

JURIDICAL ANALYSIS OF THE RIGHT OF INQUIRY OF THE HOUSE OF REPRESENTATIVES IN PERFORMING THE SUPERVISORY FUNCTION ACCORDING TO INDONESIAN CONSTITUTIONAL LAW

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Abstract

The right of inquiry of the House of Representatives is a right to conduct an investigation owned by the House of Representatives that decides that the implementation of a law in government policies that is important, strategic, and has a wide impact on community life, the nation, and the state is allegedly contrary to legislation. The right of inquiry of the House relating to the exercise of the supervisory functions of the House is “an institutionalized system, involving the effectiveness and regularity of restrictions on government actions. In Indonesian constitutional practice, the right of inquiry is rarely implemented. Twice executed during the reign of the old order and twice executed during the reign of the new order. The use of the right of inquiry in the current presidential system shows a significant increase. This study uses normative juridical methods that are descriptive and analytical. Basically, the right of inquiry is a constitutional right of the DPR in the constitutional system as part of carrying out the function of supervision and balance of the executive. As a result of the legal application of the right of inquiry, the House of Representatives can exercise the right to express an opinion.

Keywords: Questionnaire Rights, House of Representatives, Representative Institutions

INTRODUCTION

Indonesia is a constitutional state a state limited by the constitution. The amendment of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) which was carried out in four amendments from 1999 to 2002 has created some fundamental changes that are balanced with conceptual problems that arise in Indonesian constitutional practice, one of which is the shift in the relationship of government power from the executive to the legislature which is closely related to the scope of accountability and supervision of government power.

Based on the affirmation in the 1945 Constitution of the Republic of Indonesia, it is stated that the State of Indonesia is a constitutional state, namely a state limited by the constitution. As a state limited by the constitution, of course all actions and steps taken by the government and the organs of the State must be based on the constitution as the basic law of the State. In fact, all elements of the nation must also comply with the provisions of the applicable constitution. If later in practice there are actions outside the constitutional provisions, then such actions are unconstitutional.

In the four main characteristics of the Continental European rule of law, which are often referred to as "*rechstaat*", there is an element of limitation of power as an important feature of the rule of law. Therefore, according to Montesquieu and the theory of the Trias Politica, namely the legislature, executive, and judiciary, there is no longer a dominant power running the government. For example, the executive can no longer carry out policies without oversight from the legislature, which in Indonesia is known as the House of Representatives (DPR).

The House of Representatives (DPR) has three main functions based on Article 20A of the 1945 Constitution, namely the legislative function, the budgetary function, and the supervisory function. Therefore, to support the implementation of its duties, (DPR) has three rights, namely the right of interpellation, the right of inquiry, and the right to express an opinion.

One of the rights possessed by (DPR) is the right of inquiry. This right is a constitutional right given to the DPR to run a balanced government system. According to Article 79 paragraph (3) of Law No. 17/2014 on the MPR, (DPR), DPD, and DPRD, the right of inquiry is the right of the DPR to conduct an investigation into the implementation of laws or government policies relating to important, strategic, and broad impacts on the life of the community, nation, and state, which are suspected of violating laws and regulations.

In the revision of the 1945 Constitution (up to the fourth stage), the authority to form laws has been given to the DPR, but it still gives the government the right to submit bills to the DPR. This change in the authority to form laws has an impact on the expansion of the paradigm and the preparation of national legislation. This policy and the shift of authority in the formation of laws to the DPR are based on the desire to implement a democratic system of government based on the concept of distribution of power and the mechanism of checks and balances between state institutions. This was reflected in the spirit in which the draft revision of the 1945 Constitution was discussed. The position of the House of Representatives is affirmed in Article 7C of the 1945 Constitution, which states, "The President does not have the authority to suspend or dissolve the House of Representatives." This is in accordance with the presidential principle of Indonesia's system of government, which was maintained and improved in the revision of the 1945 Constitution.

Reading the exercise of the rights of the House of Representatives as a whole, the right to investigation is part of the right to supervision and can be linked to the right of interpellation and the right to express an opinion. The question arises: is this incorporation appropriate? Does the right of inquiry only function as a form of supervision that can end with the right to express an opinion, or can the right of inquiry also be used in carrying out other supervisory duties? This will be analyzed in this journal as an attempt to give proper meaning to the right of inquiry as part of the oversight function of the House of Representatives.

Based on the background above, several things become problem formulations that will be studied more deeply: 1) What is the constitutional legal basis of the right of inquiry authority of the House of Representatives (DPR) in Indonesian constitutionalism? And 2) How is the implementation of the right of inquiry of the House of Representatives of the Republic of Indonesia in exercising control over government policies to realize the governance system?

RESEARCH METHOD

Research is a major part of science, which aims to better know and understand all aspects of life, so research must be carried out systematically with scientific methods and techniques. According to Soerjono Soekanto, research is a scientific work activity related to construction analysis carried out methodologically, systematically, and consistently. Methodological means by certain methods or methods. Systematic is based on a reason, while consistent means the absence of contradictory things in a particular essay. In principle, research methods provide guidelines on how a scientist studies,

analyzes, and understands the problems he faces. Research is a principal means of developing science and technology that aims to reveal the truth systematically, methodologically, and consistently. Through this research, the data that has been collected and processed is analyzed and constructed.

RESULTS AND DISCUSSION

The Constitutional Legal Basis of the Authority of the Right of Inquiry of the House of Representatives (DPR) in Indonesian Constitutionalism

Since the amendment of the 1945 Constitution, there has been a shift in legislative power away from the hands of the president. Previously, the president held the ability to form laws with the approval of the legislature; now the opposite is true; the ability to form laws rests with the legislature, while the president only has the right to propose bills to the House of Representatives. The amendments to the 1945 Constitution really brought about a very significant change for the president and the DPR. Many people consider that there has been a shift in power from the dominance of the executive to the dominance of the legislature.

However, basically, the power of the House of Representatives (DPR) during the Reform Order was very strong in terms of authority. The power of the DPR can lead to an effective system of checks and balances, especially in its supervisory function over the executive and legislative institutions. Amendments to the 1945 Constitution greatly affected the position and authority of the DPR as a legislative body. Radical changes to Article 5 paragraph (1) and Article 20 paragraph (1) of the 1945 Constitution significantly reduced the president's power in the law-making process. Now, the legislative process is dominated by the DPR as the most powerful force in interpreting the normative formulations contained in the 1945 Constitution. Therefore, the supremacy of DPR in the legislative process becomes very dominant because the President has no other choice but to approve the draft law.

In particular, one of the important rights possessed by the DPR is the right of inquiry, which is one of the duties of the DPR in carrying out its oversight function under Article 20A of the 1945 Constitution. For this right to be exercised, a clear regulation or a more detailed regulation in the form of a law is needed to regulate the duties, functions, powers, rights, and obligations of the DPR under the provisions of the 1945 Constitution, Article 20A, paragraph (4). Thus, Law No. 27/2009 was made, which was later amended into Law No. 17/2014 on the MPR, DPR, DPD, and DPRD.

According to Article 199 paragraph (1) of Law No. 17/2014, the right of inquiry needs to be proposed by at least twenty-five (25) members and more than one faction, and is accompanied by a document containing at least the policy material of the implementation of the law to be investigated and the reasons for the investigation. The object of the right of inquiry under Article 79 paragraph (3) states that:

“The right of inquiry as referred to in paragraph (1) letter b is the right of the House of Representatives to investigate the implementation of a law and/or government policy relating to important, strategic, and broad impacts on the life of society, nation, and state that allegedly violates laws and regulations.”

Furthermore, Article 79 paragraph (3) of Law No. 17/2014 also explains that:

“The implementation of a law and/or government policy can be in the form of a policy implemented by the President, Vice President, state minister, TNI commander, Chief of Police, Attorney General, or head of a non-ministerial government institution.”

Implementation of the Right of Inquiry of the House of Representatives of the Republic of Indonesia in Controlling Government Policies for the Realization of the Government System

Based on recent developments, Indonesia has now entered a reform era, where the constitutional system has shifted from the previous system governed by the 1945 Constitution of the Republic of Indonesia. Along with this, the separation of powers between the executive and the legislature is becoming increasingly firm. The relationship between the state and the people in a country is usually represented by the government, while the interests of the people are institutionalized through parliament. The separation of powers is carried out in the hope of creating a system of supervision and balance in the division of powers so that the President, in exercising his powers, can be examined by the House of Representatives as an institution representing the interests of the people. This supervision is carried out not only after activities or policies are issued but also beforehand. The House of Representatives has the authority to provide input, as explained in Article 13 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that, *“In appointing ambassadors, the President shall pay attention to the considerations of the House of Representatives.”*

The authority of the legislative body, which contains representatives of the people and has the status of a state body. There are three main tasks of the House of Representatives: legislative duties,

budgetary duties, and supervisory duties. These three tasks are closely related and always interconnected with other tasks. One of the tasks of supervision is an activity that aims to ensure that the implementation of the state is carried out by state agencies according to applicable regulations.

When carrying out its duties, the House of Representatives is responsible for monitoring the course of government by exercising its rights and obligations. The House of Representatives has several rights, such as the right of interpellation, the right of inquiry, and the right to express an opinion. When performing its duties, the right of inquiry of the House of Representatives becomes an institutional right. The right of inquiry was previously regulated in Article 70 of the Provisional Constitution Number 7 of 1950 (LN 1950-56, d.u. 15 August 1950), which states that, "*The House of Representatives has the right to investigate (enquete), in accordance with the provisions stipulated by law.*"

In addition to the rights stipulated in other articles of the constitution, each member of the House of Representatives has the right to ask questions, submit proposals, and voice opinions, as well as immunity. The further rights of the House of Representatives and its members are regulated by law. The Constitution explicitly explains the role of the House of Representatives vis-à-vis the government, resulting in a real shift in power, both in the field of legislation and in the field of political supervision related to government policy. Therefore, the House of Representatives, by its duties and authorities in the 1945 Constitution of the Republic of Indonesia, aims to limit the power of the government so that it does not act arbitrarily. As a legislative body, the people elect their representatives to sit in government.

The implementation of the right of inquiry in the state structure of the Republic of Indonesia after the second modification of the 1945 Constitution of the Republic of Indonesia is inseparable from the growth of life and political changes. In the procedure for the implementation of the right of inquiry, there are two legal guidelines, namely Article 1 paragraph (1) of Law of the Republic of Indonesia Number 6 of 1954 concerning the Determination of the Right of Inquiry of the House of Representatives, which states, "*The proposal to hold an inquiry is submitted in writing by at least 10 members of the House of Representatives.*"

Article 199 paragraph (2) of Law of the Republic of Indonesia Number 42 of 2014 concerning the modification of Law of the Republic of Indonesia Number 17 of 2014 concerning the People's Consultative Assembly, the House of Representatives, the Regional Representatives Council, and the Regional Representatives Council, which states, "*The right of inquiry as referred to in Article 79 paragraph (1) letter b is proposed by at least 25 members of the House of Representatives and more than 1 faction.*"

CONCLUSION

The right of inquiry of the House of Representatives is the right to know the state of the government, both to know the implementation of the government and to seek materials in formulating policies or to provide approval or consideration regarding a person, situation, or event. The right of inquiry is not a right to discover the possibility of a criminal offense or a case. Basically, the right of inquiry is a constitutional right of the House of Representatives in the constitutional system of the Republic of Indonesia as part of carrying out the function of checks and balances on the executive. The legal effect of the application of the right of inquiry is that the House of Representatives can exercise the right to express an opinion. Although the right of inquiry is recognized by the Constitution, its implementation must be governed by the existing provisions. The inaccuracy of the conception of the right of inquiry has occurred in the KPK case and also when the House of Representatives investigated Bullogate, the BLBI case, and others. This can distort the functions of the House of Representatives in the formation of laws (legislation) or supervision of the implementation of government duties and state expenditures, including the appointment of public officials in the form of approval or rejection or in the form of consideration by the House of Representatives. Therefore, if these functions are to be carried out effectively, dynamically, and reasonably, there must be a strong desire from members of the House of Representatives to reposition themselves as representatives of the people who aspire to serve the interests of all the people they represent.

Formally and procedurally, the right of inquiry of the House of Representatives is clearly regulated in Articles 199-209, where one of the formal or procedural requirements that must be met is that all factions in the parliament are involved in the right of inquiry by deploying one permanent representative to each faction in the inquiry committee. Because the right of inquiry is the right of the House of Representatives as an institution, not the right of each member of the House of Representatives, this requirement must be met.

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