THE PROBLEM OF THE RE-EXISTENCE OF MPR DECREES AS A TYPE AND HIERARCHY OF LEGISLATION IN INDONESIA

Made Gerry Gunawan[1*], I Nyoman Bagiastra[2]
[1,2]Faculty of Law, Universitas Udayana
E-mail: [1)] gerrygunawan99@gmail.com, [2)] nyoman_bagiastra@unud.ac.id

Abstract

The Decree of the People's Consultative Assembly, also known as MPR Decrees, contains decisions made by the People's Consultative Assembly. The presence of MPR Decrees has undergone various system dynamics within the hierarchical order of legislation in Indonesia. Law Number 12 of 2011 on the Formation of Legislation reintroduces MPR Decrees as a type and hierarchy of law and regulation, reversing the previous law, Law Number 10 of 2004, which abolished the MPR Decrees from the structural hierarchy. The re-existence of MPR Decrees in the Indonesian legislative system has implications for the order and position of these decrees in the state administration system. This research adopts a normative research method, utilizing a statutory approach as the primary legal material and secondary legal materials such as books, journals, and other sources for analysis. The findings of this study indicate that the re-existence of MPR Decrees creates ambiguity in the validity of the MPR within the state administration system, considering that MPR Decrees originated before the reform or amendment of the 1945 Constitution, when the MPR held a higher position as a state institution. Furthermore, there is no authorized judicial institution to test the MPR Decrees if they are suspected of violating the provisions of the Constitution of the Republic of Indonesia.

***Keywords** : MPR decree, People's Consultative Assembly, Hierarchy of Legislation*

1. INTRODUCTION

Indonesia, as a sovereign country, upholds the rule of law as the foundation for organizing the nation and state. The supremacy of the constitution plays a vital role in realizing this principle, requiring a system of rules that provide protection and guarantee the constitutional rights of every citizen. As part of embodying the rule of law, the state must ensure legal protection, justice, and legal certainty for its people. Establishing a hierarchy or order of norms is one way to provide legal certainty and implement the state's way of life.

In the context of Indonesian state administration, the types and hierarchy of laws and regulations have been regulated and have undergone various dynamics of change. The governing law in Indonesia is Law Number 12/2011 on the Establishment of Legislation, which establishes the hierarchy or sequence of Indonesian laws and regulations. This law reflects the constitutional mandate to regulate the Indonesian constitutional system through legislative measures. Its primary purpose is to regulate the mechanism of formation and hierarchy of laws and regulations in Indonesia.

According to Article 7, Verse (1) of Law Number 12/2011, the hierarchy of laws and regulations is as follows: "Firstly, the 1945 Constitution holds the highest position. Secondly, the Decree of the People's Consultative Assembly is given prominence. Thirdly, Law/Government Regulation in lieu of Law occupies a significant position. Fourthly, Government Regulation is considered in the hierarchy. Fifthly, Presidential Regulation holds its place. Sixthly, Provincial Regional Regulation is recognized. Lastly,

Regency/City Regional Regulations are included in the hierarchy of laws and regulations."

Furthermore, Verse 2 of the clause states that "The legal force of laws and regulations is in accordance with the hierarchy as referred to in Verse 1." Law No. 12/2011 can be seen as an improvement upon Law No. 10/2004 on the Formation of Legislation. Several new provisions were added, including the reintroduction of the Decree of the People's Consultative Assembly or MPR Decrees to the hierarchy of laws and regulations, which had been previously removed in Law Number 10/2004. The regulation also clarifies that the legal force of laws and regulations is based on the hierarchical order established. This indicates that the new provisions in this law reinstate the MPR Decrees as a type of legislation with legal force, positioned below the 1945 Constitution but above ordinary laws.

The re-existence of MPR Decrees in the hierarchy of laws and regulations raises concerns about inconsistency in Indonesian legal politics amid efforts to reform the legal system. Moreover, MPR Decrees originated from the previous constitutional system before the reform era, and their current position has been diminished in quantity due to the mandate of the fourth amendment to the Indonesian constitution. Additionally, the inclusion of MPR Decrees in the legal system creates a gap in the testing of these decrees against the constitution. Neither the Constitutional Court nor the Supreme Court, which are responsible for testing legislation in Indonesia, have the authority to examine MPR Decrees. This setback contradicts the spirit of reform, especially in striving for an Indonesian legal system that can safeguard and uphold the constitution.

The dynamics of MPR Decrees as a type and hierarchy of laws and regulations in Indonesia have been extensively studied and discussed in previous research, which serve as state-of-the-art references for this study. However, this research will specifically focus on the gap in testing MPR Decrees against the Constitution as an implication of their re-existence in Indonesia.

2. RESEARCH METHOD

The research method employed in this study was juridical-normative. This method involved examining the law textually through legislation and conceptualizing legal principles and guidelines for human relations. Therefore, a statutory approach was utilized throughout this writing. The statute approach involved observing all forms of rules and everything related to the issue under discussion.

The author collected data from various sources to prepare this paper. Primary sources included national regulations (primary), which served as the foundation for the analysis. Secondary sources consisted of juridical reviews such as text readings, opinions from scholars, legal journals, and research results. Tertiary sources, such as legal dictionaries, were also consulted to supplement the research process.

3. RESULTS AND DISCUSSION

3.1. Development of MPR Decrees Existence in the Indonesian Legislation System

The position of the People's Consultative Assembly or MPR before the amendment of the 1945 Constitution was the highest state institution in Indonesia in holding full power as an embodiment of the Indonesian people. As an institution that holds and fully executes the sovereignty of the people, the MPR at that time was often said to be the embodiment of the sovereignty of all Indonesian people. The MPR's position as the highest institution in Indonesia ended when the 1945 Constitution was amended from 1999 to 2002. Based on this, the position of the MPR shifted from being the highest institution to becoming a high institution and also having the same position as other state institutions to control and balance other state institutions or what is commonly referred to as the "checks and balances" function.

The demands of reform that occurred in 1998 included revamping the constitutional system in accordance with the mandate of the constitution, especially in rearranging the position, duties, authority and composition of existing state institutions in the constitutional system in Indonesia. The amendments to the 1945 Constitution that were made in response to the demands of the reform resulted in a significant reduction in the MPR's authority, including automatically changing the type and hierarchy of Indonesian legislation.

The Legal Histories of MPR Decrees in the Indonesian legislative system began in 1966, when the Decree of the MPRS occupied the second position in the hierarchy of laws and regulations under the 1945 Constitution. The hierarchy is listed in Appendix 2 letter A at point 1 of MPRS Decree Number XX/MPRS/1966, which outlines "the forms of legislation of the Republic of Indonesia according to the 1945 Constitution are as follows: 1945 Constitution; MPRS Decree; Law or Government Regulation in Lieu of Law; Government Regulation; Presidential Decree; Implementing regulations, such as: -Ministerial Regulations; -Ministerial Instructions; -And others." It is also explained in another point in the attachment that "In accordance with the constitutional system as explained in the authentic Explanation of the 1945 Constitution, the highest form of legislation, which is the basis and source for all subordinate legislation in the State." In addition, the next point explains that "In accordance with the principle of the rule of law, every piece of legislation must be based and sourced firmly on the applicable legislation, which is higher in level."

The status of MPR Decrees in the hierarchy of laws and regulations continued despite the change in the hierarchy of laws and regulations in 1999. History records that in that year there were various big pushes by regions in Indonesia demanding the expansion of regional autonomy and the strengthening of national disintegration as a threat. Under this pressure, the government at that time reformed the concept of regional autonomy to produce Law No. 22/1999 on Regional Government and Law No. 25/1999 on Central and Regional Financial Balance. These changes have certainly also affected the type and hierarchy of laws and regulations in Indonesia. Because of this, MPR Decree Number III/MPR/2000 on the Source of Law and the Order of Legislation was also born, which included Regional Regulations in the type and hierarchy of laws and regulations of the Republic of Indonesia.

The dynamics of the legislation system in Indonesia continued in 2004, when the bearers of the state legislative function approved the Draft Law on the Formation of Legislation into Law Number 10 of 2004. This law improved and replaced MPR Decree

No. III/MPR/2000, which previously regulated the hierarchy of laws and regulations. This law also abolishes the MPR Decrees in the hierarchy of legislation system to be in line with the reform demands that the MPR has reduced its authority and is no longer the highest institution in Indonesia. The hierarchy of laws and regulations is contained in Article 7 Verse (1) of Law Number 10 Year 2004 which states: "The types and hierarchy of laws and regulations are as follows:

a. 1945 Constitution
b. Law / Government Regulation in Substitute of Law
c. Government Regulation
d. Presidential Regulation
e. Regional Regulation."

After a few years, Law Number 12/2011 on the Formation of Legislation was born to replace Law Number 10/2004, which became an effort to improve legislation products. One of the latest contents embedded in Law Number 12/2011 is the addition of the People's Consultative Assembly Decree or MPR Decrees into a type of legislation positioned under the Constitution. According to Article 7 Verse 1 of Law Number 12 of 2011 "The types and hierarchy of laws and regulations consist of:

a. 1945 Constitution
b. Decree of the People's Consultative Assembly
c. Law/ Government Regulation in lieu of Law
d. Government Regulation
e. Presidential Regulation
f. Provincial Regional Regulation
g. Regency/City Regional Regulations."

Through the explanation of the Law, it is explained that the return of the MPR Decree to the type and hierarchy of laws and regulations is intended to provide legal standing for the MPR Decree and MPRS Decree that are still in effect. This is based on Article 2 and Article 4 of MPR Decree No. 1/MPR/2003 on the Review of the Material and Legal Status of the Provisional People's Consultative Assembly Decrees and People's Consultative Assembly Decrees 1960-2002, which still enforce several MPR and MPRS Decrees even though the existence of the MPR has been reduced after the improvement of the constitutional system in the Reformation era.

3.2. Implications of the Re-Existence of Decrees MPR in the Hierarchy of the Indonesian Legislation System

The dynamics or "suspended animation" of the existence of the MPR's Decrees has occurred after the reduction of the MPR's authority after the reformation and the birth of Law Number 10 of 2004 concerning the Formation of Legislation which eliminates the rules in the hierarchy of laws and regulations. The implication of this is a dilemma over the validity of Decrees MPR and Decrees MPRS which are still in effect after changes in the Indonesian constitutional system. The emergence of Law No. 12/2011 on the Formation of Legislation to replace the previous law, is the answer to the re-enactment of the existence of the DECREES MPR which was resurrected and given a clear and firm position in the Indonesian legal system.

The practical implications after the MPR Decree were restored to its existence in the hierarchical structure of the Laws and Regulations as a juridical basis for the validity of the MPR / S Decree which is still in effect as regulated in Article 2 and Article 4 of MPR Decree Number 1/MPR/2003 concerning Review of the Material and Legal Status of the Provisional People's Consultative Assembly Decrees and Decrees of the People's Consultative Assembly 1960-2002.

Another problem or implication that then arises is the blurring of the measure of the extent to which this MPR Decree can be binding inwardly and outwardly as intended by Law Number 12/2011. This is based on the Indonesian constitutional system which has changed after the amendment of the 1945 Constitution. Sociologically, it would not be comparable, especially since the position of the MPR today is no longer positioned as the personification of popular sovereignty and also not as a supreme institution. The position of the MPR does not have a top position compared to other state institutions, so the MPR cannot freely issue all policies and juridical or political decisions that lead to obligations that must be carried out for other state institutions in Indonesia.

The re-existence of Decrees MPR hierarchically in the legislative system also has implications for the gap in testing legislation products against the rules above them. The hierarchical position of the MPR Decrees based on Law Number 12/2011 is placed just below the Constitution, which shows that in the realm of testing the Constitution, only the Constitutional Court can conduct a material / formal test. However, according to the Constitutional Court, testing the MPR Decrees is not within its authority, because the Constitutional Court only has the authority to test laws against the 1945 Constitution. This provision has been regulated by the Constitution through Article 24C Verse (1) of the 1945 Constitution which states that "the Constitutional Court has the authority to hear cases at the first and last instance and its decision is final to test laws against the 1945 Constitution". Although in terms of the hierarchy of legislation, the MPR Decree sits directly below the 1945 Constitution, the Constitutional Court is not authorized to review it.

In this way, it shows a norm deficiency on the institution of judicial power that is authorized to test the products of legislation to be in accordance with the course of the constitution, especially the MPR Decrees which has a position in the hierarchy of the legislative system in Indonesia. In "formal juridical" terms, there is no single provision that regulates that there is a state institution that has the authority to examine the MPR Decree. The implication of the re-existence of the MPR's Decrees in terms of the empty supervision of the MPR's Decrees material through the mechanism of testing legislative products illustrates the big problem of law in Indonesia. This is because the MPR's Decrees material, which is still in effect today, is a product of the constitutional system legislation before the reformation occurred. So that it is vulnerable to the gap of incompatibility with legal needs that lead to the ideals of the nation today, besides that these problems will tend to show an inconsistency in the direction of legal politics in Indonesia.

4. CONCLUSION

The position of the MPR Decrees in the hierarchy of the legislative system in Indonesia has undergone various dynamics in the direction of legal development in Indonesia. The reinstatement of the MPR Decree's existence after the enactment of Law

No. 12/2011 on the Establishment of Laws and Regulations brings about various legal implications. One such implication is the juridical basis for the validity of the MPR/S Decree, which remains in effect as stated in Article 2 and Article 4 of MPR Decree No. 1/MPR/2003 on the Review of the Material and Legal Status of the Provisional People's Consultative Assembly Decrees and Decrees of the People's Consultative Assembly of 1960 to 2002.

Another implication resulting from the re-existence of MPR Decrees is the absence of limitations on their validity in the Indonesian constitutional system after the reform era or the amendment of the Constitution. This is due to changes in the Indonesian constitutional system, where the MPR no longer holds the highest position among state institutions. Furthermore, there are additional implications, such as the absence of a judicial institution with the authority to assess MPR Decrees against the 1945 Constitution, similar to other regulatory products. Consequently, the validity of MPR and MPRS Decrees after the amendment of the 1945 Constitution has significantly diminished in quantity. When compared to the current constitutional system, it becomes evident that MPR Decrees have evaded material supervision by other state institutions. This misalignment with the framework for reforming state institutions in Indonesia, which emphasizes a system of checks and balances, highlights the inconsistency of Indonesian legal politics during the reform era.

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