

UUMILC 2017
9TH UUM INTERNATIONAL LEGAL CONFERENCE

**THE DEVELOPMENT OF DEMOCRACY AS A BASIS OF
PEOPLE'S SOVEREIGNTY IN INDONESIA**

Megawati (a)*

*Corresponding author

(a) Faculty of Law, Universitas Ahmad Dahlan, 42nd Pramuka St, Sidikan, Umbulharjo, Yogyakarta, Indonesia,
megawati@law.uad.ac.id

Abstract

The establishment of the state cannot be separated from the concept of democracy or the people's sovereignty in certain country. People's sovereignty is an important element in a country. This is because the state is an organization of power as a tool for achieving common goals. The concept of people sovereignty has become an intellectual debate among the constituents of the state in Indonesia. People's sovereignty or modern democracy is a democracy with a representative system; it means the people choose someone from themselves to represent their own selves. Through the processing and analysing data using descriptive qualitative method, it generated that the development of democracy in modern state with the several characteristics such as having vast territory and its dense and plural population like the Republic of Indonesia, the system of government will be sourced from people sovereignty. Align with its system; the application of the constitution moralized by the values of the nation's philosophy. So, the implementation of people's sovereignty could not be directly but indirectly or also known as the Democratic Representative System. In the Democratic Representative System, it is necessary to have a State Institution as the people's sovereignty actors in order to implement the people will. So, it is important that the State Institute of the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat*) is an illustration of the implementation of democratic values in Indonesia. In the time of development, the role of the MPR has changed in line with the amendment of the 1945 Constitution.

© 2018 Published by Future Academy www.FutureAcademy.org.UK

Keywords: Representation System, Democracy, Constitutional System.



1. Introduction

In General, the modern state declares itself as a country with the democratic governance system that comes from the people's sovereignty. Democracy serves as the basis of state which gives the understanding that at the bottom level is the people who determine the issue of nation and state life existence. This is because the establishment of a country is formed by the people's will. However, the implementation of the people's sovereignty is based on the people and state philosophy of life, so the implementation of the people's sovereignty can be controlled and not affected from the power or interests of a particular group.

Athena, a state figure of the ancient democracy, used the form of a pure democratic model or direct democracy. The immediate nature of democracy in ancient Greece can be effectively operated because of the limited conditions of its territory and the simple nature of its people. On the contrary, the modern state is no longer simple in nature and the territory of its country is wide with the large number of the population. Thus, the way to implement the democratic system is not pure democratic as the Athens did, but indirect democracy or representative democracy, where the people choose their representatives to declare their wills and hopes (Budiardjo, 1986, pp. 52).

In Indonesian independence history in August 17th, 1945, it was founded not just from a state of power but it based from the state of law principle in which framed by the people's sovereignty or democracy. This is then outlined in the Revelation of the 1945 of Indonesian Constitution, that Indonesia is a state based on law (*rechtsstaat*) not based on a mere power (*machtsstaat*).

It can be assured that the founders of the country at that time has a specific purpose that is the state of Indonesia will not fall within the power of certain political groups or powers, but it is the property of all Indonesian people constitutionally. Especially considering that Indonesia, which has a vast territory and plural society that the practice of democracy is using indirect democracy model or representative democracy and it based on Pancasila (The State Five Principles: [1] Believe in only One Supreme God; [2] The Just and civilized humanity; [3] The unity of Indonesia; [4] Democracy led by the wisdom of deliberations among representatives; [5] Social justice for the whole Indonesian people) as the ideal basis and the 1945 Constitution as the constitutional foundation (Nugroho, 2013, pp. 248-249).

The ideal foundation of Pancasila is set forth in the fourth paragraph of the 1945 Constitution Preamble as the constitutional foundation and basic philosophy of the establishing of the Republic of Indonesia. The system or principle of people's sovereignty contained in the fourth paragraph is described in Article 1 paragraph (2) of the 1945 Constitution which affirms that "Sovereignty is in the hands of the people, and carried out entirely by the People's Consultative Assembly". However, after the third amendment of 1945 Constitution, Article 1 paragraph (2) of the 1945 Constitution turned into "Sovereignty is in the hands of the people and implemented according to the Constitution". By this amendment, there is a shift of power of Indonesian state administration system. In this case, the power of the People's Consultative Assembly (MPR) which was originally the full implementation of the people's sovereignty is not in its original power.

The above mentioned cannot be separated from any deviations. So, from the above explanation, it is interesting to conduct a study or research on the people's sovereignty as it related to the relationship between the people with sovereign holders or the holder of power with high state organizers or sovereign

organizers (state). This is because; the people's sovereignty is derived from the perception that, in fact, the one who hold the highest power in the state is people, not the ruler or state organizers. While the ruler tends to maintain and extend his strength, there needs to be a limitation on that power.

2. Problem Statement

From the above description, it can be drawn a principal issue regarding the implementation of democracy or people's sovereignty in the Indonesian state administration system which is based on the ideal foundation of Pancasila and the constitutional foundation of the 1945 Constitution. The object of this research focuses on the People's Consultative Assembly (MPR) which prior to the third amendment of the 1945 Constitution is as a full implementation of the people's sovereignty, but after the third amendment, the MPR is no longer as the sole executive of the people's sovereignty.

3. Research Questions

Based on the description in the background of the above problems, this study formulates the questions: "Has the People's Consultative Assembly (MPR) hold the power as the people's sovereignty after Article 1 paragraph (2) of the 1945 Constitution changed by the third amendment of the 1945 Constitution?"

4. Purpose of the Study

The purpose of this research is to know whether the People's Consultative Assembly (MPR) still hold the power as the people's sovereignty after Article 1 paragraph (2) of the 1945 Constitution changed by the third amendment of the 1945 Constitution.

5. Research Methods

This research used descriptive qualitative method for data processing and data analysis. Data processing is an activity to systematize legal materials. Systematization means making a classification of these legal materials to facilitate the work of analysis and its construction. After the data systematized, it then analysed qualitatively by interpreting, describing, and arranging systematically and logically in accordance with the research.

6. Findings

Thomas Hobbes in his book *De Cive* (1642), as quoted by Saldi Isra, states that, "Sovereignty is an essential function that exists in the state". While Jimly Asshiddiqie in his book *Constitution and Constitutionalism of Indonesia*, assessed Thomas Hobbes's point that the concept of sovereignty is the soul of a political institution which called the state (Isra, 2013, pp. 3; Wijaya, 2014, pp. 13).

Democracy as the basis of living state is a manifestation of the implementation of people's sovereignty in the state administration. Democracy has an important meaning for the people who hold it, because with democracy the people's right to determine the course of the government can be guaranteed (Hanafi, 2013: 235).

The implementation of democracy or the people's sovereignty in its development has changed. As we have already mentioned in the introduction, that in the time of the ancient Democracy in Athens, they used the pure democratic model or direct democracy. The immediate nature of democracy in ancient Greece is possible because the condition of the country and the community is still simple. That is why the model of direct democracy can be implemented effectively in Athena because it's limited area and its simple society nature (Kurniawan, 2015, pp. 95).

Different with the ancient democracy, the modern state has complexity in implementation of democracy. It is because the territory of the country is wide and the number of citizens has grown rapidly. Such complexity makes the implementation of democracy shifted into indirect democracy or representative democracy, where people choose their representatives to declare their wills and hopes. Even though as a theory, none of the teachings of people's sovereignty can be called the most modern, however, it would be admitted that almost all modern states today, formally adhere to the principle of people's sovereignty (Asshiddiqie, 1994, pp. 11).

The principle of people's sovereignty or understanding of democracy has two meanings (Asshiddiqie, 1994):

- a. Democracy which is relating to the system of government or how the people are involved in the state administration.
- b. Democracy as a principle that is influenced by cultural circumstances and a nation's history, so came the terms such as constitutional democracy, people's democracy and Pancasila democracy.

Through the time development, the implementation of people's sovereignty or modern democracy is a democracy with a representative system, it means people choose someone from himself to represent theirs. In connection with the representation system in the context of people's sovereignty, as suggested by Robert Dahl, that the people's government on a large scale (nation state) can only be formed with a representative system as a democratic form of government or in other word government of people's sovereignty (Asshiddiqie, 1994).

Therefore, Democracy with the system of representation is a form of democracy on a large scale that requires the institutions of representation as a guarantee of the implementation of democracy, which are (Dahl, 1999, pp. 18-19):

- a. Preferred Officials
- b. Free, fair and regular elections
- c. Freedom of opinion
- d. Alternative sources of information
- e. Associational autonomy
- f. Inclusive citizenship rights

Representative democracy is a democracy that is made to be practiced over a long period of time and covers a large area. According to Hans Kelsen, as quoted by Janedjri M. Gaffar (2013, pp. 3), "in a representative democracy, the function of government is conferred from citizens to the organs of the state, to fill the organs of the state through democratic nominations, namely elections."

Sri Soemantri (1979, pp. 136), in the same contexts states that, "by still following the people's sovereignty, an appropriate system must be sought to discuss the question of statehood and then make a

decision for a country with a large number of people such as Indonesia. The system adopted in the Republic of Indonesia is regulated in the 1945 Constitution”.

The implementation of democracy with a representative system is not as simple as direct democracy. The problem faced by indirect democracy or the democracy of a representative system is that the state must establish an institution to organize the people’s sovereignty. The formed-institution must really represent the people as the people’s sovereign holders. Therefore, the establishment of representative institutions should reflect the values of democracy in order to run the mandate of the people. Besides, it also needs a set of rules to regulate the implementation of democracy with an indirect model or representative democracy system. The State based on the principle of democracy, alongside the basic values of the State of Law is as a counterweight, so that the power contained in democracy can be directed and not deviate from the basic purpose of the life of the nation and the state (Absori, 2016, pp. 130; Azhari, 2017, pp. 45).

The Constitution is a rule which contains the state basis and the principles of the state system of government. If we use this juridical meaning, then it equates the constitution with the Constitution. K.C. Whear (1951, pp. 1) said about the understanding of the constitution:

“It (constitution) is used to describe the whole system of government of a country, the collection of rules which establish and regulate or govern the government. These rules are partly legal, in the sense that courts of law will recognize and apply them, and partly non-legal or extra-legal, taking the form of usages, understandings, customs, or conventions, which courts do not recognize as law but which are not less effective in regulating the government than the rules of law”

J.G. Steenbeek, as quoted by Sri Soemantri (1979, pp. 136), presents three kinds of principal material content contained in the constitution, namely:

- a. Guarantees of human rights (and fundamental obligations) of human beings and citizens
- b. The basic constitutional structure
- c. The division and restriction of constitutional duties which are also fundamental

By looking at the meaning of the constitution mentioned above, the democracy contained in the constitution stands as the basis for the implementation of the nation life and the state. The Implementation of the democratic values then inevitably requires the people support to organize the state administration. All of the government decisions cannot be separated from opinion, voice, supervision, and the participation of the policies making process taken by the government.

The process of forming the people representative institution cannot be separated from how the people desire chooses their representatives to bring their voice and realize their goals and goals of the state. General Election is a procedure to gather people’s representatives in a modern state framed by people’s sovereignty or democracy. This election process may be able to elect people’s representatives directly from the society itself. Through this electoral mechanism the government will be certainly not symbolized as an authoritarian government, and it can be implemented on continuously, so there is no one can hold the power for his entire life. That is because nowadays, the world modern countries began to recognize the five-year concept as well as it practiced in Indonesia.

Indonesia as a country that embraces the democratic system or the people’s sovereignty is depended by people’s participation to determine the course of government and the direction of state

development. However, the implementation of people's sovereignty is not fully applied by the people, even though the Constitution of 1945 has changed for more democratic implementation of the government. This is because the development of the country and its people is so rapidly growth, especially in the field of people's sovereignty.

Thus, power is not acquired by power, or because it is appointed by a particular individual or group of elites. Rather, power is obtained because of public judgment of someone who is considered to have competence and honesty in leadership. Therefore, power is obtained through the election process with the most votes. This is the role of the people in the life of democracy. The given sound value is the same according to the existing rules (Yusuf, 2011).

In the fourth paragraph of the Preamble of the 1945 Constitution, the State Founders has made political decisions to establish the state:

“Establishing the Indonesian state government that protects the entire nation of Indonesia and the entire blood of Indonesia and to promote the general welfare, educate the nation life and participate in implementing the world order based on independence, eternal peace and social justice, hence the independence of Indonesia formed in The Constitution of the State of the Republic of Indonesia, which constituted by people's sovereignty ...”

By looking the above provisions, it shows that the constitution has its nature as a modern rule of law. This is because the modern state in general is based on democracy or sovereign state of the people. In addition, it is necessary to know how Pancasila influences the development of democracy in Indonesia, especially in order to face this era of globalization. By all the challenges and expectations, Pancasila as a state ideology and the basic state is expected to resolve and can unite Indonesia's diverse ethnicities and interests (Noviati, 2013, pp. 335).

As one of the people's representative institutions, the People's Consultative Assembly (MPR), before the amendment of 1945 Constitution, has been given full responsibility for the implementation of people's sovereignty as it regulated in article 1 paragraph (2) of the 1945 Constitution. The article also gives position to the People's Consultative Assembly as the Supreme State Institution in the Indonesian Institutional Structure. Before the amendment, the explanation of the 1945 Constitution also mentioned that “this assembly holds the ultimate power”. On that basis, Ismail Sunny, as quoted by Nazriyah (2007, pp. 89), concluded that before the amendment the state power was in the hands of the Supreme People's Consultative Assembly. According to him, the supremacy of state institution, whether parliament or national assembly, contains two important principles, namely:

- a. As a sovereign body that holds the law-based power to establish everything that has been affirmed by the 1945 Constitution, or it could be called as a “legal power”.
- b. No rival authority, meaning that there is no authority either individual or organ that match or override the decision of the MPR.

From the description and according to the 1945 Constitution, it is clear that the structure of the Indonesian state administration before the amendment embraces the principle of parliamentary supremacy, not presidential.

As time passes, the amendment of the 1945 Constitution in Article 1 paragraph (2) shifts the power position of the People's Consultative Assembly in Indonesian constitutional system. The

amendment of the 1945 constitution occurred because there is a judgment states that government is less reflective toward the democratic values and tend to be an authoritarian and absolute (Agustian, 2016, pp. 2). Thus, the People's Consultative Assembly (MPR) as the actor of democracy or the people's sovereignty does not reflect the people representation. It is especially seen from the process of composing the membership that does not reflect that the MPR is a political miniature for the Indonesian nation but reflects as an absolute and authoritarian power. This is because the mechanism of composing the membership is not through the overall electoral mechanism (Latuconsina, 2013, pp. 12).

From the juridical standpoint of constitutionality, the amendment of the 1945 Constitution also changed the MPR system into bicameral system or two-room system. It is consisting of the House of Representatives (DPR) and the Regional Representative Council (DPD). These two state institutions became part of the MPR. With those memberships, the composition of MPR members is no longer appointed. It means, generally, MPR members are who have been through an electoral mechanism that held every five years.

Prior to the third amendment of the 1945 Constitution, the MPR is the supreme body that fully implements the people's sovereignty, then in the third amendment of the 1945 Constitution the position of the MPR is no longer the highest structure of state institution but stand same as the other state institutions. Therefore, the MPR is no longer the implementer of the people's sovereignty as a whole. This is as stipulated in Article 1 paragraph (2) of the third amendment of the 1945 Constitution that "Sovereignty is in the hands of the people and implemented according to the Constitution". The shift of MPR status is then stipulated in Article 3 of Act Number 27 Year 2009 concerning the People's Consultative Assembly, the People's Legislative Assembly, the Regional Representatives Council, and the Regional People's Legislative Assembly which states that the MPR is a people's consultative body domiciled as a state institution, which in detail has the authority (Asshiddiqie, 2010, pp. 36-37; Nazriyah, 2017, pp. 41):

- a. To amend and enact the 1945 Constitution of the State of the Republic of Indonesia;
- b. Inaugurate the President and /or Vice President from the election results;
- c. To decide upon the Parliament's proposal to dismiss the President and/or Vice President during his/her term of office, after the Constitutional Court has ruled that the President and/or Vice President have been found guilty of treason, corruption, bribery, other serious criminal offenses/or proven that the President and/or Vice President is no longer qualify as President and/or Vice President;
- d. Inaugurate the Vice-President to become President when the President dies, stops, dismisses, or cannot perform his duties;
- e. To elect a Vice-President from 2 (two) candidates proposed by the President in the event of a vacancy of the Vice President's position in his/her term of office; and
- f. To elect the President and Vice President if both are dead, stopped, dismissed or unable to perform their duties in the same term, from 2 (two) pairs of presidential and vice-presidential nominees nominated by a political party or a coalition of political parties to which the Presidential candidate and his Vice-President gained the first and second most votes in the previous general election, until the end of his term.

Therefore, the changes in Chapter I about the Form and Sovereignty, particularly in Article 1 Paragraph (2), have changed the structure of state power as an implementation of the principle of people's sovereignty. These changes brought the consequences of the changing of the state institutional structure and its authority (Nazriyah, 2007, pp. 89).

The Implementation of the people's sovereignty principle in the amendment of the 1945 Constitution resulted in the change of position and authority of the MPR. The MPR no longer has the authority to form MPR Clauses. The MPR is more functioning as a constituent institution (authorized to amend and enact the Constitution) and functions as a joint session of two parliamentary bodies, namely DPR and DPD. Therefore, the provisions of Article 3 of the 1945 Constitution have changed into "The People's Consultative Assembly has the authority to amend and enact the Constitution" (Huda, 2008, pp. 213).

It is also important to note that in accordance with Article 37 of the 1945 Constitution, the People's Consultative Assembly is still authorized to amend, supplement or reduce the content of the articles of the 1945 Constitution, as amendments to the Constitution shall be effected by a decision of the Consultative Assembly People (MPR). In accordance with the principle of People's Sovereignty (democracy), according to Pancasila and described in the 1945 Constitution, the values of democracy must be met in its elaboration. This is because Pancasila and the 1945 Constitution have been agreed upon by all the people of Indonesia, and there should be no coercion of will by any power, either individual or group. In the practice of state administration, the agreement is known as the National Consensus.

7. Conclusion

Based on the above description, it can be drawn a conclusion that the Republic of Indonesia is a democratic country, where the people participate in determining the way of government and the direction of its development. As a country with vast territory and plural society, it makes Indonesian uses indirect democracy or democracy with a representative system. Therefore, as the organizer, before the amendment of 1945 constitution, the People's Consultative Assembly (MPR) is the highest and supreme institution in Indonesia as it stated in Article 1 Paragraph (2) of the 1945 Constitution. It is also affirmed in the Elucidation of the 1945 Constitution in the seven key of government systems no. III, that the People's Consultative Assembly is the incarnation of all Indonesian people. In the time of development, the implementation of governance in Indonesia seems not reflect the values of democracy. So, the 1945 Constitution as a source of state administration needs to be changed in order to create a more democratic government.

In the third amendment of the 1945 Constitution, Article 1 Paragraph (2) of the 1945 Constitution the position of the People's Consultative Assembly (MPR) as the people's sovereignty actors has changed. Although the position and authority of the MPR has shifted, the task and authority of the People's Consultative Assembly as the bearer of the People's Sovereignty is not lost. Instead the People's Consultative Assembly was formed more democratic than in the period before the amendment of 1945 Constitution. All members of the MPR are consisting from the members of the House of Representatives

(DPR) and members of the Regional Representative Council (DPD), and they are formed through a directly election process by the people.

References

- Absori (2016). *Cita Hukum Pancasila, Ragam Paradigma Hukum Berkepribadian Indonesia*. Solo: Pustaka Iltizam.
- Agustian, T. (2016). Implikasi Pengujian Ketetapan MPR dalam Sistem Ketatanegaraan Republik Indonesia Pasca Putusan Mahkamah Konstitusi No. 75/PUU-XII/2014. *Lex Renaissance*, 1(1).
- Asshiddiqie, J. (1994). *Gagasan Kedaulatan Rakyat Dalam Konstitusi dan Pelaksanaannya di Indonesia*. Jakarta: Ichtiar Baru Van Hoeve.
- Asshiddiqie, J. (2010). *Konstitusi & Konstitusionalisme Indonesia*. Jakarta: Sinar Grafika.
- Azhari, A.F. (2017). *Tafsir Konstitusi: Pergulatan Mewujudkan Demokrasi di Indonesia*. Yogyakarta: Genta Publishing.
- Budiardjo, M. (1986). *Aneka Pemikiran Tentang Kuasa dan Wibawa*. Jakarta: Sinar Harapan.
- Dahl, R.A. (1999). *Perihal Demokrasi: Menjelajah Teori dan Praktek Demokrasi Secara Singkat*. Jakarta: Yayasan Obor Indonesia.
- Gaffar, J.M. (2013). *Demokrasi dan Pemilu di Indonesia*. Jakarta: Konpress.
- Hanafi, M. (2013). Kedudukan Musyawarah dan Demokrasi di Indonesia. *Jurnal Cita Hukum*, 1(2).
- Huda, N. (2008). *UUD 1945 dan Gagasan Amandemen Ulang*. Jakarta: Raja Grafindo Persada.
- Isra, Saldi (2013). *Demokrasi Konstitusional*. Jakarta: Konpress.
- Kurniawan G. (2015). Kebebasan Sebagai Hakekat Demokrasi. *Inovatif: Jurnal Ilmu Hukum*, 8(1).
- Latuconsina, N (2013). Perkembangan Demokrasi dan Civil Society di Indonesia. *Jurnal: Populis*, 7(2).
- Nazriyah, R. (2007). *Kajian Terhadap Produk Hukum dan Prospek di masa Depan MPR-RI*. Yogyakarta: UII.
- Nazriyah, R. (2017). Penguatan Peran Majelis Permusyawaratan Rakyat Dalam Struktur Ketatanegaraan Indonesia. *Jurnal Hukum dan Pembangunan*, 47(1).
- Noviati, C.E. (2013). Demokrasi dan Sistem pemerintahan. *Jurnal Konstitusi*, 10(2).
- Nugroho, S. (2013). Demokrasi dan Tata Pemerintahan Dalam Konsep Desa dan Kelurahan. *Jurnal Cita Hukum*, 1(2).
- Soemantri, S. (1979). *Prosedur dan Sistem Perubahan Konstitusi*. Bandung: Alumni.
- Whear, K.C. (1951). *Modern Constitution*. England: Oxford University Press.
- Wijaya, D.N. (2014). John Locke Dalam Demokrasi. *Jurnal Sejarah dan Budaya*, 8(1).
- Yusuf, T. (2011). Mengembangkan Demokrasi, *Warta Perundang-Undangan Nomor 3037*. Jakarta.