

Execution Of Legislative Power Of The People's Representative Council Of The Republic Of Indonesia And Legal Reform In Indonesia

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ABSTRACT

The legislative function of the People's Representative Council of the Republic of Indonesia post-amendment of the 1945 Constitution cannot be optimally executed, as can be seen in both quantity and quality aspects of the legislative products produced. Several factors contribute to the fact; first, legislative planning through the National Legislation Program has not been carried out optimally because bills are not supported by conceptional academic studies; second, ineffective debate and discussion regarding bills; third, support from the professional world as a support system of the legislative body that is not yet optimal; fourth, political commitment from parties and factions, apparatus, and members of the People's Representative Council as the 'Law Center'. These obstacles have caused the important role of the People's Representative Council as a state institution cannot be optimally executed in the effort of national legal reform.

Keywords: Optimization, power, legislation.

A. INTRODUCTION

Amendments to the 1945 Constitution of the Republic of Indonesia has placed the People's Representative Council as the institution that exercises legislative power (Manan & Harijanti, 2005). Article 20 paragraph (1) of the 1945 Constitution of the Republic of Indonesia shows a shift of legislative power from the executive to the legislative branch of the government (Asshidiqie, 2006). Although, Article 5 paragraph (1) still gives the President the right to recommend bills to the People's Representative Council. The shift of legislative function is an effort to reposition the footing of the People's

Representative Council to have more power, especially in legislation to help legal developments in Indonesia (Asshidiqie, 2004). According to Saldi Isra, such a shift of legislative power is an effort to 'purify' the presidential government system as adopted by the Indonesian constitutional system post-amendment of the 1945 Constitution (Isra, 2010). However, the execution of the legislative function of the People's Representative Council has not been in accordance with what the Constitution mandated. The legislative function of the People's Representative Council has not been optimally executed because national

legislation program targets have never been accomplished and many laws have been challenged through judicial review at the Constitutional Court. National legislation program targets and judicial review challenges are not the only cause to the suboptimal execution of the legislative function of the People's Representative Council, but more importantly, there are philosophical issues. When the People's Representative Council as an institution that is mandated to create and enact laws through its legislative function, but it does not execute its mandate and function, then it will have consequences to the basic philosophy of the state (philosophical grondslag), which is Pancasila (Latief, 2012). From legal perspective, Pancasila does not only serve as the state ideology, but it is the spirit of execution of the law in lives within a state and a nation. (Shidarta, 2008). In such context, the national legislation system places Pancasila as the mother of the source of all written laws. (Darmodiharjo & Shidarta, 1996)

Another dilemma that arises when the execution of the legislative function of the People's Representative Council is done sub-optimally is the contradiction between the philosophical objective of the formation of the People's Representative Council as an institution that represents people, and its formation is inherently meant to strive for the interests of the people. The intention of giving legislative function to the People's Representative Council was to form and reform the law, in accordance with the legal needs of the people, and to replace and reform the colonial legal system that no longer fitted the soul of the nation (*volksgeist*) and fulfill the legal needs of the people (Soekanto, 2015). This study aims at finding facts on the execution of the legislative function of the People's Representative Council of the Republic of Indonesia, in connection with the effort to reform the national legal system.

B. METHODOLOGY

This study is an empirical-normative research that is backed with socio-legal research. Normative law research is conducted by using statute approach (Muhammad, 2004), comparative study (Marzuki, 2008), historical

approach (Wiradipradja, 2015), as well as conceptual approach.

C. ANALYSIS

Inherently, the legislative function of the People's Representative Council is not the execution of the principle of sovereignty of the people. However, there is correlation between people's sovereignty and the execution of the legislative function by people's representative institutions. People's representative institutions are given crucial constitutional power and authority, which is legislative power. John Locke Argues that legislative power is the authority to make laws and order society to achieve the primary purpose of government: the protection of individual rights (Knight II, 2019). According to Vattel, there is close interrelationship between the concept of sovereignty and legislative power. Vattel argues that one of the most essential parts of the society is to enact laws and regulations to regulate their lives, where the people have that sovereignty, and this sovereignty is called legislative power. Vattel also argues "it essentially belongs to the society to make laws both in relation to the manner in which it desires to be governed, and to the conduct of the citizens: this is called the legislative power" (Knight II, 2019). The legislative power of the parliament to enact bills into laws that was given by the constitution is a form of the execution of the people's sovereignty. It is the people who are sovereign in determining the content and form of the law of the state, especially if the law regulates matters relating to limiting human rights and taxes. It is the legislative power of the parliament that can limit people's freedom of human rights and property rights. Therefore, the provisions of legal sanctions that contain criminal and tax sanctions are usually regulated in laws and regulations that require parliamentary authority or are made and enacted by parliament in the form of laws and regional regulations (Soeprapto & Indrati, 2007, p. 157).

A constitutional law expert who also served as a judge at the Constitutional Court of the Republic of Indonesia, Maria Farida Indriati

(Soeprapto & Indrati, 2007, p. 200), stated that legislative power cannot be separated from the people's sovereignty. The form of people's sovereignty in constitutional law is embodied in the shape of procedural legislation and substantive legislation. First, procedural aspect. This aspect is utilized as a framework because people's sovereignty as an idea sits at the level of philosophical thought. Second, substantive aspect. This aspect is essential considering that procedural aspect may put aside the significance of the idea of people's sovereignty, which is how to listen to what the people, whom the highest sovereignty is sourced from, truly need. Often times, in the name of procedural compliance, basic rights of the people are ignored. The tools to fence off the substantive aspects of people's sovereignty are the recognition and the existence of mechanisms to protect, obtain, and encourage the fulfillment of human rights. In subsequent developments, human rights also include civil and political rights, economic, social, and cultural rights, as well as people's welfare (Susanti, 2016). Jimly Asshidiqie (Asshidiqie, Perihal Undang-Undang, 2006, p. 11) states that the People's Representative Council's legislative authority is based on the sovereignty of the people which is carried out by the legislative body. The authority to make and regulate is attached to the legislative power. The legislative authority is exclusive to make laws that bind and limit the freedom of individual citizens. State legislative institution is the only state institution that has the legitimacy to establish legal norms by enacting laws. (Asshidiqie, Perihal Undang-Undang, 2006, p. 12). Other state institutions can only exercise legislative power if the authority to make regulations is mandated and legitimized by the legislature through laws it has enacted. The People's Representative Council is then considered as the owner of the main legislative power (primary legislator) while state institutions that carry out the legislative power ordered by the legislature is the delegated legislator. (Asshidiqie, Perihal Undang-Undang, 2006, pp. 375 - 376)

However, the implementation of the legislative functions of the People's Representative Council after the amendment to

the 1945 Constitution of the Republic of Indonesia cannot be optimally implemented, both in terms of quantity and quality of the laws produced. Several factors contribute to such conditions; first, legislation planning through the National Legislation Program is not carried out optimally because the proposed bills are not supported by conceptional study and academic script; second, ineffective debate and discussion regarding bills; third, support from the professional world as a support system of the legislative body that is not yet optimal; fourth, political commitment from parties and factions, apparatus, and members of the People's Representative Council to the execution of the legislative function is still inadequate, and; fifth, inconsistency of legal policy to turn the legislative body of the People's Representative Council as a 'Law Center'. Such hindrances cause the role of the People's Representative council as a state institution in national legal reform cannot be executed optimally.

Therefore, the concept of strengthening of the legislative function of the People Representative Council can be done by employing a concept that is integral-comprehensive and sustainable. Such concept is supported by several components, namely; first, consistency of legal policy in strengthening the execution of legislative function; second, an effective lawmaking mechanism; third, strengthening the support from the professional field, and; fourth, strengthening public commitment and the implementation of legislative function commitments. The concept of sustainable strengthening of the implementation of the legislative function means that it is carried out consistently by the People's Representative Council, not only for 5 (five) years or for a membership period, but it is implemented continuously for 20 (twenty) years so that it is in line with the national legal reforms that have been mandated.

D. CONCLUSION

The essence of strengthening the legislative function of the People's Representative Council of the Republic of Indonesia through the amendment of the 1945 Constitution of the

Republic of Indonesia, specifically the amendment of Article 20 paragraph (1) is a form of purification of the implementation of the principle of people's sovereignty and the principle of the rule of law. This purification of the principle of people's sovereignty in the formation of laws is carried out by placing the People's Representative Council as the main state institution forming and enacting laws (primary legislation). Strengthening the legislative function of the People's Representative Council is also the implementation of the rule of law principle as recognized by Article 2 paragraph (1) of the 1945 Constitution which makes the power of the People's Representative Council in creating laws as an instrument of national legal reform.

Therefore, factors that hinder the implementation of the legislative functions of the People's Representative Council post-amendment to the 1945 Constitution of the Republic of Indonesia cannot be optimally implemented, both in terms of quantity and quality of the laws produced. The People's Representative Council should be able to mitigate these factors through consistency legal policies, both at the level of legal products produced by the legislative, as well as the People's Representative Council Code of Conduct. What is also crucial is the implementation of political commitment of the People's Representative Council as an institution to carry put its legislative function optimally, through personal commitment of members, apparatus, and factions of political parties of the People's Representative Council. It should also design a long-term strengthening of the legislative function policy blueprint in order to maintain consistency and sustainability of the implementation of its legislative function, and also to keep the strengthening policy in line with the national legal reform policy that has been set in place by the President and the People's Representative Council in the Long-Term Development Plant Law.

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