



Immunity Rights of Members House of Representatives from the Perspective of Equality Before the Law

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ABSTRACT

The right to immunity is one of the rights held by members of the House of Representative in carrying out their duties, functions and authorities. This right to immunity essentially confirms that members of the House of Representative cannot be held accountable or sued in court in carrying out their duties, functions and authorities. Because they cannot be held accountable or sued in court, this right is considered by some people as a right that is contrary to equality before the law. Seeing this problem, this study aims to comprehensively examine and analyze the ratio legis regulating the right to immunity for members of the House of Representative and the suitability of the right to immunity in the perspective of equality before the law. This study is a legal study using a statutory, conceptual and comparative approach. The results of this study indicate that the ratio legis regulating the right to immunity for members of the House of Representative is to protect the independence and courage of members of the House of Representative in carrying out legislative duties. However, when the right to immunity is confronted with the principle of equality before the law, then formally the right to immunity conflicts with the principle of equality before the law, but substantively the right to immunity must be seen as a whole, whether the different treatment is carried out in the same conditions and positions or not.

ABSTRAK

Hak imunitas merupakan salah satu hak yang dimiliki oleh anggota DPR dalam menjalankan tugas, fungsi, dan kewenangannya. Hak imunitas ini

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pada hakikatnya menegaskan bahwa anggota DPR tidak dapat dimintai pertanggungjawaban atau digugat di pengadilan dalam pelaksanaan tugas, fungsi, dan kewenangannya. Karena tidak dapat dimintai pertanggungjawaban atau digugat di pengadilan, hak ini oleh sebagian pihak dipandang sebagai hak yang bertentangan dengan prinsip persamaan di hadapan hukum. Berdasarkan permasalahan tersebut, penelitian ini bertujuan untuk mengkaji dan menganalisis secara komprehensif ratio legis pengaturan hak imunitas bagi anggota DPR serta kesesuaiannya dalam perspektif persamaan di hadapan hukum. Penelitian ini merupakan penelitian hukum dengan menggunakan pendekatan perundang-undangan, konseptual, dan komparatif. Hasil penelitian menunjukkan bahwa ratio legis pengaturan hak imunitas bagi anggota DPR adalah untuk melindungi independensi dan keberanian anggota DPR dalam menjalankan fungsi legislasi. Namun demikian, ketika hak imunitas dihadapkan dengan prinsip persamaan di hadapan hukum, secara formal hak imunitas tersebut bertentangan dengan prinsip tersebut. Akan tetapi, secara substantif, hak imunitas harus dilihat secara menyeluruh, yakni apakah perbedaan perlakuan tersebut dilakukan dalam kondisi dan posisi yang sama atau tidak.

A. INTRODUCTION

1. Background

Following the amendments to the 1945 Constitution of the Republic of Indonesia, the institutional position of the House of Representative was strengthened through clearer constitutional recognition of its legislative, budgetary, and oversight functions. This strengthened position reflects the House of Representative's important role in ensuring democratic representation and executive accountability. However, the expansion of parliamentary functions and privileges must be accompanied by adequate mechanisms of accountability to ensure that institutional protection does not result in unequal legal treatment. From a human rights and constitutional perspective, parliamentary privileges, including immunity, are legitimate only insofar as they facilitate the effective exercise of constitutional functions while remaining subject to the principles of equality before the law and non-discrimination. Thus, the post-amendment strengthening of the House of Representative should not be understood as granting broader protection without limits, but as requiring a corresponding balance between legislative independence, accountability, and equal legal protection.

After the amendment process of the 1945 Constitution of the Republic of Indonesia, the position and status of the House of Representative became stronger, with better

clarity regarding its rights and obligations.¹ This change emphasizes the role of the House of Representative as a legislative institution that is not only responsible for making laws, but also has a supervisory function over the executive and involvement in the budget process. With the addition of more specific provisions, the House of Representative can now carry out its duties more effectively, strengthen government accountability and increase public participation in the democratic process.² This creates a stronger foundation for the House of Representative to carry out its functions in achieving the goals of a democratic and just state.³

In carrying out its functions, the House of Representative, which comes from members or administrators of political parties, is equipped with the authority and duties that are clearly regulated in Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council (hereinafter referred to as Law No. 17 of 2014).⁴ In addition, the House of Representative also has various rights, both institutionally and as members. Institutional rights include the Right of Interpellation, the Right of Inquiry, and the Right to Express an Opinion, which give the House of Representative the ability to request explanations or investigate government policies. Meanwhile, the rights of House of Representative members include the right to immunity.⁵ This right to immunity can protect them from lawsuits related to statements or actions they take in carrying out their duties. Therefore, this right to immunity is considered by the public as one of the rights that has the value of "immunity".⁶

The right to immunity for members of the House of Representative is regulated in

¹ Saldi Isra, *Pergeseran Fungsi Legislasi: Menguatnya Model Legislasi Parlementer Dalam Sistem Presidensial Indonesia* (Jakarta: RajaGrafindo Persada, 2010).

² Baharuddin Riqiey and Muhammad Ahsanul Huda, "Interpreting Article 22(2) of the 1945 Constitution of the Republic of Indonesia Post Constitutional Court Decision 54/PUU-XXI/2023," *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal* 4, no. 1 (January 31, 2024): 24–37, <https://doi.org/10.15294/ipmhi.v4i1.76687>.

³ Erik Dwi Prasetyo and Siti Fatimah, "Problematisasi Demokrasi Presidensial Pasca Amendemen UUD 1945," *Jurnal Patingalloang* 9, no. 3 (2022), <https://doi.org/10.26858/jp.v9i3.38930>.

⁴ Hasto Kristiyanto, Satya Arinanto, and Hanief Saha Ghafur, "Institutionalization and Party Resilience in Indonesian Electoral Democracy," *Heliyon* 9, no. 12 (2023), <https://doi.org/10.1016/j.heliyon.2023.e22919>.

⁵ Rizky Rahmadani and Hufon Hufon, "Hak Imunitas Dalam Perspektif Prinsip Persamaan Derajat Di Hadapan Hukum," *Jurnal Sosial Humaniora Sigli* 6, no. 2 (2023), <https://doi.org/10.47647/jsh.v6i2.1530>.

⁶ Andry Rahman Arif, "Analisis Hak Imunitas Bagi Anggota Dewan Perwakilan Rakyat Republik Indonesia," *Keadilan* 19, no. 2 (2022), <https://doi.org/10.37090/keadilan.v19i2.941>.

Article 20A paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that in carrying out their functions, authorities, and duties, members of parliament may not be questioned, blamed, or sued in court, either in conveying statements or opinions, either verbally or in writing. The purpose of this right to immunity is to maintain the dignity and honor of parliament, so that members of the House of Representative can carry out their duties freely and without fear of legal consequences.⁷ Thus, the right to immunity plays an important role in ensuring the continuity of the democratic process and oversight of the government, as well as providing space for members of the House of Representative to voice the aspirations and interests of the community without hindrance.

The problem of parliamentary immunity from the perspective of equality before the law should not be understood as an inherent contradiction between immunity and legal accountability. Rather, the issue concerns the scope and application of immunity in relation to its functional purpose of protecting legislative independence. Parliamentary immunity does not constitute impunity when it is exercised in connection with legitimate legislative functions and within the limits established by law. Accordingly, the legitimacy of immunity may be assessed through three considerations: whether the challenged conduct is functionally connected to legislative duties, whether its application remains within constitutional and statutory limits, and whether the conduct is genuinely legislative rather than purely personal. Where these conditions are not satisfied, the invocation of immunity may extend beyond its constitutional purpose and create an unjustified disparity in legal accountability. Thus, the relevant question is not whether parliamentary immunity is inherently contrary to equality before the law, but whether its application in a particular case remains functionally justified, legally bounded, and proportionate to the protection of legislative independence.

The regulation of immunity rights is also regulated by various other legal countries, such as the United States. The right of immunity is granted to the Senate, an affirmation as stated in Article I, Section 6 of the United States Constitution, which provides protection to members of the Senate from lawsuits related to statements or actions taken

⁷ Emha Ainuddin and Djoko Purwanto, "Kajian Yuridis Hak Imunitas Anggota DPR RI Dalam Prinsip Equality Before the Law Menurut Undang-Undang Nomor 2 Tahun 2018 Perubahan-Perubahan Ke Dua Atas Undang-Undang Nomor 17 Tahun 2014 Tentang MPR, DPR, DPD Dan DPRD," *Journal of Contemporary Law Studies* 1, no. 1 (2023), <https://doi.org/10.47134/lawstudies.v1i1.1951>.

in their official capacity. This clause is designed to ensure that members of the Senate can carry out their duties freely, without fear of legal repercussions that could hinder the legislative process and public debate. However, this right of immunity is not absolute.

Previous research on the immunity rights of members of the House of Representatives and *equality before the law* was conducted by Supriyadi A. Arief in “*Deconstruction of the Immunity Rights of Members of the House of Representatives from the Perspective of Equality Before the Law*,”⁸ which found that immunity is legitimate only insofar as it protects the performance of parliamentary functions. Emha Ainuddin and Djoko Purwanto, in “*A Juridical Study of the Immunity Rights of Members of the House of Representatives of the Republic of Indonesia under the Principle of Equality Before the Law pursuant to Law Number 2 of 2018*,”⁹ similarly concluded that immunity does not place members of the House of Representatives above the law. More recently, Fany Kambu, Alwiyah Sakti Ramdhon Syah Rakia, and Sri Yati, in “*Reinterpreting the Immunity of the House of Representatives within the Indonesian Constitutional System: Harmonizing Immunity with the Principle of Equality Before the Law*,”¹⁰ emphasized the need to prevent the misuse of immunity. Unlike these studies, this research focuses on establishing constitutional boundaries for the immunity rights of members of the House of Representatives, using *equality before the law* as the principal parameter to distinguish legitimate functional protection from legal privilege. This constitutes the principal novelty of this research.

2. Research Questions

Seeing the problem as explained previously, this study intends to comprehensively examine and analyze the ratio legis regulating immunity rights for House of Representative members and the suitability of immunity rights in the perspective of equality before the law. Through this study, it is expected to be able to explain the ratio legis regulating immunity rights for House of Representative members and the

⁸ Supriyadi A Arief, “Dekonstruksi Hak Imunitas Anggota DPR Dalam Perspektif Equality Before The Law,” *Jambura Law Review* 1, no. 1 (2019), <https://doi.org/10.33756/jalrev.v1i1.2016>.

⁹ Ainuddin and Purwanto, “Kajian Yuridis Hak Imunitas Anggota DPR RI Dalam Prinsip Equality Before the Law Menurut Undang-Undang Nomor 2 Tahun 2018 Perubahan-Perubahan Ke Dua Atas Undang-Undang Nomor 17 Tahun 2014 Tentang MPR, DPR, DPD Dan DPRD.”

¹⁰ Fany Kambu, Alwiyah Sakti Ramdhon Syah Rakia, and Sri Yati, “Reinterpretasi Imunitas DPR Dalam Sistem Ketatanegaraan Indonesia: Harmonisasi Prinsip Equality Before the Law,” *JURNAL USM LAW REVIEW* 8, no. 1 (April 27, 2025): 304–19, <https://doi.org/10.26623/julr.v8i1.11669>.

suitability of immunity rights in the perspective of equality before the law. In addition, theoretically, this study is also expected to be able to provide general input for the development of legal science and specifically in the field of Human Rights. The development of the field of Human Rights related to the ratio legis regulating immunity rights for House of Representative members and the suitability of immunity rights in the perspective of equality before the law. Likewise, practically, it is expected to be used as a reference for practitioners in exercising immunity rights.

3. Research Methods

This research is a legal research using a legislative and conceptual approach.¹¹ The legal materials used in this study are primary legal materials and secondary legal materials. Primary legal materials are collected using the inventory and categorization method, while secondary and tertiary legal materials are collected using the literature search method. All legal materials that have been collected are then identified, classified, and systematized according to their sources and hierarchies. After that, the legal materials are reviewed and analyzed using legal reasoning with the deductive method.¹²

B. DISCUSSION/ ANALYSIS

1. Ratio Legis of Regulation of Immunity Rights for Members of the House of Representatives

The birth of immunity rights is rooted in ancient legal traditions, where protection for public officials has existed since Roman and Greek times. This concept emerged in response to the need to protect members of the legislature from external pressure, allowing them to carry out their functions without fear of reprisal. In the modern context, immunity rights have been adopted in various constitutions around the world, including in the United States and Indonesia, as a guarantee of freedom of speech and action in an official capacity. In Indonesia, immunity rights are regulated in the 1945 Constitution of the Republic of Indonesia, which reflects a commitment to maintaining the independence of the House of Representative and ensuring that people's representatives

¹¹ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2021).

¹² Irwansyah and Ahmad Yunus, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel* (Yogyakarta: Mirra Buana Media, 2020).

can function effectively in a democratic system.¹³ Over time, immunity rights have continued to be a topic of debate, especially regarding the limitations and accountability of its members.

The regulation of the immunity rights of House of Representative members in Indonesia is regulated in Article 20A paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which provides protection to House of Representative members from lawsuits for opinions and actions taken in carrying out their official duties.¹⁴ In addition, Article 80 letter f of Law No. 17 of 2014 concerning the MPR, DPR, DPD, and DPRD strengthens this provision by emphasizing that House of Representative members cannot be prosecuted in carrying out their legislative, supervisory, and budgetary functions. This regulation aims to create a conducive environment for House of Representative members in carrying out their duties, so that they can function effectively without fear of legal pressure or intimidation, while maintaining the integrity of the legislative institution in a democratic system.

The ratio legis of parliamentary immunity under Article 20A paragraph (3) of the 1945 Constitution and Article 80 letter f of Law No. 17 of 2014 derives from the constitutional purpose of protecting House of Representative members in performing their legislative functions. Article 20A paragraph (3) constitutionally recognizes immunity, while Article 80 letter f of the MD3 Law affirms it as a right of House of Representative members. Its scope is clarified by Constitutional Court Decision No. 76/PUU-XII/2014, which emphasized that immunity must be understood in connection with the duties, powers, and functions of House of Representative members and does not protect criminal conduct unrelated to those functions. Thus, parliamentary immunity protects legislative independence, but remains subject to functional and legal limits consistent with accountability and equality before the law.

Furthermore, this arrangement reflects the recognition of the strategic role of House of Representative members as representatives of the people.¹⁵ In carrying out

¹³ A A Sagung, "Analisis Yuridis Hak Imunitas Dpr Ditinjau Dari Prespektif Prinsip Negara Hukum," *Kerta Negara* Vol 6, no. No 2 (2018).

¹⁴ Marisa Nurfaizzah, "Hak Imunitas Anggota Dewan Perwakilan Rakyat Menurut Prinsip Persamaan Di Hadapan Hukum," *Al-Balad: Journal of Constitutional Law* 3, no. 3 (2021).

¹⁵ Baharuddin Riqiey and Syofyan Hadi, "Constitutional Imperatives: Examining the Urgency of Term Limits for Members of the House of Representatives," *Mimbar Keadilan* 17, no. 1 (2024), <https://doi.org/https://doi.org/10.30996/mk.v17i2.9635>.

their supervisory and law-making functions, House of Representative members must be able to operate without pressure from external parties, including the government and interest groups. With the right to immunity, they are given space to explore important issues and voice the aspirations of the community without fear of legal action that could hinder their independence in carrying out their duties.¹⁶

However, it is important to remember that immunity rights are not a form of absolute freedom. Ratio legis also emphasizes the need for accountability for members of the House of Representative. Article 80 letter f of Law No. 17 of 2014 stipulates that although members of the House of Representative are protected from legal prosecution in carrying out their duties, they remain morally and ethically responsible to the public. This regulation encourages members of the House of Representative to act with integrity and in the interests of the people, maintaining public trust in the legislative institution.

Finally, the synergy between Article 20A paragraph (3) of the 1945 Constitution of the Republic of Indonesia and Article 80 letter f of Law No. 17 of 2014 creates a balanced legal framework to protect immunity rights while ensuring accountability. This reflects the understanding that legislative power must be balanced with responsibility, so that members of the House of Representative can carry out their functions effectively and responsibly.¹⁷ Thus, this regulation not only protects members of the House of Representative, but also strengthens the principles of democracy and justice in the Indonesian government system.

Immunity rights for members of the House of Representatives have also been adopted in various countries, although their scope and constitutional justification differ. In the United States, the Speech or Debate Clause under Article I, Section 6 of the U.S. Constitution protects members of Congress from being questioned for legitimate legislative acts.¹⁸ In *Gravel v. United States*, 408 U.S. 606 (1972), the Supreme Court held that protection extends to acts integral to the deliberative and communicative processes of Congress, while emphasizing that the Clause does not extend beyond the legislative

¹⁶ Finny Alfionita Massie, "Kajian Yuridis Hak Imunitas Anggota DPR Dalam Sistem Ketatanegaraan Indonesia," *Pakistan Research Journal of Management Sciences* 7, no. 5 (2018).

¹⁷ fathih Misbahuddin Islam, Untung Sri Hardjanto, And Lita Alw Tyesta, "Implementasi Hak Imunitas Anggota Dewan Perwakilan Rakyat Republik Indonesia Berdasarkan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," *Diponegoro Law Journal* 8, no. 4 (2019), <https://doi.org/https://doi.org/10.14710/dlj.2019.25508>.

¹⁸ Erin Brown, "The Lost Judicial Review Function Of The Speech Or Debate Clause," *Virginia Law Review* 107, no. 8 (2021).

sphere. Similarly, *Doe v. McMillan*, 412 U.S. 306 (1973), confirmed protection for legislative acts such as committee reports and voting, but rejected immunity for conduct falling outside legitimate legislative functions. Thus, U.S. jurisprudence demonstrates that parliamentary immunity is function-based rather than an unlimited protection attached to official status, providing a useful comparative benchmark for determining the scope and limits of House of Representative immunity in Indonesia.

In other countries, the rules on immunity rights also vary. In the UK, for example, there is the principle of “parliamentary privilege,” which provides protection to members of Parliament in carrying out their legislative duties.¹⁹ Members of Parliament cannot be prosecuted for statements made in debates or in committees, creating space for open and honest discussion. However, there are certain limits, such as actions that constitute contempt of parliament, which can be sanctioned. This shows that even with protections in place, accountability and integrity remain important concerns.²⁰

In other countries, immunity rights are also regulated in a similar way, providing protection for members of parliament to carry out their legislative functions.²¹ However, in some countries, there are stricter mechanisms to respond to potential abuses of immunity rights. For example, in France, members of parliament can be prosecuted if they are suspected of being involved in certain criminal acts, even though they have immunity rights in the context of legislation. This arrangement reflects an attempt to find a balance between the protection of freedom of expression and the legal responsibilities that members of parliament must bear.

The essence of the regulation of immunity rights for members of the House of Representative refers to the protection provided to ensure that legislators can carry out their duties independently and without pressure. With the right to immunity, members of the House of Representative can express opinions, discuss, and make decisions without fear of legal repercussions. This is important in the context of democracy, where freedom of speech and open discussion are key elements in the process of making laws and oversight of the executive.

¹⁹ Edward Lui, “Piercing the Parliamentary Veil against Judicial Review: The Case against Parliamentary Privilege,” *Oxford Journal of Legal Studies* 42, no. 3 (2022), <https://doi.org/10.1093/ojls/gqac008>.

²⁰ Murdoch Thomson, “Parliamentary Privilege In R V White (Lord Hanningfield) 2016 All Equal Before The Law?,” *The Denning Law Journal* 29, no. 1 (2017), <https://doi.org/10.5750/dlj.v29i1.1406>.

²¹ Hilarie Barnett, “PARLIAMENTARY PRIVILEGE,” in *Constitutional & Administrative Law*, 2020, <https://doi.org/10.4324/9781843146575-114>.

In addition, immunity rights also serve to maintain the integrity of the legislative institution. By protecting members of the House of Representative from lawsuits that could interfere with their duties, immunity rights create space for members of the council to operate effectively and boldly. This allows them to voice the aspirations of the people and monitor government policies without fear of disproportionate consequences.²² In this case, immunity rights are one of the important pillars in ensuring that the legislative function runs well.²³

However, the regulation of immunity rights does not mean that members of the House of Representative are free from accountability. In various countries, including Indonesia, there are limitations to immunity rights that require members of the council to act with integrity and ethics. Although protected in the context of legislation, they must still be accountable for their actions and decisions to the public. Thus, immunity rights must be seen as a tool to strengthen the role of the legislature in a democratic system, while maintaining the principles of accountability and transparency to the public.

The limitations of immunity rights for members of the House of Representative in Indonesia are clearly regulated in the 1945 Constitution of the Republic of Indonesia and various other laws and regulations.²⁴ Article 20A paragraph (3) of the 1945 Constitution states that members of the House of Representative cannot be prosecuted for opinions and actions taken in carrying out their duties.²⁵ However, this limitation is not a form of absolute freedom. This immunity right only applies to actions directly related to the implementation of legislative, supervisory, and budgetary duties. Thus, actions outside the scope of official duties do not receive the same protection, and members of the House of Representative can be subject to legal sanctions if they are involved in criminal acts or other violations of the law.

Furthermore, Article 80 letter f of Law No. 17 of 2014 concerning the MPR, DPR,

²² Prashna Samaddar and Victor Nayak, "Parliamentary Privileges in Indian Governance System: Role Of Free Speech in Promoting Transparency," *International Journal of Law and Social Sciences*, 2023, <https://doi.org/10.60143/ijls.v5.i1.2019.31>.

²³ Nirmalendu Bikash Rakshit, "Parliamentary Privileges and Fundamental Rights," *Economic and Political Weekly* 39, no. 13 (2004).

²⁴ Lanang Sakti, "Penerapan Hak Imunitas Dalam Melindungi Hak Konstitusional Anggota Dewan Perwakilan Rakyat Daerah (DPRD)," *Jurnal Fundamental Justice* 1, no. 1 (2020), <https://doi.org/10.30812/fundamental.v1i1.635>.

²⁵ Baharuddin Riqiey et al., "Immunity Clause in The 1945 Constitution of The Republic of Indonesia," *JAPHTN-HAN* 5, no. 1 (January 30, 2026): 1–20, <https://doi.org/10.55292/japhtnhan.v5i1.204>.

DPD, and DPRD emphasizes that although House of Representative members have immunity rights, they remain morally and legally responsible. This shows that immunity rights cannot be used as an excuse to avoid responsibility for unlawful actions. In practice, if a House of Representative member is involved in a corruption case or other criminal act that is not related to their official duties, then the immunity rights do not apply, and they can be tried in accordance with applicable legal provisions. This is important to maintain the integrity of the legislative institution and public trust in the House of Representative.

In addition, in the context of ethical violations, each member of the House of Representative can also be subject to sanctions by the Council's Ethics Council (MKD). The MKD has the authority to follow up on reports of ethical violations committed by members of the House of Representative, including actions that are not in accordance with the code of ethics. This is one form of limitation on the right to immunity, where members of the House of Representative must be accountable for their behavior outside the context of legislation, which shows that even though they have protection in carrying out their duties, they must still behave in accordance with applicable norms and ethics.

Likewise, parliamentary immunity in other countries is not absolute but is limited to acts sufficiently connected to the legislative process. In the United States, the Speech or Debate Clause protects acts within the "legislative sphere," including speech, voting, committee activities, and other acts integral to the deliberative and communicative processes of Congress. In *Gravel v. United States*, 408 U.S. 606 (1972), the Supreme Court distinguished protected legislative acts from activities not essential to congressional deliberation, while *United States v. Brewster*, 408 U.S. 501 (1972), established that the Clause does not protect all conduct related to legislative affairs, including bribery. Thus, U.S. jurisprudence adopts a functional boundary: immunity attaches to the nature of the legislative act rather than merely to the member's official status. This approach provides a useful comparative basis for assessing whether the immunity of House of Representative members in Indonesia remains connected to the exercise of legislative functions or extends to conduct that should remain subject to ordinary legal accountability.

In the UK, the principle of "parliamentary privilege" provides protection for members of Parliament to speak and debate without fear of legal repercussions.

However, while this right provides freedom in the context of legislation, members of Parliament are not protected from criminal acts they commit outside of their legislative functions. For example, if a member commits an insult or criminal act outside of parliament, they can be sanctioned.²⁶ This shows that while there are protections, there are limitations that emphasize that members of parliament must act with integrity and within the framework of the applicable law.

Furthermore, Germany distinguishes between *Indemnität* and *Immunität*, which serve different purposes under Article 46 of the Basic Law (*Grundgesetz*). *Indemnität* under Article 46(1) provides substantive protection against judicial or disciplinary proceedings for votes and statements made in the Bundestag or its committees, except defamatory insults. By contrast, *Immunität* under Article 46(2)–(4) provides procedural protection against prosecution or arrest for punishable acts, which may be lifted with the authorization of the Bundestag, subject to specific exceptions. Thus, Bundestag members remain legally accountable for unlawful conduct falling outside the protection of *Indemnität*, while *Immunität* does not permanently bar criminal proceedings but regulates when such proceedings may be initiated. The German model therefore distinguishes substantive protection for legitimate parliamentary expression from procedural protection against prosecution, providing a useful comparative basis for defining the functional and legal limits of parliamentary immunity in Indonesia.

Given the limitations of immunity rights as above, this reflects the balance between protection of freedom of speech and legal responsibility.²⁷ With clear regulations regarding the limitations of immunity, it is hoped that members of the House of Representative can carry out their duties optimally, while still respecting the principles of accountability and transparency. This is important to ensure that the legislative institution functions well and can be trusted by the public, so that the presence of the House of Representative as a representation of the people can be well maintained in the Indonesian democratic system.²⁸

²⁶ Nicholas Bamforth, "Parliamentary Privilege and Defamation," *The Cambridge Law Journal* 58, no. 3 (1999), <https://doi.org/10.1017/s0008197399243012>.

²⁷ Justine Toms, "Democracy as Border Line. Freedom and No-Freedom of Speech in the Internrt Era," *Yearbook of Department Mass Communications* 1 (2020), <https://doi.org/10.33919/ydmc.19.1.11>.

²⁸ Hamdan Zoelva, "The Development of Islam and Democracy in Indonesia," *Constitutional Review* 8, no. 1 (2022), <https://doi.org/10.31078/consrev812>.

2. The Appropriateness of the Immunity Rights of Members of the House of Representatives from the Perspective of Equality Before the Law

Indonesia as a country of law recognizes the principle of "equality before the law" as stated in Article 27 of the 1945 Constitution. This principle emphasizes that every citizen, without exception, has the same standing before the law.²⁹ In this context, there is no discrimination based on social status, race, gender, or other background. This recognition aims to ensure that all individuals can access justice and receive equal protection from the law, thus creating a just and equitable society.³⁰

The principle of equality before the law in Indonesia is reflected, among others, in Law No. 39 of 1999 on Human Rights, which guarantees equal legal protection without discrimination.³¹ However, equality does not necessarily require identical treatment where constitutional functions justify differential treatment. In the context of parliamentary immunity, the different legal treatment accorded to House of Representative members may be constitutionally justified insofar as it is functionally connected to the exercise of their legislative duties and serves the legitimate purpose of protecting legislative independence. Conversely, where immunity is invoked for conduct unrelated to parliamentary functions or beyond its constitutional and statutory limits, such differential treatment may constitute an unjustified departure from equality before the law. Thus, the principle of equality operates not by eliminating parliamentary immunity, but by requiring that any differential protection be objectively justified, functionally limited, and proportionate to its constitutional purpose.

Nowadays, a problem arises, namely the right to immunity for members of the House of Representative when viewed from the perspective of the principle of equality before the law.³² The right to immunity for members of the House of Representative provides certain protection in carrying out their legislative duties. However, when this

²⁹ Daron Acemoglu and Alexander Wolitzky, "A Theory of Equality Before the Law," *Economic Journal* 131, no. 636 (2021), <https://doi.org/10.1093/ej/ueaa116>.

³⁰ Rofingi, Umi Rozah, and Adifyan Rahmat Asga, "Problems of Law Enforcement in Realizing The Principle of Equality Before The Law in Indonesia," *Law Reform: Jurnal Pembaharuan Hukum* 18, no. 2 (2022), <https://doi.org/10.14710/lr.v18i2.47477>.

³¹ Baharuddin Riqiey and Wiwik Afifah, "Policy Effectiveness of Social Assistance for Religious Minority Group in Sidoarjo Regency," *Proceeding International Conference on Religion, Science and Education* 2, no. 1 (2023).

³² Katherine Swinton, "Challenging the Validity of an Act of Parliament: The Effect of Enrolment and Parliamentary Privilege," *Osgoode Hall Law Journal* 14, no. 2 (1976), <https://doi.org/10.60082/2817-5069.2165>.

right is misused, injustice can arise that is detrimental to society. For example, members of the House of Representative who are involved in acts of corruption or other violations of the law can avoid legal accountability by claiming the right to immunity, thus ignoring the principle of equality before the law.

This situation raises questions about fairness for civil society that does not have similar protection. When the law is not applied fairly to everyone, including members of parliament, it can create the perception that certain classes in society are more privileged. This dissatisfaction can move public opinion and reduce trust in legislative institutions and the legal system as a whole. In this context, it is important to review the limits of immunity rights to be in line with the principle of equality before the law, so that all citizens, including members of parliament, can be tried according to the same legal provisions.³³

Furthermore, this issue is also related to the integrity of the legislative institution. If the right of immunity is used to protect illegal actions, then this can damage the image of the House of Representative as a representation of the people. The public has the right to justice and transparency in the government process. Therefore, it is important for authorized institutions to supervise and regulate the use of the right of immunity, with the aim of avoiding abuse that can harm the public interest. Thus, in order to maintain public trust, there must be a clear and firm mechanism to respond to violations committed by members of the council.

Looking at the explanation as above, then the right of immunity when viewed from the principle of equality before the law formally the right of immunity is actually not allowed, however, from a substantive perspective, different treatment must be analyzed based on equality of position. This is also in line with the Constitutional Court's interpretation of the principle of equality before the law in Article 28D paragraph (1) of the 1945 NRI Constitution. Based on the Constitutional Court (MK) Decision, this principle emphasizes that equality means equality in position. Therefore, if different treatment is caused by differences in position, then this is not considered to violate the principle of "equality before the law". Furthermore, regarding this matter, the Constitutional Court when interpreting Article 28D paragraph (1) of the 1945 NRI

³³ Victoria Iturralde Sesma, "Equality before Law: Analysis of Some Objections from Legal Philosophy," *Doxa. Cuadernos de Filosofía Del Derecho*, no. 42 (2019), <https://doi.org/10.14198/DOXA2019.42.06>.

Constitution in the Constitutional Court Decision No. 25/PUU-XIII/2015 and the Constitutional Court Decision No. 40/PUU-XIII/2015 illustrates that:

"...the principle of equality before the law or equal treatment before the law is also a principle that applies generally in a democratic country based on law. What is emphasized by this principle is that in a democratic country based on law no one is 'immune' before the law. In a country based on law (rule of law), anyone who violates the law, whatever their status, must be processed in accordance with applicable legal provisions..."

Furthermore, the Constitutional Court reaffirmed:

"... Empirically, if a country in formulating, interpreting, and implementing its laws takes into account various interests, resulting in practices where all people are not treated exactly the same, this does not necessarily mean that this is contrary to the principle of equality before the law and therefore it is concluded that the country is not a country based on law..."

Looking at the interpretation as above, it can be concluded that treating someone differently is not necessarily an act or action that is contrary to the principle of equality before the law.³⁴ However, to determine whether an act or action is contrary to the principle of equality before the law is by seeing whether the treatment or action is carried out differently when faced with the same problem and the same position. If so, then the act or action clearly contradicts the principle of equality before the law. This is also in line with the rule of *usul fiqh* which states, *Al-Musawah fi al-Mu'amalah*.

At this point, the question that may be interesting and can be asked is whether every different treatment of a person or a certain group can be considered discrimination? Based on the definition given by Article 1 number 3 of Law 39 of 1999 above, it is clear that discrimination includes every different treatment carried out on the basis of religion, race, color, gender, or other races. However, not all different treatments can be considered discriminatory acts if we look at the evolution of other Constitutional Court decisions. There are at least 2 (two) Constitutional Court Decisions that clearly describe the characteristics of discriminatory acts.

The Constitutional Court's jurisprudence provides a constitutional standard for assessing differential treatment under the principle of equality before the law. In

³⁴ Arief, "Dekonstruksi Hak Imunitas Anggota DPR Dalam Perspektif Equality Before The Law."

Decision No. 070/PUU-II/2004, the Court held that differential treatment does not constitute discrimination where it is based on reasonable grounds, while treating materially different circumstances identically may itself produce injustice. This approach was reinforced in Decision No. 27/PUU-V/2007, which distinguished permissible differentiation based on relevant differences from discriminatory treatment lacking a reasonable basis. Taken together, these decisions establish that differential treatment is constitutionally permissible when it is based on relevant and reasonable distinctions and serves a legitimate purpose. Applied to parliamentary immunity, the different legal treatment accorded to House of Representative members may therefore be justified by their distinct constitutional function of exercising legislative, budgetary, and oversight powers. However, such differentiation is constitutionally legitimate only insofar as immunity remains functionally connected to those duties and does not extend to conduct unrelated to parliamentary functions. Accordingly, parliamentary immunity constitutes permissible differentiation rather than an unjustified privilege when its scope is objectively justified by legislative function and remains within constitutional and statutory limits.

Constitutional Court Decision Number 22-24/PUU-VI/2008 is one of the decisions that can be used as a reference to show that not all different treatment is the same as discrimination. The Constitutional Court allows the application of positive action provisions against certain groups that are considered culturally, socially, and politically weak, such as women, in its decisions. The existence of constitutional provisions in Article 28H paragraph (2) of the 1945 Constitution, which states that everyone has the right to receive special treatment and facilities to obtain the same opportunities and benefits in an effort to achieve equality and justice, makes this even stronger.

In fact, the right to immunity does not mean absolute immunity for members of the House of Representative. This means that the right to immunity they have has clear limitations, so that not all actions taken by members of the House of Representative are free from the law. This right to immunity is designed to protect members of the House of Representative in carrying out legislative and supervisory functions without fear of legal action that could prevent them from carrying out their duties. Thus, the right to immunity functions as a guarantee that members of the House of Representative can operate effectively and independently in the context of democracy.

However, it is important to note that the right to immunity only covers statements, questions, opinions, attitudes, actions, and activities carried out by members of the House of Representative in carrying out their functions, authorities, and duties. This means that actions outside the context of legislative duties or those of a personal nature can still be subject to legal sanctions. With these limitations, the right to immunity not only protects members of the House of Representative, but also ensures that they remain accountable for their actions, maintaining the integrity of the legal system and public trust in the legislative institution.

In the Constitutional Court Decision No. 37/PUU-XVIII/2020, the Constitutional Court emphasized that the immunity rights for members of the House of Representative are not absolute and have clear limitations. This decision explains that the immunity rights are intended to protect members of the House of Representative in carrying out their duties and functions as representatives of the people. However, this protection does not apply to actions taken outside the context of legitimate legislative or supervisory duties. In other words, immunity only covers statements and actions that are directly related to the implementation of the duties of the council, not personal activities that may violate the law.

Furthermore, the Court also emphasized the importance of accountability of House of Representative members in carrying out their duties. In this decision, it was stated that although House of Representative members are granted immunity rights, they must still be held accountable for actions that are not relevant to their duties as a council. This limitation aims to prevent the misuse of immunity rights as a shield to avoid legal responsibility. Thus, this decision reflects the Constitutional Court's commitment to the principles of justice and transparency in the legislative system.

This ruling also emphasizes that immunity rights may not be used to obstruct a fair legal process. The Constitutional Court reminds that any unlawful act must still be processed in accordance with applicable legal provisions, without any intervention from immunity rights. With this emphasis, the Constitutional Court seeks to maintain a balance between protection for members of the House of Representative and the legal interests of the wider community, so that public trust in the legislative institution is maintained.

C. CONCLUSIONS

The right to immunity is one of the important rights held by members of the House of Representative, designed to protect them in carrying out their duties and functions as representatives of the people. The ratio legis regulation of this immunity right aims to ensure that members of the House of Representative can carry out their legislative and oversight obligations without being hampered by the threat of lawsuits, so that they can function independently and effectively in the public interest. However, this immunity right has clear limitations; it only covers statements, questions, and actions taken in the context of the council, and does not protect members of the House of Representative from legal sanctions for actions that are personal or outside their official duties. Thus, despite having the right to immunity, members of the House of Representative remain responsible for their behavior before the law.

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