

# Constitutional Analysis of the DPR's Interpellation Rights According to the 1945 Constitution

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**Abstract.** Individuals' Agent Gathering (DPR) is an association ordered by the 1945 Constitution of the Republic of Indonesia to supervise the tasks of the public authority in the system of the protected framework of Indonesia since the first amendment to the constitution in 1999. One of the freedoms held by the DPR is the Interpellation Right. This examination means to decide the restrictions of the power of Individuals' Agent Chamber in the utilization of the interpellation right conceded by the 1945 Constitution of the Republic of Indonesia. It additionally tries to recognize the objects of Individuals' Agent Board's utilization of the interpellation right concerning the Defilement Destruction Commission (KPK) in view of the 1945 Constitution of the Republic of Indonesia. This study embraces a juridical-regularizing approach, which inspects a legitimate issue by thinking about the premise of contentions from different lawful materials and furthermore depending on a writing survey. According to Article 20A paragraph 2 of the 1945 Constitution of the Republic of Indonesia, the DPR holds the authority to use the interpellation right when the criterion is a higher regulation. The utilization of the interpellation right by Individuals' Delegate Board concerning the KPK isn't yet in view of the 1945 Constitution of the Republic of Indonesia.

**Keywords:** Interpellation Right, DPR, Checks and Balances

## 1 Introduction

Law and order is viewed as the best idea of a state today; law and order is many times known by the expression "law and order" or "Rechtsstaat". The cutting-edge idea of law and order in nations that comply with the Mainland European general set of laws was created utilizing the German expression "Rechtsstaat" by Friedrich Julius Stahl and Immanuel Kant.[1] Muhammad Yamin explained that the rule of law is a state that governs not according to the whims of those in power but according to written rules established by legitimate representative bodies formed by the principle of "the last and not men shall govern".

Based on the above concept of the rule of law, Jimly Asshiddiqie argues that the concept of the rule of law is related to the term "nomocracy" (nomocratie), which means that law determines the course of government power.[1] This means that in a rule-of-law state, limitations on state power and political power owned by the state must be clearly defined and cannot be violated by anyone. Therefore, in a rule of law state, law plays a very important role.

After the fourth amendment to the 1945 Constitution of the Republic of Indonesia (UUD NRI), the idea of law and order, which was beforehand just referenced in the Clarification of the 1945 Constitution of the Republic of Indonesia, is currently expressly formed through Article 1 section 3 which declares, "Indonesia is a Law-and-Order State." The ideal foundation for navigating the dynamics of state life is law, according to the Rule of Law concept.

The concept of popular sovereignty contained in the Indonesian constitution has also fundamentally changed, previously implemented by Individuals' Consultative Gathering and presently held straight by individuals. The execution of famous power as indicated by the 1945 Constitution of the Republic of Indonesia fills in as the justification for the development of the state and organization of the Republic of Indonesia considering the 1945 Constitution of the Republic of Indonesia [2]. We can relate that in the organization of a popularity-based state, administration with governing rules is likewise executed. The hypothesis of balanced governance is established in the hypothesis of the division of abilities.

The doctrine of the separation of powers serves as the basis for a state government system, one of its powers being legislative power. Furthermore, concerning the state's authority in the legislative field, Miriam Budiardjo argues, "The legislative body or Legislature reflects one of its functions, namely the legislator, or lawmaking. Another name often used is Assembly, which emphasizes the element of "gathering" (to discuss public issues). Another term is Parliament, a term that emphasizes the element of "speaking" (parler) and negotiating. Another designation that prioritizes representation or the representation of its members is called the People's Representative Body or the People's Representative Council. However, whatever the differences in name, it can be ensured that this body is a symbol of the sovereign people." [3]

After the difference in the 1945 Constitution of the Republic of Indonesia, the power and obligation of Individuals' Agent Board (DPR) have become heavier. However, this is indeed the consequence because although given heavy tasks, the DPR is also facilitated with several functions that they must fulfill, namely legislative functions, oversight functions, and budget functions. [4]

Meanwhile, examining the amendment to the 1945 Constitution of the Republic of Indonesia, Jimly Asshiddiqie argues, that in the New Order era, the center of legislative power was held entirely by the President, then now that center of power has shifted to the DPR. It is a consequence of a system change that previously showed symptoms of being "executive heavy", and now symptoms of being "legislative heavy" have naturally emerged, which are related to the functions of parliament. [5]

In the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), it is additionally plainly expressed that to guarantee the outcome of the administrative capability and oversight capability, which are the privileges of Individuals' Delegate Chamber (DPR). Article 20 passage (1) of the 1945 Constitution declares, "Individuals' Agent Gathering holds the power to sanction regulations." Besides, it is significantly more stressed in Article 20A passage (1) of the 1945 Constitution of the Republic of Indonesia, which decides, "Individuals' Delegate Committee has authoritative, monetary, and oversight capabilities." This indicates that the DPR holds the authority to enact laws, create budgets, and oversee the operation of the government. As indicated by Article 20A passage (2) of the 1945 Constitution of the Republic of Indonesia, it

is stated that "In carrying out its functions, in addition to the rights regulated in other articles of this Constitution, the DPR has the right of interpellation, the right of inquiry, and the right to express opinions." Furthermore, in paragraph 4, it is also stated, "Further provisions regarding the rights of the People's Representative Council and the rights of its members shall be regulated by law."

After the modification of the 1945 Constitution of the Republic of Indonesia, there are something like three guidelines controlling the opportunities of the DPR and its people. In the first place, 2003's Regulation No. 20. Second, Guideline Number 27 of 2009. Thirdly, the Regional Representative, People's Representative Council, and People's Consultative Assembly Council, and Regional People's Representative Councils (MD3) provisions of Law No. 17 of 2014. The arrangements above command that, naturally, the DPR as one of the state establishments in the administration arrangement of the Republic of Indonesia has a few rights, one of which, with regards to oversight (control) of state organization, is the Interpellation Right.

The interpellation right is the right to conduct an investigation by the legislative body into the policies implemented or carried out by the government (executive). The interpellation right emerges from the utilization of the standard of governing rules to adjust and control the working of the public authority to accomplish state goals. Furthermore, the rule of balanced governance is likewise an outcome of the execution of the official arrangement of government in Indonesia.

According to the author's opinion, the use of the interpellation right by the DPR in the current presidential system seems less relevant, the interpellation right of the DPR, which is a means of control within the scope of the principle of oversight and checks and balances. It indicates the increasing impurity of the use of the division of powers, one of which is influenced by the breadth of political, economic, and socio-cultural issues faced by many countries. In line with Montesquieu's opinion, the DPR only can enact laws, but currently, its ability is expanding toward oversight and budgeting. The presence of Article 20A section (2) of the 1945 Constitution of the Republic of Indonesia expresses that in completing its capabilities, the DPR has the right of interpellation, the right of request, and the right to express opinions. According to Saldi Isra, the use of these three rights, especially the interpellation right and the inquiry right, has caused disturbances in the relationship between the DPR and the President. [6]

This can arise because the term interpellation is interpreted as an investigative right. Essentially, this is not incorrect, because the word "interpellation" itself comes from the French language, which indeed means "investigation." However, it needs to be emphasized that the understanding of the DPR's investigative right is understood ambiguously with the investigative right in the law enforcement process. Finally, sometimes misunderstandings occur in the implementation of this interpellation right. [7]

Looking at the provisions of Law Number 17 of 2014 concerning MD3, which regulates the use of the DPR's interpellation right but still raises differences in legal interpretations regarding the subjects, and objects of the DPR's interpellation right. Therefore, the ambiguity of the provisions regulating the DPR's interpellation right results in legal uncertainty regarding the DPR's interpellation right. The assessment of a norm as unclear or subject to multiple interpretations can be linked to the principle of legal certainty. Regarding the principle of legal

certainty in regulations, there is legal ambiguity about the rules of the DPR's interpellation right with the criterion of "Superior and Inferior Norms" or its applicability relying on other norms, considering that the applicability of the DPR's interpellation right relies on other norms from which the first norm is derived.

Based on the above background, several issues arise that will be examined as the basis for developing the topic to be studied. Therefore, the issues can be formulated as follows:

1. What is the DPR's ability to use the option to demand as demonstrated by the 1945 Constitution of the Republic of Indonesia ?
2. In light of the Republic of Indonesia's 1945 Constitution, are the DPR's articles in general appropriate to request?

## **2 Method**

The chosen research methodology involves conducting field research utilizing a qualitative approach. This method encompasses a thorough examination of literature, particularly legislation, which conceptualizes law as norms or regulations guiding human conduct. The research is grounded both sociologically and empirically, drawing from relevant laws and regulations, particularly those pertaining to the primary research inquiries.

## **3 Result and Discussion**

### **3.1 The Authority of the DPR in Exercising the Interpellation Right according to the 1945 Constitution of the Republic of Indonesia.**

The pivotal changes in Indonesia's governance system cannot be separated from the series of events that occurred in the early 2000s, particularly during the process of amending the 1945 Constitution. This amendment was a consequence of our initially heavily executive-centric state structure. Since the amendment of the 1945 Constitution, there has been a shift in the authority to enact laws, previously held by the president, to the DPR. On the other hand, the president is now only granted the right to propose bills to the DPR.

The amendment to the 1945 Constitution significantly altered the relationship between the president and the DPR. Many constitutional experts have assessed that there has been a fundamental change in the declining influence of executive power before the amendments on several fronts. Meanwhile, legislative power has become stronger due to the additional authority accommodated by the 1945 Constitution. The transfer of the authority to enact laws to the DPR, while refining the basic constitutional rules on the supremacy of law, human rights, regional autonomy, and so forth, has become one of the strategically important agendas in strengthening our presidential system.

However, in interpreting the shift from executive-heavy to legislative-heavy orientation, many also doubt whether there will be significant improvements. Yet, the reality shows that there hasn't been much meaningful change in all aspects of power. Legislative power, along

with its authority, has begun to deviate from its intended course. This is evidenced by the numerous members of the DPR who have been arrested due to alleged corruption offenses. Based on this, the people have requested that the DPR open all its activities transparently, and directly monitored by the public.

One of the House of Representatives' constitutional rights is the interpellation right; however, in practice, attempting to use the right only becomes impossible. The proof is that since it was first started during the 1950s up to this point, the interpellation right has not found any end as portrayed in Regulation Number 6 of 1954 concerning Interpellation Freedoms or Regulation Number 17 of 2014. The interpellation right is by all accounts only a political round of the ideological groups possessing the seats in the Place of Delegates.

The interpellation right is additionally alluded to as the examination right since it is for sure moved by the DPR to explore, in addition to other things, matters connected with state funds. All the more explicitly, Article 79 section (3) of Regulation MD3 which has likewise been remembered for the detailing of Article 164 passage 3 of the DPR Guideline No. 1 of 2014 concerning Rules of Procedure, states that the interpellation right is used to investigate "the implementation of a law and/or government policy related to matters that are important, strategic, and have a broad impact on community life, nationhood, and statehood suspected of being contrary to the legislation."

In addition to the Interpellation Law, as mentioned earlier, Law MD3 also regulates the interpellation right. This law not only confirms the authority of the DPR in the interpellation right but also explains the composition of the interpellation committee. The Interpellation Law regulates in more detail not only the procedure for submitting an interpellation but also determines the "value" of the interpellation results.

Talking about the composition of the interpellation committee, Law MD3 determines that all members of the interpellation committee are DPR members representing all existing factions. The number of representatives in the interpellation committee is based on the proportion of factions. Here is a brief comparison of the regulation of the interpellation right in both laws.

**Table.** Comparison of Regulations Regarding Questionnaires in the MD3 Law and the Questionnaire Law

Material	UU MD3	Questionnaire Law
Questionnaire Proposer	25 people more than 1 faction	10 members of the DPR of the Republic of Indonesia
Membership Composition (Inquiry Committee)	Consists of all elements of the DPR faction based on DPR decisions	Based on the minutes of the DPR session
Nature of Examination	It does not regulate explicitly, but the MD3 Law stipulates that, in principle, DPR sessions are open unless otherwise specified	Examination in closed meeting
Subpoena Rights	Subpoena Rights Recognized	Subpoena Rights are regulated in detail
Witness/expert testimony	Unregulated	All information provided cannot be used as evidence in court
Documents seized in the questionnaire	Unregulated	Unregulated

Legal science recognizes the principle of "lex specialis derogat lex generalis," which means that specific provisions override general ones. In the context of the interpellation right, the Interpellation Law can override the provisions in the MD3 Law because the Interpellation Law is a specific regulation. However, legal science also recognizes the principle of "lex posteriori derogat legi anteriori," which means that a later law overrides an earlier law. From this principle, it can be interpreted that the provisions of the MD3 Law can be a reference for the DPR in exercising the interpellation right. This principle is reflected in several practices.

However, issues that further regulate the implementation of the interpellation right, such as the procedure for summoning witnesses and the value of the interpellation right, are still based on the Interpellation Law. If we apply both principles simultaneously, it implies inconsistency in implementing the law. This phenomenon also shows that the Interpellation Law cannot be fully applied effectively under current conditions.

To this day, the Interpellation Law remains the basis for the DPR to carry out its function as a government overseer. In its decision on March 26, 2004, the Constitutional Court affirmed that Law Number 6 of 1954 is still valid based on the provisions of Article 1 of the Transitional Rules of the 1945 Constitution. Thus, there is no doubt about using the provisions in Law

Number 6 of 1954 to exercise the DPR's interpellation right. However, its implementation must consider the presidential system currently in effect under the 1945 Constitution. Besides the different philosophical foundations of the current state, neither the Interpellation Law nor the MD3 Law clearly defines the binding force of the results of the Interpellation Committee's investigation, especially those with legal implications.

If we examine the discussions related to the MD3 Law, it can be observed that the use of the interpellation right before the 1945 Constitution was amended had a greater chance of dismissing the President during their term if the Government, symbolized by the President, was deemed to have violated the law or was involved in criminal activities. If the President was proven to have committed legal violations that infringed upon the law, the DPR could directly submit Memorandum 1 and Memorandum 2 to the President. Subsequently, the DPR could request the MPR to hold a Special Session. In this special session, the President's position would be determined, whether they would be impeached or not.

This issue once became an extraordinary constitutional problem during the administration of President Abdurrahman Wahid, linked to the Buloggate 1 and Buloggate 2 scandals and the Brunneigate case. As a result of these cases, the interpellation right was invoked to investigate these matters. Consequently, the President's anger became unavoidable, and he radically issued a decree to dissolve the DPR. It led to the convening of a special session, and eventually, President Abdurrahman Wahid was impeached from his position.

The implementation of the interpellation right after the 1945 Constitution was amended tends to offer a much smaller potential for the DPR to impeach the President mid-term, as it has been adjusted to the constitutional amendments. The impeachment mechanism has also become longer and more burdensome, involving the role of the Constitutional Court.

The DPR has carried out the right to inquiry into the Corruption Eradication Commission (KPK)'s activities in relation to the implementation of the right to inquiry for state institutions. Notwithstanding, the public sees that the execution of the right to request is reflected in the component for carrying out the right to request. Apart from that, the approval for the use of the right to inquiry was seen as the culmination of the DPR's disappointment with the Corruption Eradication Committee. On the other hand, the approval for the questionnaire against this independent state institution was considered to be formally and materially flawed. Through approval in the DPR plenary session, the exercise of the right to inquiry is not aimed at summoning the President but is instead an effort by the DPR to help the Government reveal clearly the KPK's allegations which have so far been very secretive, as an indicator that causes suspicion that it has harmed the state.

### **3.2 The Use of the Right of Inquiry by the House of Representatives against the KPK Based on the 1945 Constitution of the Republic of Indonesia**

The DPR has established a Special Committee for the Right of Inquiry Against the Corruption Eradication Commission (KPK), which is referred to as Pansus KPK, in order to initiate the right of inquiry against the KPK as a supervisory body over the administration of the government. As per the law, the KPK is a free state organization in playing out its obligations

and practicing its position. In this regard, it is necessary to clarify what the right of inquiry is and for whom it is intended, as well as what constitutes an independent state institution.

By the provisions of Article 20A, paragraph (4) of the 1945 Constitution, states, "Further provisions regarding the rights of the House of Representatives and the rights of members of the House of Representatives are regulated by law." Following the amendments to the 1945 Constitution from 1999 to 2002, at least three laws regulate the right of inquiry of the DPR and its members.

"Every person has the right to recognition, guarantees, protection, and fair legal certainty and equal treatment before the law," peruses passage 1 of Article 28D of the 1945 Constitution. All Indonesian residents have the right, surefire by the state under Article 24D, section 1, of the 1945 Constitution, to get insurance, fair legitimate conviction, and equivalent treatment under the watchful eye of the law to act as an illustration of law and order.

The author is of the opinion that the DPR's erroneous interpretation of using the right of inquiry against the KPK contradicts Article 1, Paragraph (3) of the 1945 Constitution, which states that Indonesia is a state based on law, with regard to the embodiment of the rule of law related to the provisions of Article 79, Paragraph (3) of Law Number 17 of 2014 concerning MD3. It very well may be inspected considering the assertion of one of the initial architects, Muhammad Yamin, who declared that Indonesia is a condition of regulation or "rechtstaat," not a state in view of force or "machstaat."

With the grammatical interpretation by the DPR by rolling out the right to inquiry against the Corruption Eradication Committee, it violates the characteristics of a rule of law which are known as the supremacy of law and the division of power or limitation of power. Linked to Article 3 of Regulation Number 30 of 2002 concerning the KPK on the grounds that the KPK is one piece of the general set of laws in the Republic of Indonesia. The arrangements of Article 3 of Regulation Number 30 of 2002 concerning the Debasement Destruction Commission explicitly express that there are rules that the Defilement Annihilation Council has a post-reform spirit that implements the Decree of the MPR from the influence of any power.

## **4 Conclusion**

### **4.1 Conclusion**

The writer draws the following conclusions:

- a. The power held by the DPR in conducting investigations granted by the 1945 Constitution and legislation is not entirely in line with the wishes of a country that adheres to a presidential system. Referring to the composition of the inquiry team in MD3 Law has been explained that all members of the inquiry team are DPR members representing all factions in the DPR during that period.
- b. The utilization of the DPR's right of request against the KPK disregards the qualities of a law and order state, known as the incomparability of regulation and the division or constraint of force. As to exemplification of law and order connected with the arrangements of Article 79, passage (3) of Regulation Number 17 of 2014



concerning MD3, in the writer's perspective, the DPR's mistaken understanding in utilizing the right of request against the KPK goes against Article 1, section (3) of the 1945 Constitution which confirms that Indonesia is a condition of regulation, not a state in view of force.

## 4.2 Recommendations

In light of the exploration led by the creator on the DPR's Right of Request In view of the 1945 Constitution of the Republic of Indonesia, the following recommendations need to be conveyed:

- a. The author wishes for the results of the use of the right of inquiry to be admissible as evidence in court because so far, the investigation results facilitated by the right of inquiry cannot be used as evidence.
- b. The DPR needs to regulate the right of inquiry more clearly, especially regarding the process of implementing the right of inquiry so as not to cause broad interpretations that result in legal uncertainty.

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