPR RI) was trimmed in such a way that almost all of the authority of the MPR RI which made itself (MPR) an institution superior, which at the time before the constitutional amendment was carried out, state supremacy existed in the supremacy of the MPR RI, all of this authority was taken from the MPR RI through a constitutional amendment. After the amendment to the 1945 Constitution, the MPR RI institution was no more than an Adhoc institution. What is only needed at certain times, namely once every five years to inaugurate the President and Vice President, apart from that, the existence of the MPR RI is not needed,

Therefore, taking into account the discourse on the Indonesian constitutional system, especially those related to state institutions regulated in the 1945 Constitution, it is necessary to make improvements that strengthen each of these state institutions in order to strengthen the system of checks and balances. Between institutions, as well as to increase the functionality of

²¹ <https://www.dpr.go.id/berita/detail/id/768/t/Amin+Rais+%3A+Tidak+Perlu+Ada+Ketua+Mpr+Ri>

the existence of these institutions, especially the institutions of the People's Consultative Assembly of the Republic of Indonesia (MPR RI) and the Regional Representative Council of the Republic of Indonesia (DPD RI).

Strengthening state institutions whose existence is regulated in the 1945 Constitution is very important, because state institutions that are weak in terms of function and authority will only make these state institutions lose their functionality as state institutions such as the People's Consultative Assembly whose existence is very, very inadequate. Functional and not even needed anymore. Because as an institution that does not have functional authority, the MPR RI has lost its existence in the Indonesian constitutional system. Therefore, it is necessary to strengthen the MPR RI in terms of authority and composition of its membership.

Without Strengthening in terms of authority and composition of its membership, the MPR RI will only become a redundant and completely useless institution, the MPR RI will only become a burden on the state budget, while itself (MPR) does not have any function other than appointing the President and Vice President once every five years. Meanwhile, the institutional budget is budgeted annually. So indirectly the state loses out on non-functioning institutions.

There are several options to strengthen the MPR RI institution so that the institution is more existent and more functional as follows;

1. Giving additional authority to the People's Consultative Assembly of the Republic of Indonesia.
2. Changing the membership composition of the MPR RI, which previously only consisted of members of the DPR and DPD.

There are a number of things that can be added to the MPR RI to become the authority of the MPR RI, in which there are no state institutions that have them. These things are as follows;

1. Give authority to the MPR RI to be able to postpone general elections and extend the term of office of the President in certain circumstances. As we will describe in the next section.
2. Revive the Outlines of State Policy (GBHN) which were removed from the 1945 Constitution through amendments, which were previously the MPR RI's authority to stipulate.
3. Changing the composition of the MPR RI's membership to make it more representative and the MPR RI to become an interpreter for all the Indonesian people.

The addition of authority to the MPR RI to postpone elections and extend the term of office of the president and other positions under certain circumstances is very important in an uncertain world situation. Many factors can be the cause of the failure of holding elections. For example, war emergencies, pandemic emergencies and so on. Citing the opinion of Yusril Ihza Mahendra who stated that the amendment to the 1945 Constitution “must add a new article in the 1945 Constitution related to general elections, especially Article 22E of the 1945 Constitution. At least, there are 2 provisions added to Article 22E of the 1945 Constitution”.²²

First, Article 22 E paragraph (7) of the 1945 Constitution which contains the norm, ‘In the event that the holding of general elections once in five years as referred to in Article 22E paragraph (1) cannot be carried out due to wars, rebellions, security disturbances that have wide-reaching impacts, disasters natural disasters and disease outbreaks that are difficult to overcome, the People’s Consultative Assembly has the authority to postpone the implementation of the General Election until a certain time limit. Second, Article 22E paragraph (8) of the 1945 Constitution which states, “All state positions whose filling is carried out through general elections as stipulated in this constitution, temporarily remain in their positions as temporary officials until general elections are held.”²³

With the addition of 2 paragraphs in Article 22E of the 1945 Constitution, there is no term for extending the term of office of the President, MPR, DPR, DPD and DPRD. Members of state institutions such as the MPR, DPR, DPD changed their status to become temporary members, before being replaced with election results members. Their status is the same as members of the KNIP during the early days of independence, members of the DPRS during the Liberal Democracy and members of the MPRS during the Old Order and early New Order..²⁴

What was conveyed by Prof. Yusril is very relevant and needed, especially in an uncertain world situation, which changes very quickly and tends to be dangerous for developing countries like Indonesia. With world conditions that are completely uncertain, regional and non-regional geopolitical issues that are increasingly complex are a separate threat to Indonesia’s domestic conditions. The state and nation of Indonesia must anticipate all possibilities, including the possibility of a constitutional crisis caused by the regional and non-regional geopolitical situation..

²² <https://investor.id/national/284545/yusril-paparkan-3-cara-sah-tunda-pemilu-2024-dan-perpanjang-jabatan-presiden>

²³ ibid

²⁴ ibid

In addition to the addition of authority related to the postponement of the general election and the extension of the term of office for officials who fill it through the election, there is also a need for additional authority that was removed after the amendment, namely the revival of the GBHN (Broadlines of State Policy). The revival of the GBHN is urgently needed by the nation and state, so that the development of the nation and state is more directed and sustainable (Sustainable Development Goals).

Regarding the discourse on reviving GHBN, Yusril Ihza Mahendra argues that “GBHN is something that is needed for this nation and state so that the direction of development and the nation’s journey for the next five years is truly the agreement of all citizens of the nation which is decided by the MPR. What is meant is of course not the MPR as it is now as produced by the amendments to the 1945 Constitution. The MPR must be ‘the embodiment of all the Indonesian people’ consisting of members of the DPR plus delegates from the regions and groups”.²⁵

If it is agreed that the GBHN is revived, the consequence, according to Yusril Ihza Mahendra, is that the President must again be responsible to the MPR, not like now, where the President is responsible. If the GBHN is revived then the MPR needs to become the highest state institution. The consequences are indeed so. I am of the opinion that the positioning of the MPR as such reflects more on the idea of a nation-state of Indonesia which has a background of custom and Islam”.²⁶

The three things which, as the authors have described above, are very urgent to be discussed, discussed and disseminated publicly so that they are brought to the attention of the parties, especially the holders or owners of power in the Indonesian state. The idea of strengthening state institutions, especially the MPR RI by increasing functional authority is very important and very urgent as an anticipatory step against the possibility of a constitutional crisis that can cause the nation and state to be in an uncertain situation. And this will endanger the sustainability of the Indonesian nation and state in the future.

f. Mechanism for Amending the Constitution of the Republik of Indonesia

As has been described in previous sections regarding the need to strengthen the MPR RI institution by adding more functional and operational authority to the MPR. However, the question then becomes whether it is possible to add authority to the MPR. Furthermore, are the factors of urgency for the addition of authority as described in the previous section sufficient

²⁵ <https://humbanghasundutankab.go.id/main/index.php/read/news/381>

²⁶ *ibid*

to serve as the basis for adding authority to the MPR RI. And if it is possible to provide additional authority to the MPR RI, what is the mechanism for adding authority to the MPR RI? It is very natural for these questions to arise in the minds of the general public, bearing in mind that the discourse on the need for institutional strengthening of the MPR RI by increasing its authority is still new and has not yet fully become a public concern. Discourses on this matter are still minimal in public conversation, so it is natural to question the urgency of strengthening and increasing the authority of the MPR RI.

Theoretically, strengthening and increasing the authority of the MPR RI can be carried out. Because the constitution of the 1945 Constitution is not sacred or something sacred, so it cannot be tampered with like when the New Order era was in power. And indeed historically the 1945 Constitution has undergone changes or amendments four times since 1999 – 2002.

Then can something that is not factual or something that is in the nature of ideas or ideas can be used as a basis for amending the 1945 Constitution. For law students, “Research in law is different from research in other social sciences. Social science deals with what is, examines the truth of facts, not what ought to be. Social science answers how and why something is the way it is. The aim is to determine the logical patterns of constancy in social life. Meanwhile, the science of law is the other way around. Relating to what should be, answering the question how should be. Jurisprudence conveys the message: “that’s how you should do it” (prescriptive in nature) not “that’s how it is”. The aim is to regulate and realize regulations”.²⁷

Therefore, something that is ideas and ideas but argumentative can also be used as a basis for making changes to the law, including ideas and ideas for strengthening and increasing the authority of the MPR RI through changes or amendments to the Constitution of the 1945 Constitution. In law it is known a term *ius contituum*, namely the aspired law or this Law has not yet been established, or it can also be referred to as the law to come. *Ius constituendum* are ideas or ideas about laws that need to be made or determined in the future.

“The process, act or situation that changes the Law consists of at least three Dimensions of Law Renewal, namely, the Maintenance Dimension, the Renewal Dimension, and the Creation Dimension.”.²⁸ Therefore, ideas and notions about increasing the authority of the MPR RI for the purpose of institutional strengthening have a theoretical basis and rationality.

²⁷ Sudikno Mertokusumo, *Penemuan Hukum*, Yogyakarta, Universitas Atma Jaya Yogyakarta, 2014, Hal. 36

²⁸ Dr. Greg, dalam penyampaian matakuliah Aspek-aspek pengubah Hukum di Fakultas Hukum Universitas Pamulang program studi Magister Hukum Tahun 2022

Regarding changes to a law, Roscou Pound argues “law as a tool of social engineering”. Roscou Pound describes that the main task of modern thinking about law is the task of “social engineering”, therefore, interests protected by law can be classified into 3 main categories, namely :

1. kepentingan umum (*public interest*)
2. kepentingan masyarakat (*social interest*)
3. kepentingan pribadi (*private interest*).”²⁹

Why is the change in the constitution of the 1945 Constitution, specifically the change to increase the authority of the MPR RI in the context of strengthening the institution, as Robert Seidman stated, “That law cannot simply be transferred from one society to another, this is known as; The Law of The Non Transferrability of Law. This happens due to differences in social structure, social values adhered to, social stratification and the level of thinking of its citizens”.³⁰

The most important thing from the discussion about the possibility of an amendment to a constitutional law is how the mechanics of changing the constitution, especially the 1945 Constitution of the Republic of Indonesia.

In constitutional science, there are two terms of mechanism for changing the constitution. The first is a flexible constitutional change and the second is a rigid constitutional change. Amendment or “Examination of a flexible constitution revolves around the issue of how to amend, if the method of ratification of a constitutional law is the same as the method of ratification of an ordinary law which does not include a constitutional character, then the constitution is declared flexible”.³¹ However, if the ratification or amendment to the constitution has a different mechanism than the ratification or amendment to laws in general, then the said constitutional amendment is included in a rigid constitutional amendment.

Basically, there are four ways of constitutional amendments used in countries with rigid constitutions: first, amendments implemented by the legislature according to special limits; secondly, the amendments implemented by the people through a referendum; third, special constitutional amendments for federal states whose amendments must be approved by some or

²⁹ ibid

³⁰ ibid

³¹ C.F. Strong, *Konstitusi-Konstitusi Politik Modern, Kajian Tentang Sejarah & Bentuk-Bentuk Konstitusi Dunia*, Bandung, Nusamedia, 2004. Hal. 193

all of the federation units; and fourthly, amendments made with special conventions for that purpose.³²

Amendments to the constitution of the 1945 Constitution of the Republic of Indonesia are included in a rigid constitution, because the mechanics of the changes are not the same as changes to laws in general. It has its own mechanism which is separate from the system of changing ordinary laws. Amendments to the 1945 Constitution of the Republic of Indonesia are still carried out by the legislature but at different levels. In the 1945 Constitution of the Republic of Indonesia Article 3 paragraph (1) states that “The People’s Consultative Assembly has the authority to amend and stipulate the Constitution.” Specifically, the mechanism for changing or amending the 1945 Constitution is regulated in Chapter XVI concerning Amendments to the Constitution Article 37 which consists of five paragraphs as follows;;

- (1) Proposals for amendments to the articles of the Constitution can be put on the agenda in the session of the People’s Consultative Assembly if submitted by at least 1/3 of the total number of members of the People’s Consultative Assembly.
- (2) Each proposal to amend the articles of the Constitution is submitted in writing and clearly indicates the part proposed to be amended along with the reasons.
- (3) To amend the articles of the Constitution, the People’s Consultative Assembly shall be attended by at least 2/3 of the total number of members of the People’s Consultative Assembly.
- (4) Decisions to amend the articles of the Constitution are made with the approval of at least fifty percent plus one member from all the members of the People’s Consultative Assembly.
- (5) Specifically regarding the form of the Unitary State of the Republic of Indonesia, no changes can be made.

5. Conclusion & Recommendation

In human life, change is a necessity. Humans continue to move forward through the boundaries of life. Along with this limitless human movement, the needs of human life also increase and continue to grow. With the addition of the list of human needs, he will move faster to meet his needs. In the context of the movement to seek fulfillment of the necessities of life,

³² C.F. Strong, *Konstitusi-Konstitusi Politik Modern, Kajian Tentang Sejarah & Bentuk-Bentuk Konstitusi Dunia*, Bandung, Nusamedia, 2004. Hal. 193

disputes often occur between individuals and community groups. Even at the state level, disputes often occur due to movements between countries to meet their needs. Because like it or not, when every individual, community group, and country move in the same direction to meet their needs, there will definitely be competition between them which will eventually develop into conflict. Both conflicts between individuals, groups and conflicts between countries. Therefore, every individual, community group, even the state, must always be prepared to face all possibilities that will occur in their lives.

In this modern era, where competition between individuals, groups and countries is getting tougher, it is imperative for the Indonesian nation and state to always be prepared to face all possibilities that will happen to the Indonesian nation and state. Indonesia must not be complacent, even at the safest times, it must remain vigilant. Every thing can be a trigger for the imbalance of the nation and state. The government must be able to amputate all possible crises that could trigger domestic turmoil, including the possibility of a constitutional crisis.

The occurrence of a constitutional crisis will be the most powerful trigger for domestic chaos. National resilience both in terms of security and economy will be threatened. Therefore, ideas and ideas related to strengthening state institutions, especially the MPR RI institution, must continue to be discussed and discussed publicly. These ideas and ideas are in the context of anticipating a constitutional crisis that is very likely to occur against the nation and state of Indonesia caused by regional and non-regional geopolitical competition, or may also be caused by the situation in the country itself. In essence, the nation and state of Indonesia must be able to prevent a constitutional crisis from occurring.

For example, what if the General Election Commission cannot hold elections, or what if the Indonesian elections fail to be held. Who is responsible, and what form of responsibility. There are no answers to all these questions, because there are no regulations in the Indonesian constitution. If these things happen, then Indonesia will experience what is called a constitutional crisis, which at the next level, the crisis will cause chaos that can endanger the life of the nation and state. Therefore, the only way to prevent this constitutional crisis from occurring is to revitalize the Role and Functions of the People's Consultative Assembly (MPR RI) through the Addition of the Authority of the MPR RI After the 1st, 2nd, 3rd, & 4th Amendments to the 1st, 2nd, 3rd & 4th Constitution of the Republic of Indonesia 1945.

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Undang-Undang

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