

## **The Right Of Inquiry of The Representative Council**

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**Abstract:** *The Legal Aspect of Right of Inquiry of The Representative Council and The Process of Launching The Right of Inquiry Normatively, the existence of the right of inquiry is regulated in Article 20, Clause (2) 1945 Constitution, namely: "In implementing its function, The Representative Council has the right of interpellation, the right of inquiry, and the right of opinion. Thus, the right of inquiry which is the right of The Representative Council to investigate the imperative and strategic governmental policies widely affecting the lives of the people in society and state which is assumed incompatible with the rule of laws. In the other words, the right of inquiry is one right of The Representative Council to control the executive policy. It means that legislative is integral part of another government power, namely executive and judicative power in division system of power according to Montesquieu theory which is known as Trias Politica. The aim of power division here is to prevent state power to be held only by one hand or body so it is worried that it can cause power misuse by that organ. The shift of power from executive institution to legislative institution in the period after 1945 Constitution amendment, not become the benchmark that legislative power will be bigger and stronger than executive power, and to judicative power. But, the balance is the final aim of governmental and state system. The Representative Council is High Institution of The State which is formally and informally represents Indonesian people in The Government System of The Republic of Indonesia. The Representative Council does the similar duty as mandated in The Constitution as the body which represents people's interest. The Representative Council as legislative institution in implementing its functions have the rights as regulated and determined in article 19 until article 22B in 1945 Constitution amendment.*

*Keywords: The Right of Inquiry, The Representative Council*

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### **Introduction**

Actualization contain the meaning that all actions done by state institutions should be concrete and real in operational from all values of Pancasila which had been asserted constitutionally as state foundation. In this level, those levels should be able to be outlined in practice and operational by all state institutions which is mentioned in Constitution, which able to give guarantee to improve people welfare and able to realize national ideals as asserted in The Preamble of 1945 Constitution, namely to protect all Indonesian people, to develop public welfare, and to develop nation life, and to implement word order which is based on freedom, eternal peace and social justice. (Dedi Irawan, 2007:3), all state institutions in configuration of state institution in legislative, executive and judicative domains, should be able to actualize the values of Pancasila and all substances of 1945 Constitution, in operating all authorities given by Constitution consistently by holding firmly the check and balance principle. *Second*, all state institutions should be able to maintain, foster, and enhance the quality of integrated coordination in operating all authorities by giving broad opportunity to all public to give participation in formulating all public policies in the form of legislation.

In the other words, all public policies generated started from the process of planning, implementation and supervision, it is public participation which is prioritized by applying responsive principle. *Third*, all state institutions able to maintain, foster, and enhance the

power and defense of nation culture which is believed by all public spheres as the power and soul of nation character which is also Pancasila values, to become main power in formulating all public policies implemented by each state institution. *Forth*, all state institutions must practice the principle of Indonesia as the law state. In this context, the principle and characteristic of the law state need to be actualized. In general, in each State which practice the Law State, at least three basic principles of the law state should be practiced at once, namely supreme of law, equality before the law, and due process of law. In operational practical implementation, those principles should be practiced consistently by setting forward the characteristic of the law state, namely *first*, guarantee the protection of human rights; *second*, guarantee the implementation of free justice power; and *third*, uphold legality principle, which means that both government/state and citizens in taking action must be based on law.

In the context of 1945 Constitution amendment which had been amended by four times as mentioned above, that The People's Consultative Assembly has owned basic agreement, namely not to amend even one sentence of all contents in The Preamble of Constitution. There are five basic agreements which are held firmly in the context of constitution amendment, namely: *First*, not amend The Preamble of 1945 Constitution; *Second*, keep defend The Unitary State of Republic Indonesia; *Third*, assert the presidential system; *Forth*, the explanation of 1945 Constitution which contains normative matters will be included in clauses; and *Fifth*, the amendment will be done by using addendum. The Preamble of 1945 Constitution is not amended, because it contains philosophical base and normative base of all clauses in 1945 Constitution. On the other side, the Preamble also contains *staatsidee* (The General Secretary of Indonesian People's Consultative Assembly, 2006:13).

### **The representative Council**

It can be explained that the function of The Representative Council among others are: a. The Representative Council functions as legislator institution; b. The Representative Council functions as budget which means it is related to The Representative Council authority in arranging and determining The National Budget Plan together with the President. In provincial level, Provincial Representative Council together with governor in arranging and determining Provincial Budget Plan. Meanwhile, in regency/city level, Regency/City Regional Representative Council together with head of regency/mayor arranges and determine Regency/City Budget Plan; c. The Representative Council functions to supervise the government in implementing the rule of laws prevailed, in addition of function and authority, The Representative Council also has the right which is related to the implementation of that function and authority.

The rights of The Representative Council among others are: a. The right of interpellation right is The Representative Council's right to demand government accountability related to imperative and strategic governmental policies widely affecting the lives of the people; b. the right of inquiry is the right to do investigation toward government policy which is supposed to be contrary with legislation rule; c. the right of opinion is the right of The Representative Council as institution to give opinion related to government policy and extraordinary events in the country or situation in international world with its solution, for example corruption suspect, bribery and other acts of grave criminal nature; d. The right of initiative is the right to propose legislation bill, the right of amendment is the right to change the instrument of legislation bill; e. the right of budget is the right to decide the national budget; f. the right of petition is the right to propose something to the authority body; g. the right to question is the right to ask questions in written form to government.

### **The Right Of Inquiry Usage**

In the case of the right of inquiry which is regulated in Act No.6 of 1954 about the right of inquiry of The Representative Council. Even though this act is derived from parliamentary governmental system under Temporary 1950 Constitution, it is still used until now.

The Constitutional Court through its decree on March 26 2004 asserts that The Act No.6 of 1954 is still prevailed based on the provision of Clause I of 1945 Constitution. Therefore, without doubt The Representative Council use the provisions in The Act No.6 of 1954 to implement the right of inquiry. If the proposal to implement this right is agreed, The Representative Council will form The Right of Inquiry Committee who will work during inquiry process. During that time, The Committee will collect the fact and evidence not only from government, but also from everyone including people who is expert on the investigated problem. They must come when the Committee call them and answer all questions and give complete information, including submit all documents requested, with exception if that document submission is incompatible with the state's interest. Those who are called but do not come without valid reason, they can be taken as hostage for the latest 100 days (Article 17 clause 1 of Act No.6 Year of 1954). The committee also can ask the Court to instruct the officials who do not want to submit the state document they request to be submitted to the right of inquiry Committee.

When the Committee had finished their duty, everything will depend on the facts and evidences revealed during investigation and also depend on The Committee's analysis of the facts and evidences which are successfully revealed. If everything revealed concludes that government policy about the problem favor the people and in accordance with the rule of laws which is prevailed, of course the government is safe. The Committee's Report plenary session received by faction and authorized by The Representative Council then submitted to the President. The President conveniently will accept the right of inquiry result which in fact justify all government's policies. It means also that The Representative Council had been mistakenly assumes something that after being investigated it is in fact not true.

If the inquiry conducted by the Committee concludes that there is policy which detriment the state and its people and it is in conflict with legislation rule prevailed, even violate the provision of 1945 Constitution, the Committee's report should be conveyed in final meeting of The Representative Council to listen the faction's opinion before deciding that the report will be accepted or rejected by using acclamation or voting. That decision of The Representative Council is conveyed to President. Subsequently The Representative Council can follow up this decision in accord with the authority of The Representative Council (Article 182, The Order Regulation of The Representative Council).

The follow up over The Representative Council's decision about the use of the right of inquiry is regulated in Article 184 clause (1a) is to convey "The Right of Opinion" on decision of investigation result through the use of the right of inquiry, or directly use the provision in Article 184 clause (1b) namely The Right of Opinion to suspect that "President and/or Vice President is guilty in violation of law in the form of rebellion to the state, corruption, bribery and other acts of grave criminal nature or no longer meeting the qualifications to serve as President and/or Vice President." The use of this article which is provision derived from the provision of Article 7B, clause (1) of 1945 Constitution is indeed very serious. This provision which is well-known with the term "impeachment" to President.

The provision of Article 7B, clause (1) 1945 Constitution above has never been practiced in the history or our state. If The Representative Council give opinion that it truly

happens, then The Constitutional Court must decide whether or not The Representative Council's opinion is evidenced. If The Constitutional Court decide that it is evidenced, then The Representative Council hold the plenary meeting to continue the proposal to The Consultative Assembly to dismiss the President and/or Vice President (Article 7B clause 5, 1945 Constitution jo Article 190 on The Representative Council Regulation.) Indonesian history notes two special meeting of MPRS and MPR occurred in the era of President Sukarno and President Abdurrahman Wahid. And both of them are the president who become the victims of the right of inquiry, because they were forced to leave their position before their ruling period ended.

### **Conclusion**

To improve the practice of constitutionality in the future, the use of the right of inquiry needs to change the way which is done so far. One way is by giving clear and assertive meaning in Legislation about the meaning of "imperative and strategic governmental policies widely affecting the lives of the people in society and nation which is supposed incompatible with the rule of laws." So not using the right of inquiry is perceived as the political "tool" by some people who think that using this right of inquiry is intended to topple the government's authority.

### **References**

- Bahan Tayangan Materi Sosialisasi Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, (Jakarta : Sekretariat Jenderal MPR RI, 2006);
- Dedi Irawan, "*Menggugat Perubahan UUD 1945*", dalam Majalah FIGUR, (Jakarta: Panca Wira Karsa, 2007);
- Panduan Pemasyarakatan Undang- Undang Dasar Negara Republik Indonesia Tahun 1945, Sesuai dengan urutan Bab, Pasal dan Ayat, (Jakarta : Sekretariat Jenderal MPR RI, 2006);
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, RI, 2006).