

## THE AUTHORITY OF THE PEOPLE'S CONSULTATIVE ASSEMBLY IN MAKING OUTWARD REGULATING PROVISIONS AFTER THE AMENDMENT OF THE 1945 CONSTITUTION

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### ABSTRACT

**Purpose:** Along with the reform era, amendments to the 1945 Constitution were carried out which made the MPR a state institution that was equal in position with other state institutions, no longer the incarnation of all Indonesian people who exercised fully people's sovereignty. The People's Consultative Assembly (MPR) as a representative institution has "as if" lost its authority to make provisions that are externally regulating. For this reason, the author conducted research on the Authority of the People's Consultative Assembly in Making Provisions that Regulate Outwardly After the Amendment of the 1945 Constitution.

**Theoretical Reference:** To be able to analyze related issues under study, the author uses Authority Theory as a tool for analyzing existing data.

**Method:** The research was conducted using normative juridical research with a statutory approach. Therefore, the data used are secondary data sourced from primary, secondary and tertiary legal materials.

**Results and Conclusion:** From the results of the research conducted, it was concluded that the MPR still has the authority to make provisions that are regulatory outward in nature that are recognized for their existence and have binding legal force as long as they are made on the basis of higher laws and regulations or based on their authority, as stipulated in Article 8 of the Law on the Establishment of Laws and Regulations.

**Implications of Research:** Therefore, the MPR should use this authority to make interpretations of constitutional norms as a reference or reference in examining the Law against the Constitution and references for state institutions in carrying out their duties and authorities derived from the 1945 Constitution.

**Originality/Value:** Until this research was conducted, there had been no research that specifically discussed the authority of the MPR in making regulations that regulate exit based on the provisions of Article 8 of the Law on the Establishment of Legislative Regulations.

**Keywords:** authority, people's consultative assembly, mpr decrees, 1945 constitution.

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## A AUTORIDADE DA ASSEMBLEIA CONSULTIVA POPULAR NA ELABORAÇÃO DE DISPOSIÇÕES REGULAMENTARES EXTERNAS APÓS A ALTERAÇÃO DA CONSTITUIÇÃO DE 1945

### RESUMO

**Propósito:** Juntamente com a era da reforma, foram feitas alterações à Constituição de 1945 que fizeram do MPR uma instituição estatal que era igual em posição com outras instituições estatais, não mais a encarnação de todo o povo indonésio que exerceu plenamente a soberania do povo. A Assembleia Consultiva do Povo (MPR), como instituição representativa, perdeu "como se" a sua autoridade para fazer provisões que são reguladas externamente. Por esta razão, o autor realizou uma pesquisa sobre a Autoridade da Assembleia Consultiva Popular na elaboração de disposições que regulam externamente após a emenda da Constituição de 1945. Referência Teórica: Para ser capaz de analisar questões relacionadas em estudo, o autor usa a Teoria da Autoridade como ferramenta para analisar dados existentes.

**Método:** A pesquisa foi realizada utilizando pesquisa jurídica normativa com abordagem estatutária. Por conseguinte, os dados utilizados são dados secundários provenientes de materiais jurídicos primários, secundários e terciários.

**Resultados e Conclusão:** A partir dos resultados da pesquisa realizada, concluiu-se que a MPR ainda tem autoridade para fazer disposições de natureza regulatória externa que sejam reconhecidas por sua existência e tenham força jurídica vinculativa, desde que sejam feitas com base em leis e regulamentos mais elevados ou com base em sua autoridade, conforme estipulado no artigo 8 da Lei sobre o Estabelecimento de Leis e Regulamentos.

**Implicações da Pesquisa:** Portanto, o MPR deve usar essa autoridade para fazer interpretações de normas constitucionais como referência ou referência na análise da Lei contra a Constituição e referências para as instituições estatais no desempenho de suas funções e autoridades derivadas da Constituição de 1945.

**Originalidade/Valor:** Até que esta pesquisa fosse realizada, não havia nenhuma pesquisa que discutisse especificamente a autoridade da TPM na elaboração de regulamentos que regulassem a saída com base no disposto no artigo 8 da Lei sobre o Estabelecimento de Regulamentos Legislativos.

**Palavras-chave:** autoridade, assembleia consultiva popular, decretos do mpr, constituição de 1945.

## LA AUTORIDAD DE LA ASAMBLEA CONSULTIVA POPULAR PARA ADOPTAR DISPOSICIONES DE REGLAMENTACIÓN EXTERNA DESPUÉS DE LA ENMIENDA DE LA CONSTITUCIÓN DE 1945

### RESUMEN

**Propósito:** Junto con la era de la reforma, se llevaron a cabo reformas a la Constitución de 1945 que convirtieron al MPR en una institución estatal que estaba en igualdad de condiciones con otras instituciones estatales, y ya no era la encarnación de todo el pueblo indonesio que ejercía plenamente la soberanía del pueblo. La Asamblea Consultiva del Pueblo, como institución representativa, ha perdido "como si" su autoridad para adoptar disposiciones que regulan externamente. Por esta razón, el autor llevó a cabo una investigación sobre la autoridad de la Asamblea Consultiva Popular en la adopción de disposiciones que regulan externamente después de la enmienda de la Constitución de 1945.

**Referencia Teórica:** Para poder analizar temas relacionados en estudio, el autor utiliza la Teoría de la Autoridad como herramienta para analizar datos existentes.



**Método:** La investigación se llevó a cabo utilizando la investigación jurídica normativa con un enfoque estatutario. Por lo tanto, los datos utilizados son datos secundarios procedentes de materiales jurídicos primarios, secundarios y terciarios.

**Resultados y Conclusión:** A partir de los resultados de la investigación realizada, se concluyó que el MPR aún tiene la facultad de dictar disposiciones de carácter normativo externo que se reconozcan por su existencia y tengan fuerza legal vinculante siempre y cuando se realicen sobre la base de leyes y reglamentos superiores o en base a su autoridad, como lo estipula el artículo 8 de la Ley de Establecimiento de Leyes y Reglamentos.

**Implicaciones de la investigación:** Por lo tanto, el MPR debe utilizar esta autoridad para hacer interpretaciones de las normas constitucionales como referencia o referencia en el examen de la Ley contra la Constitución y referencias para las instituciones del Estado en el desempeño de sus deberes y autoridades derivadas de la Constitución de 1945.

**Originalidad/Valor:** Hasta que se realizó esta investigación, no había habido ninguna investigación que específicamente discutiera la autoridad del MPR en hacer regulaciones que regulen la salida basadas en las disposiciones del Artículo 8 de la Ley de Establecimiento de Regulaciones Legislativas.

**Palabras clave:** autoridad, asamblea consultiva popular, decretos de rmp, constitución de 1945.

## 1 INTRODUCTION

The People's Consultative Assembly of the Republic of Indonesia (MPR) is a state institution that has a long record of democracy in Indonesia. Born since Indonesia's independence, until now the MPR has experienced developments or changes related to its position and authority. There were at least 3 MPR duties contained in the 1945 Constitution (1945 Constitution) before the amendment, namely in Article 3 which reads "The People's Consultative Assembly establishes the Constitution and the Outline of the State Direction", continued in Article 6 which reads "The President and Vice President are elected by the People's Consultative Assembly by majority vote" and finally, namely the authority to amend the Basic Law as mentioned in the provisions of Article 37<sup>2</sup>.

In the period before the amendment of the 1945 Constitution, the MPR was the highest institution in Indonesia which was considered the incarnation of the people who exercised full people's sovereignty, as stated in Article 1 paragraph (2) of the 1945 Constitution. This is because the President in running the government must submit to and account for the mandate given by the People's Consultative Assembly through the State Guidelines (GBHN). With this authority, it is interpreted that the MPR at that time can make regulatory provisions. But in the New Order era, this mechanism became less than

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<sup>2</sup> Faculty of Law, Mulawarman University, Study of the *Arrangement of Authorities and Duties of the MPR*, MPR RI Assessment Board, 2020, p.2.



ideal until finally there was a demand to be replaced and a more open and accountable system was created<sup>3</sup>.

After the amendment of the 1945 Constitution, the MPR is no longer the highest state institution where the position is aligned with other state institutions, such as the People's Representative Council (DPR), Regional Representative Council (DPD), Supreme Court, and a number of other state institutions formed after the amendment of the 1945 Constitution. The loss of the MPR's authority to determine the State Guidelines (GBHN) seems to place the MPR as an emergency institution that will only work in the event of proposed amendments to the Basic Law, appoint the President and Vice President, and elect the President and Vice President in the event of a vacancy. In addition, the authority of the People's Consultative Assembly in making and forming Decrees does not exist for the reason of strengthening the presidential system, where the President and Vice President are no longer the MPR officials and have no line of accountability to the MPR in exercising government power<sup>4</sup>.

After the amendment of the 1945 Constitution, Indonesia had an additional people's representative institution, namely the Regional Representative Council (*Regional Representation*). Therefore, it can be said that the model of the Indonesian parliamentary institution is "as if" it is *tricameral* consisting of the DPR, DPD, and MPR. Article 2 paragraph (1) of the 1945 Constitution confirms that: The People's Consultative Assembly consists of members of the People's Representative Council and members of the Regional Representative Council elected through general elections and further regulated by law.

After the amendment of the 1945 Constitution, there was no mention of the highest institution of the state. Both the People's Consultative Assembly and the House of Representatives, DPD, the President and Vice President, the Constitutional Court, the Supreme Court, and the Audit Board are all equal and equal. This change in the position of the People's Consultative Assembly is further affirmed in Law Number 2 of 2018 concerning the People's Consultative Assembly, People's Representative Council, Regional Representative Council, and Regional People's Representative Council (MD3

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<sup>3</sup> *Ibid*, p.3.

<sup>4</sup> Siringoringo, P. 2019. The authority of the People's Consultative Assembly according to Law Number 2 of 2018 concerning MPR, DPR, DPRD, and DPD. Thing. 11.



Law) and its amendments in Article 3 which read: "The MPR is a people's consultative institution whose position is a state institution"<sup>5</sup>.

The constitution is a product of the political process. Often in the reality that occurred in the making of the 1945 Constitution, the elements of political interest are thicker than the aims and objectives of a Constitution that was held. The meaning of limitation of power by the constitution sometimes does not work well because the arrangements contained in the Constitution do not provide regulations or do not provide appropriate and representative arrangements<sup>6</sup>.

In fact, as a state institution, the MPR should also have comprehensive authority that is not limited by certain areas of life. The People's Consultative Assembly (MPR), which is not authorized to make regulatory decrees, but is limited to only having situational or periodic duties and authorities as stipulated in Article 3 of the 1945 Constitution after amendment.

Based on the description above, does the MPR really no longer have the authority to make legal products that are regulatory (MPR Decrees or other designations that are regulatory outward)? For this reason, this research is conducted under the title **"The Authority of the People's Consultative Assembly in Making Outward Regulatory Provisions After the Amendment of the 1945 Constitution"**, which will discuss the history of the formation of the People's Consultative Assembly; the position and authority of the People's Consultative Assembly, specifically in making provisions or other designations that are regulatory to the outside.

This research was conducted using normative legal research methods, namely legal research methods that focus on analyzing and interpreting existing legal rules with a *statutory approach method (statute approach)* and using authority theory in analyzing data, namely secondary data obtained from primary legal materials, secondary legal materials and tertiary legal materials.

## 2 METHOD

Indroharto<sup>7</sup> defined authority in the juridical sense without distinguishing it from the term authority, namely: "Authority is an ability given by applicable laws and

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<sup>5</sup> *Ibid*, p. 15.

<sup>6</sup> Rochmawanto, M. (2013). Juridical review of the MPR's authority in amending the Constitution. *Independent Journal*, 1(1). p.40.

<sup>7</sup> Indroharto, *General Principles of Good Governance*, in Paulus Efendie Lotulung, *Kumpulan Kertas Fundamentals of Good Governance*, Citra Aditya Bakti, Bandung: 1994, p. 65.



regulations to cause legal consequences". In Black's Law Dictionary<sup>8</sup>, the term found is "*right to exercise powers; to implement and enforce laws; to exact obedience; to command; to judge; control over; jurisdiction; and often synonymous with power*". Indroharto<sup>9</sup> stated three kinds of authority derived from laws and regulations, namely, including *attribution; delegation; and mandates*. Attribution is the granting of authority by lawmakers themselves to an organ of government, both existing and new. Delegation is the transfer of authority possessed by a government organ to another organ. Mandate is authority obtained by a delegation of authority from state organs to other state organs.

Bagir Manan<sup>10</sup> stated that authority in legal terms is not the same as power (*macht*) because power only describes the right to do or not to do. While authority means rights and obligations (*rechten en plichten*), where right contains the meaning of power to self-regulate (*zelfregelen*) and self-manage (*zelfbesturen*) and obligation (*horizontally*) means *the power to administer government* properly and (*vertically*) means the power to run the government in an orderly bond of state government as a whole. Authority in the language of law is not the same as power. Power simply describes the right to do or not to do. In law, authority at once means rights and obligations or *rechten en plichten*<sup>11</sup>.

While Philip M. Hadjon<sup>12</sup> divided the means of obtaining authority over events, namely: attribution; and delegation and sometimes also mandates. Attribution is the authority to make decisions (*besluit*) that are directly sourced to the Law in a material sense. Attribution is also said to be a normal way of obtaining governmental authority. Delegation is defined as the transfer of authority to make *besluit* by government officials (State Administration Officials) to other parties. Mandate is defined as a delegation of authority to subordinates. As a concept of public law, authority consists of at least three components, namely: influence; legal basis; and legal conformity<sup>13</sup>.

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<sup>8</sup> Henry Campbell Black, *Black's Law Dictionary*, West Publishing Co., Amerika Serikat: 1978, hal. 121.

<sup>9</sup> Ridwan HR, *State Administration Law*, RajaGrafindo Persada, Jakarta: 2008, p. 104.

<sup>10</sup> Bagir Manan in Johanis Leatemia, *Legal Regulation of Regional Authority in the Archipelago Seen from the Principle of the Island State*, Journal of the Constitution Vol. III No. 1 (2011), p. 8-9.

<sup>11</sup> Bagir Manan, *Provincial, Regency and City Authority in the Framework of Regional Autonomy*, Faculty of Law Unpad, Bandung: 2000, p. 1-2.

<sup>12</sup> Philipus M. Hadjon, *"On Government Authority (Bestuurbevoegdheid)"*, Pro Justitia Year XVI Number 1 January 1998, p. 90.

<sup>13</sup> *Ibid.*, p. 90.



### 3 RESULT AND DISCUSSION

#### 3.1 HISTORY OF THE FORMATION OF THE PEOPLE'S CONSULTATIVE ASSEMBLY

The establishment of the MPR institution has been initiated by the founding fathers of the nation when preparing for Indonesian independence as a form of embodiment of people's aspirations in the representative system. The first time was made by Karno, in his speech on June 1, 1945. Then Muhammad Yamin at the second session of BPUPKI<sup>14</sup>, said that in the Constitution will be drafted later in the presence of the Head of State and Deputy Head of State there is a Consultative Assembly for all Indonesian people, which is the highest power in the independent Republic of Indonesia. Because the Consultative Assembly is the representative of all the people, the President is also responsible to this Assembly<sup>15</sup>. In the BPUPKI meeting on July 15, 1945, Soepomo proposed a formula "Sovereignty is in the hands of the people and is carried out entirely by the MPR." As the incarnation of the whole people, whose members consist of all people's representatives, regional representatives, and deputy groups, the Assembly has the authority to appoint the Head of State (President) and Vice President<sup>16</sup>. The conception of the MPR was then ratified by BPUPKI on July 16, 1945.

The provisions of Article IV of the Transitional Rules of the 1945 Constitution state: Before the MPR, DPR and Supreme Advisory Council were established according to this Constitution, all their powers were exercised by the President with the assistance of a National Committee. With Vice Presidential Declaration Number X, the Central Indonesian National Committee (KNIP) was formed which was assigned the task of legislative power and participated in determining the Outline of the State Direction. This is the first page of the history of the implementation of the duties and authorities of the MPR, namely the formation of the KNIP as the embryo of the MPR.

During the enactment of the RIS Constitution (1949-1950) and the Provisional Constitution (1950-1959), the MPR institution was not known in the Indonesian constitutional configuration. The successor to the People's Consultative Assembly (MPR) as an institution that specifically carries out the function of making the Basic Law, a

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<sup>14</sup> The Second Session of BPUPKI was held on July 11, 1945, at the *Tyuuoo Sangi-In* Building (now the Ministry of Foreign Affairs) chaired by Dr. K.R.T. Radjiman Wedyodiningrat, with the agenda of Preparation of the Draft Constitution and the Establishment of the Basic Law Drafting Committee.

<sup>15</sup> Minutes of the Session of the Investigating Board for Preparatory Efforts for Indonesian Independence (BPUPKI) Preparatory Committee for Indonesian Independence (PPKI), May 28, 1945-August 22, 1945, State Secretariat of the Republic of Indonesia, Jakarta: 1998, p. 201-202.

<sup>16</sup> *Ibid.*, p. 293-294.



Constituent Institution was formed which was separated from the legislative function to make ordinary laws<sup>17</sup>. On 15 December 1955 elections were held to elect members of the Constituent Assembly who were charged with the task of drafting the Constitution. However, the Constituent Assembly, which was originally expected to enact the Basic Law, turned out to be deadlocked. Then on July 5, 1959, President Sukarno issued a Presidential Decree containing the dissolution of the Constituent Assembly, the re-establishment of the 1945 NRI Constitution and the establishment of the Provisional People's Consultative Assembly (MPRS) and the Temporary Supreme Advisory Council (DPAS). And to carry out the establishment of the MPRS, on July 22, 1959 the President issued Presidential Decree Number 2 of 1959 which regulated the establishment of the MPRS.

After the G-30-S/PKI rebellion, steps were taken to purify MPRS membership from PKI elements by issuing Law Number 10 of 1966 concerning the Position of MPRS and DPR-GR before the General Election, where it was regulated how to fill MPR membership in three ways, namely: through general elections, through stratified elections, and through appointments<sup>18</sup>. Then a general election was held in 1971 which elected members of the DPR (*ex officio* members of the MPR). Thus, the MPR was formed with membership sourced from general elections (DPR members), multilevel elections (Regional Representatives) and the results of appointments / appointments (Group Representatives). Where the position of the People's Consultative Assembly is as the highest institution of the state, as the full executor of people's sovereignty.

From the beginning until the reform era, before the amendment of the 1945 Constitution until the MPR results of the 1999 General Election were still the highest state institution. The MPR for the period 1999-2004 made a fundamental breakthrough by amending the 1945 Constitution 4 (four) times in 4 (four) consecutive years. The MPR becomes a state institution that is equal in position with other state institutions, no longer the incarnation of all Indonesian people who exercise people's sovereignty.

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<sup>17</sup> Jimly Asshiddiqie, *Constitutional Law and the Pillars of Democracy, Fragments of Legal Thought, Media and Human Rights*, Secretariat General and Registrar of the Constitutional Court of the Republic of Indonesia, Jakarta: 2006, p. 19.

<sup>18</sup> Eddy Purnama, *The State of People's Sovereignty, Analysis of the Indonesian Government System and Its Comparison with Other Countries*, Nusa Media, Bandung: 2007, p. 186.



### 3.2 POSITION AND AUTHORITY OF THE PEOPLE'S CONSULTATIVE ASSEMBLY

Since the amendment of the 1945 Constitution, the position of the People's Consultative Assembly (MPR) has changed to a state institution that has an equal position with other state institutions. The authority of the People's Consultative Assembly (MPR) has changed to only amend and enact the Constitution, appoint the President and Vice President, and dismiss the President and/or Vice President during their term of office according to the Constitution. The MPR is categorized as a people's representative institution, because MPR members consist of DPR members and DPD members elected through general elections, as stipulated in Article 2 of the 1945 Constitution after the amendment. Therefore, the MPR can be classified as a legislative institution. However, the MPR is no longer authorized to make MPR Decrees that are outward regulating (in accordance with the provisions of Article 7 of Law Number 12 of 2011 and its amendments). It's just that the MPR has the authority to amend and enact the Basic Law.

Whereas before the 1945 Constitutional Amendment the authority of the People's Consultative Assembly was stated in the 1945 Constitution and also in the MPR Decrees, namely in Article 3 and Article 6 of the 1945 Constitution, as follows: Establishing the Constitution; establish the outlines of the direction of the country; Elect (and Appoint) the President and Vice President<sup>19</sup>. In MPR Decree No. 1/MPR/1983, the authority of the MPR is not only that. The same is also regulated in the provisions of Article 3 of MPR MPR Decree No 1 / MPR / 1983. In addition to these authorities, there are nine MPR authorities as stipulated in Article 4 of MPR MPR Decree No 1 / MPR / 1983, namely<sup>20</sup>:

1. Make decisions that cannot be revoked by other state institutions, including the establishment of State Guidelines whose implementation is assigned to the President/Mandataris.
2. Provide an interpretive explanation of the decisions of the Assembly.
3. Complete elections and subsequently appoint the President and Vice President.
4. Hold the President/Mandataris accountable for the implementation of the State Guidelines and assess such accountability.

<sup>19</sup> Sri Soemantri, *About State Institutions According to the 1945 Constitution*, PT. Citra Aditya Bakti, Bandung: 1983, p. 84.

<sup>20</sup> *Ibid*, p. 95.



5. Revoke the mandate and dismiss the President and dismiss the President during his term of office if the President/Mandataris seriously violates the State Direction and/or the Constitution.
6. change the basic law.
7. Establish the Rules of Order of the Assembly.
8. Appoint the Leaders of the Assembly elected from and by the members.
9. Take/give decisions against members who violate members' oaths/promises.

The duties and authority of the People's Consultative Assembly (MPR) did not diminish much after the amendment of the 1945 Constitution, but its impact was very large on the institution of the People's Consultative Assembly. The duties of the People's Consultative Assembly after the amendment of the 1945 Constitution were:

1. The MPR appoints the President and/or Vice President (Article 3 paragraph 2 of the 1945 Constitution).
2. Review the material and legal status of MPRS Decrees and MPR Decrees for decision at the MPR session in 2003 (Article I of the Additional Rules of the 1945 Constitution).

While the authority of the People's Consultative Assembly in the 1945 Constitution is as follows:

1. The MPR has the authority to amend and enact the 1945 NRI Constitution (Article 3 paragraph 1 of the 1945 Constitution).
2. The MPR can "only" dismiss the President and/or Vice President during his term of office according to the Constitution (Article 3 paragraph 3 of the 1945 Constitution).
3. Elect a successor President or Vice President until the proper election of the President and/or Vice President (Article 8 paragraph 3 of the 1945 Constitution)<sup>21</sup>.

After the amendment of the 1945 Constitution, the task of establishing the Constitution was still included in the authority of the People's Consultative Assembly. However, there is no regulation that requires the People's Consultative Assembly (MPR) to make changes or changes to the Constitution, because it is an authority that is the right

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<sup>21</sup> Jimly Asshiddiqie, "Indonesia's Constitutional Structure After the Fourth Amendment to the 1945 Constitution", delivered at the National Symposium held by BPHN and the Ministry of Human Rights, Bali: July 2003, p.9.



and power (to do something).<sup>22</sup> If the MPR feels the need to make (replace) or amend the Constitution, then the MPR can do so and there is no prohibition to do or not to do so.

The authority of the People's Consultative Assembly to dismiss the President and Vice President in the 1945 Constitution after changes must be carried out through a long process and implemented by several state institutions. To dismiss the President must go through the opinion of the DPR which has sought an opinion from the Constitutional Court (Article 7B of the 1945 Constitution amendment).

In the MD3 Law, the MPR has the following duties and authorities:

1. Change and establish the Policy Law;
2. Appoint the President and Vice President based on the results of the general election, in the Plenary Session of the MPR;
3. Decide on the DPR's proposal based on the opinion of the Constitutional Court to dismiss the President and/or Vice President during his term of office after the President and/or Vice President has been given the opportunity to deliver an explanation in the MPR Plenary Session;
4. Appoint the Vice President to become President if the President dies, resigns, is dismissed, or is unable to perform his duties during his term of office;
5. Elect the Vice President from two candidates proposed by the President in the event of a vacancy in the office of Vice President during his term of office not later than sixty days;
6. Elect the President and Vice-President if both cease simultaneously in office, from two packages of candidates for President and Vice President proposed by a political party or combination of political parties whose package of candidates for President and Vice President received the first and second most votes in the previous election, until the expiration of their term not later than thirty days;
7. Establish the MPR's Rules of Conduct and code of ethics.

In the constitutional changes made by the MPR also put the Constitution in the highest position that regulates, determines, limits, and directs how state power is divided into various state institutions in the Indonesian constitutional system, guarantees human rights and the exercise of people's sovereignty by the people themselves, and so on. On that basis, if the 1945 Constitution before the amendment was considered to adhere to the

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<sup>22</sup> WJS Poerwadarminta, *Kamus Besar Indonesian*, Jakarta: Balai Pustaka, 1976, p. 1150.



"MPR System" or "Supremacy of the MPR", then after the amendment the 1945 Constitution was said to adhere to the "Supremacy of the Constitution"<sup>23</sup>. The adoption of "Constitutional Supremacy" in our constitutional system as contained in the 1945 Constitution is a manifestation of the adoption of constitutionalism in our constitution and country. Constitutionalism is an understanding that places the constitution in the highest position in the state, and makes the constitution the first basic guide in regulating and limiting the power and administration of the state. The constitutionalism that we profess is based on the law in accordance with the provisions of Article 1 paragraph (3) of the 1945 Constitution, namely "The State of Indonesia is a state of law".

### 3.3 MPR'S AUTHORITY IN MAKING PROVISIONS THAT ARE EXTERNAL REGULATING

After the amendment of the 1945 Constitution, the MPR was no longer authorized to determine the State Direction Outlines, which had been considered as the basis of the MPR in making MPR Decrees that were outwardly regulating. Even in Law Number 10 of 2004 concerning the Establishment of Laws and Regulations (after the amendment of the 1945 Constitution and after MPR Decree Number 1 of 2003), MPR Provisions are no longer included in the order of laws and regulations recognized in the Indonesian legal system. But then, with the repeal and replacement of Law Number 10 of 2004 concerning the Establishment of Laws and Regulations with Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, the Provisions of the People's Consultative Assembly (MPR) were again recognized in the order of laws and regulations, as the provisions of Article 7 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, which read: paragraph (1): The types and hierarchy of laws and regulations consist of: Constitution of the Republic of Indonesia Year 1945; Decrees of the People's Consultative Assembly; Government Laws/Regulations in Lieu of Law; Government Regulations; Presidential Regulation; Provincial Local Regulations; and District/City Regional Regulations, and paragraph (2): Legal force of laws and regulations in accordance with the hierarchy as referred to in paragraph (1).

The existence of MPRS Provisions and MPR Provisions in the hierarchy of statutory provisions as stipulated in the provisions of Article 7 of Law Number 12 of 2011

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<sup>23</sup> Faculty of Law, Mulawarman University, Study of the *Arrangement of Authorities and Duties of the MPR*, MPR RI Assessment Board, 2020, p. 130.



as amended by Law Number 15 of 2019 and the Second Amendment by Law Number 13 of 2022 (Law on the Establishment of Laws and Regulations), is again recognized. However, the existence of MPRS Decrees and MPR Decrees that are still recognized as valid is limited as referred to in Article 2 and Article 4 of MPR Decree Number I / MPR / 2003 concerning Review of the Material and Legal Status of MPRS Provisions and MPR Decrees from 1960 to 2002. Based on this, currently there are only 2 (two) MPRS/MPR Decrees that are still valid, namely: MPRS Decree Number XXV / MPRS / 1966 concerning the Dissolution of the Indonesian Communist Party , Declaration as a Prohibited Organization in All Regions of the Republic of Indonesia for the Indonesian Communist Party and Prohibition of Any Activities to Spread or Develop Communist Beliefs or Teachings / Marxism-Leninism and MPR Decree Number XVI / MPR / 1998 concerning Political Economy in the Framework Economic Democracy.

The next question is, does the MPR no longer have the authority to make provisions that are regulatory to the outside? So to answer this question, it can be read and understood the provisions of Article 8 of the Law on the Establishment of Laws and Regulations, which reads:

1. Types of laws and regulations other than those referred to in Article 7 paragraph (1) **include regulations stipulated by the MPR**, DPR, DPD, Supreme Court, Constitutional Court, Audit Board, Judicial Commission, Bank Indonesia, Ministers, agencies, institutions, or commissions at the same level established by Law or the Government by order of the Law, Provincial People's Representative Council, Governor, Regency/City People's Representative Council, Regent/Mayor, Village Head or equivalent.
2. The rule of law as referred to in verse (1) is **recognized for its existence and has the power of binding law as long as it is commanded by a higher Law Regulation or formed based on authority.**

From the formulation of Article 8 mentioned above, which states: "*...Types of laws and regulations other than those referred to in Article 7 paragraph (1) **include regulations stipulated by the People's Consultative Assembly... Dst...recognized its existence and has binding legal force as long as ordered by higher laws and regulations or formed based on authority...***", it can be interpreted that the MPR is still authorized to make laws and regulations that fall into the category of provisions of Article 7 paragraph (1) concerning the types and hierarchy of laws and regulations that are



recognized for their existence **and have binding** legal force Provided that the regulation is made **by order of higher laws and regulations or formed by authority**.

What is meant by "higher legislative orders" is as the implementation of the duties and authorities of the People's Consultative Assembly as stipulated in the Constitution as higher laws and regulations and "based on authority" as the theory of authority above is the implementation of certain government affairs in accordance with the provisions of laws and regulations. In this case, the MPR may make provisions that are outward regulating (referring to the provisions of Article 8 which refers to Article 7 paragraph (1) of the Law on the Establishment of Laws and Regulations) as long as it is an order of the Constitution or the exercise of the MPR's authority stipulated in the Constitution. Even in this case, with regard to the duties and authorities of the Constitutional Court in conducting Law review of the Basic Law, the MPR as the maker of the Constitution should be able to make provisions as an interpretation of Constitutional norms for reference or reference in testing the Law against the Basic Law, not the Constitutional Court which provides interpretation of the Constitution. In addition, so that state institutions whose authority originates from the 1945 Constitution do not misinterpret the limits that are their duties and authorities.

#### 4 CONCLUSION

The idea of establishing the MPR institution as a form of embodiment of people's aspirations in a representative system is intended as the highest power as the incarnation of all Indonesian people to fully exercise people's sovereignty, whose members consist of all people's representatives, regional representatives, and group representatives to be able to supervise the implementation of power (government).

However, after the reform era, amendments to the 1945 Constitution were made, making the MPR a state institution that was equal in position with other state institutions, no longer the incarnation of all Indonesian people who exercised full people's sovereignty. Even the People's Consultative Assembly, which is categorized as a people's representative institution, "seems" to lose its authority to make provisions that are outward regulating. However, the MPR has the authority to amend and enact the Basic Law (the highest order in the type and hierarchy of laws and regulations in Indonesia). Indeed, with this authority, referring to the provisions of Article 8 of the Law on the Establishment of Laws and Regulations, the MPR actually still has the authority to make



provisions that are regulatory to the outside that are recognized for their existence and have binding legal force as long as they are made on the basis of orders of higher laws and regulations or on the basis of the authority they have.

This is very important to support the implementation of the duties and authorities of the Constitutional Court in examining the Law against the Basic Law, where the MPR as the maker of the Constitution can make interpretations of Constitutional norms for reference or reference in testing the Law against the Basic Law in the form of provisions that are outwardly regulating and also a reference for state institutions in carrying out their duties and authorities derived from the 1945 Constitution.



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