

The Implications of a Change in Authority of People's consultative Assembly against the MPR Decree Law Product

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Abstract:-Constitution of the Republic of Indonesia in 1945 is the highest law in Indonesia. The Constitution has been amended four times. One of the consequences is fundamental is Highest Assembly as the state institutions become equal with other institutions. One consequence is a change in authority. After a change of this basic law, then the Assembly no longer has the authority to set Broad guidelines of state policy (GBHN). Study of the problem, namely (1) whether the background of the abolition of authority of MPR in setting Broad guidelines of state policy (GBHN)?, and (2) What are the implications of the change in authority MPR legal product. Methods to address issues to do with normative juridical research through library with approaches and techniques juridical and historical analysis. The research concludes that the elimination of the authority of the Assembly in setting the guidelines have a good background of the philosophical, juridical, theoretical, or sociological order levels the state institutions. Implications of changes in the authority of the Assembly to the legal product MPR that the existing products before the amendment to the Constitution of the Republic of Indonesia in 1945 as referred to Art. 2 and Art. 4 MPR Decree No. I / MPR / 2003 are still valid. Medium legal product MPR Negara Republik Indonesia post-amendment to the Constitution of 1945 is the establishment of an administrative nature (beschikking).

Keywords: *implications, change authority MPR, broad guidelines of state policy (GBHN)*

I. INTRODUCTION

Constitutional Law (HTN) Indonesia experienced a period of enormous change after the reforms have had four (4) times the change in the basic law, the Constitution of the Republic of Indonesia Year 1945 (Constitution of the Republic of Indonesia 1945)¹. Changes occur in almost all substance. Manuscript Constitution of the Republic of Indonesia 1945 (Before Amendment) has a content of 71 (seventy one) point conditions. After the changes to 199 (one hundred and ninety nine) grains provisions². Asshiddiqie argued that the results of amendment to the Constitution of the Republic of Indonesia 1945 (Before Amendment) can be regarded as a new constitution by the official name "Constitution of the Republic of Indonesia Year 1945" or abbreviated to the Constitution of the Republic of Indonesia 1945³.

A fundamental change occurred since the constitutional life of Indonesia first and second change. Namely, among others, reduction of the power of the executive branch in the form of restrictions on presidential powers. The President no longer holds legislative powers in various ways. If the related law, the president must consider the views of the House of Representatives (DPR) or the Supreme Court (MA)⁴.

¹First change the Constitution of the Republic of Indonesia in 1945 occurred October 19, 1999. The Second Amendment Date August 18, 2000, the Third Amendment on 9 November 2001, and the Fourth Amendment Date August 11, 2002. As mentioned YudhaPandu (Ed.), 1945 and the Constitution of Indonesia, (Jakarta: Indonesian Legal Center Publishing, 2008), p. vi.

²Asshiddiqie, *1945 against Change Implications for Development of National Law*, Papers, (Jakarta: National Seminar on Legal Studies, 2005), p. 12.

³The Constitutional Court of the Republic of Indonesia, Manuscript Comprehensive Amendment of the Constitution of the Republic of Indonesia Year 1945: Background, Process and Results Discussion 1999-2002, Book I, (Jakarta: Sekretariat General and Registrar of the Constitutional Court, 2010), p. 846, 851, 861, and 873; Asshiddiqie, *Indonesia Since the constitutional structure of the Fourth Amendment of the Constitution of 1945*, Papers, (Jakarta: Seminar on National Law Development Agency, 2003), p. 1. The doctrine or opinion of the scholar is one source of HTN in addition to formal legislation, jurisprudence, customs or conventions, and treaties, as in B. Hestu Cipto Handoyo, *Indonesia Constitutional Law: Towards a Democratic System Consolidation*, (Yogyakarta: Atma Jaya University, 2009), p. 39. So the authors use the abbreviation result of changes to the Constitution Homeland with the Constitution of the Republic of Indonesia in 1945.

⁴Didier Hariadi Estiko, *1945 Changes and Its Implication Legal System Development*, (Jakarta: Legal Team Assessment Center for Information Services and the Secretary General of the Assembly, 2001), p. 33.

More fundamental changes are on the third amendment to the Constitution of the Republic of Indonesia (NKRI) is. Paradigm supremacy of institutions that housed the People's Consultative Assembly (MPR) to change the paradigm of constitutional supremacy. Article 1 Paragraph (2) The Constitution of the Republic of Indonesia 1945 (Before Amendment) stipulates that sovereignty is in the hands of the people and performed entirely by the Assembly. This provision indicates that the MPR is the highest state institution as the executor of the people's sovereignty. Institutions of other countries located below the MPR. Other state institutions cannot cancel any decision of the Assembly because it has a lower position. Explanation of Article 1 Paragraph (2) The Constitution of the Republic of Indonesia 1945 (Before Amendment) confirmed that the Assembly is regarded as the embodiment of the people who hold sovereign state.

After the third amendment to the Constitution of the Republic of Indonesia 1945 (Before the Amendment), the wording of Article 1 Paragraph (2) has become "Sovereignty belongs to the people and carried out according to the Constitution". Changes in these provisions have implications⁵ the extraordinary position of the MPR. Before the change of domicile as the highest state institution, but after a change of a state institution that is equivalent to the other, namely the House of Representatives, Regional Representatives Council (DPD), President, Supreme Court, Constitutional Court (MK), and the Supreme Audit Agency (BPK). So it is logical Assembly does not have the task of establishing the Board Guidelines of State Policy hereinafter abbreviated (GBHN) as before the amendment to the Constitution of the Republic of Indonesia, 1945. While the election of President and Vice-President (Election) is done directly by the people with a very significant due to the MPR task.

SoewotoMulyosudarmo found a formula that provision is more realistic, in the sense of accommodating the constitutional principle as well, namely the rule of law, sovereignty of the people, and the sovereignty of parliament⁶. The fourth change is a must, because the direct presidential elections have consequences for the President directly accountable to voters. MPR and related compositions have also been changes because there are elimination of Envoy Group and the institutionalization of the Regional Representatives into the Regional Representatives Council (DPD) in the MPR.

Significantly, as mentioned point Quarter Tutik the bases in Sri SoemantriMartosuwignyo the opinion that after the third amendment to the Constitution of the Republic of Indonesia in 1945 adopted a system of government that truly presidential government system. A characteristic of the system of government is seen among others;

1. Procedures and mechanisms presidential elections elected as a pair directly by the people; and
2. The system of accountability of President and Vice President (VP) for its outstanding performance as an executive agency is not to MPR. Because MPR no longer manifested as executors of popular sovereignty⁷.

MPR before the amendment to the Constitution of the Republic of Indonesia in 1945 have the following duties and authority:

1. Establish the Constitution;
2. Change the Constitution;
3. Establish guidelines;
4. Choose and lift the president and vice president;
5. Make a decision that is not canceled out by other state institutions;
6. Provide an explanation/interpretation of the decision of the Assembly;
7. Request the President's accountability in the middle of his term because of the charges violations through a special court; and
8. Lay President.

While the duties and authority of the Assembly after being high state is:

1. Changing and determine the Constitution;
 2. Inaugurate President and/or Vice President;
 3. Lay the President and/or Vice President in their term of office by the Constitution;
- Choose and define the President and/or Vice President in case the President and/or Vice President remains incapacitated;
4. Inaugurate the Vice President becomes President if the President resigns, is dismissed or is unable to carry out its obligations;

⁵The implication means that (1) the involvement, (2) the intent or understanding that is not mentioned directly. Similarly, the Peter and YennySalimSalim, Dictionary Indonesian Contemporary, (Jakarta: Modern English Press, 2002), p. 562.

⁶SoewotoMulyosudarmo, *Constitutional renewal Through Constitutional Amendment*, (Malang: HTN Teachers Association and HAN East Java and In-TRANS, 2004), p. 4.

⁷Quarterly point Tutik, *Construction Indonesia Constitutional Law Post-Amendment 1945*, (Jakarta: KencanaPrenada Media Group, 2010), p. 3, 4; Asshiddiqie, *Idea People's Sovereignty in the Constitution and Implementation in Indonesia: Shifting Balance Between Individualism and Collectivism In the Policy Democracy Political and Economic Democracy for Third Period of Democracy, 1945 - 1980's*, (Jakarta: PT Ichtiar New Van Hoeve, 1994), p , 1.

5. Select and induct the vice president if a vacancy occurred Vice President; and
6. Select and induct the President and Vice President if both quit together.

Comparison of the duties and authority of the Assembly between before and after the amendment to the Constitution of the Republic of Indonesia in 1945 shows the removal of an MPR task is to establish the guidelines.

Elimination of duties MPR sets Guidelines implies the existence of legal uncertainty MPR thoroughly. In order to avoid this incident, they held a review of the agenda of the Assembly issued since 1966 up to (s/d) in 2002 as the provisions of Article I Additional Rules 1945 Constitution of the Republic of Indonesia (Change). August 7, 2003 the Assembly set the "People's Consultative Assembly Decree of the Republic of Indonesia Number I/MPR/2003 on Reconsideration Matter and Legal Status of the Provisional People's Consultative Assembly Decree and the Decree of the People's Consultative Assembly of the Republic of Indonesia Year 1960 until the Year 2002" (MPR Decree No. I/MPR/2003). Decreebased on this, the Assembly since 1960 s/d in 2002 to have 139 (one hundred and thirty nine) Decree the classification 6 groups:

- a. Art. 1 form of MPR/S is revoked and declared null comprising Decree8.
- b. Art. 2 in the form of MPR/S shall remain valid with the provision (Decree3).
- c. Art. 3 is MPR/S shall remain valid s/d establishment of governance results of the 2004 (Decree8).
- d. Art. 4, MPR/S shall remain valid s/d formation of the law (Decree 11).
- e. Art. 5, MPR declared valid s/d the establishment of rule of order by the results of the 2004 MPR (Decree5).
- f. Art. 6, MPR / S declared no longer need to do any further legal action, either because it is final, it has been revoked, or has been completed (Decree 10)⁸.

Therefore, the issues to be examined are:

1. What is the background of the abolition of the authority of the Assembly in setting the guidelines?
2. What are the implications of the change in authority MPR legal product?

II. METHODOLOGY

2.1. Types of research

This type of research is to study the legal / normative to search for, collect, and analyze legal materials, both primary and secondary. In a narrow sense, juridical / normative only logically viewed systematically in the overall device is the norm, while in the broad sense see the effect of social and community background. Juridical/Normative in the broad sense is quite natural that the definition of "normative" is defined as "that should/should/who should" (including normative / should have been legally living or aspired by the people/nation Indonesia based on the study of philosophical, sociological, and historically) as said Sudarto⁹. This study uses the notion of juridical/normative in its broadest sense includes the background of philosophical, juridical, theoretical, and sociological.

2.2. Research approach

Based on the formulation of the problem and the type of the study, the research approach used is the juridical and historical (as contemplated Soekanto and Sri Pamudji)¹⁰the provisions of the Constitution of the Republic of Indonesia in 1945 about a change in authority MPR.

2.3. Legal Materials Research

This normative legal research uses two kinds of law to obtain the substance of the study materials, namely primary legal materials (primary sources or authorities)¹¹consisting of legislation and secondary legal materials (secondary sources or non-authorities)¹². Primary legal materials include the Constitution of the

⁸People's Consultative Assembly Decree of the People's Consultative Assembly of the Republic of Indonesia Number I / MPR / 2003 on Reconsideration Matter and Legal Status Decree of the Assembly Provisional Consultative Assembly Decree of the Republic of Indonesia Year 1960 s / d 2002, (Jakarta: Secretariat General of the People's Consultative Assembly , 2012), p. 1 - 33. People's Consultative Assembly, Study on the Status MPR Post-Determination Act No. 12 in 2011, the Terms of Reference Workshop, (Malang: Center for the Study of MPR and Regional Autonomy Development Center of UB's Faculty of Law, 2012), p. 1, 2.

⁹BardaNawawiArief, *Criminal Law Science Intergalactic (Integrative Thinking in Criminal Law)*, paper "Congress of Indonesian Legal Studies", (Semarang, Indonesia and the Association of Sociology of Law and Public Law Section FH UNDIP, 19 and October 20, 2012).

¹⁰Soerjono Soekanto and Sri Mamudji, *Normative Legal Research: A Brief Overview*, (Jakarta: Rajawali, 1985), p. 15.

¹¹ Morris L. Cohen, *Legal Research in a Nutshell*, (ST Paul: West Publishing Co., 1978), p.1.

¹²*Ibid.*, hlm. 2.

Republic of Indonesia in 1945 and MPR Decree No. I/MPR/2003. The secondary law covering literature, journals, papers, magazines jurisprudence, encyclopedias, and the opinion of the experts who have scientific payloads associated with changes in the MPR authority establishes guidelines.

2.4. Collection Techniques Legal Materials Research

Mechanical collection of legal materials normative juridical research is literature, then analyzed to solve legal problems. In addition, the materials libraries are also needed as a source of ideas to explore the thoughts or ideas to formulate a new theoretical framework.

Researchers do this to get legal materials needed, both primary and secondary. Of legal materials obtained are then researchers used a card system to record quotes, effort, and comments needed.

2.5. Mechanical Analysis Research

The legal analysis is an examination and assessment (by) jurisprudence (*rechtswetenschap*, the science of law)¹³. Appropriate approach to the study, the analysis is done legally and historically furnished with content analysis, primarily performed to ingredients primary law. Content analysis is done based on the principle of logical consistency between legal principles relating to problems studied. It is well to determine whether there is a deviation from the principles in question.

According to type of research, content and article relevant principles are interpreted with authentic and historical methods¹⁴. The use of authentic method is to interpret the provisions of the Constitution concerning the authority of the Assembly. The historical method used to interpret the events of the constitutional amendment for the purpose of the framers.

III. RESULTS AND DISCUSSION

3.1. Background Removal Authority MPR Establishing Guidelines

Elimination of MPR authority in setting the guidelines has good background of the philosophical, juridical, theoretical, or sociological. MPR philosophical background no longer have the authority to set the guidelines is the representation system (ontological) held by the bicameral system with equal footing (epistemologies) in order to guarantee the representation and representation of local residents in a fair and effective political decision-making (axiological). During the New Order, the regional representative's faction in the Assembly does not participate in the decision-making legislation.

The cornerstone of the philosophy of the bicameral system based on two things: the checks and balances and representativeness. The philosophy of checks and balances is not until there is one institution that monopolizes the mechanisms for creating legislation. The mechanism of checks and balances requires that no single institution that is not controlled other institutions. Implementation of checks and balances system in Indonesia, a functional relationship exists - horizontal; not structural - a vertical among state institutions in order to realize a democratic constitutional state and a democratic state based on law by upholding human dignity.

Philosophy degree of representativeness (representativeness) that in a society or a country those very high levels of social fragmentation generally enforced bicameral mechanism. Implementation in various countries is in order to accommodate the growing aspirations of so many in the community. Degree of representativeness of representative institutions guaranteeing whole groups that exist in society. Homeland fragmentation levels high, even consolidated economic class, ethnicity, religion, language, or otherwise. Homeland Islands certainly cannot be accommodated by the legislative branches only. Therefore we need a representative institution of the people who really holds the degree of aspiration.

The bicameral system in the structure of the Assembly has the consequence that the MPR be the name of a forum or conference proceedings joint between the DPR and DPD. So that the Assembly only has the authority to set the amendment to the Constitution and appoint and dismiss the President and Vice President (if a change is not lifted in the sense of choosing); should be given the authority to set, decided through a forum with DPR and DPD.

The bicameral system of people's representative body of the people wants a pure presidential system of government. The President is elected directly by the people, so it is no longer a function Assembly to elect the President and Vice President as well as in determining the guidelines and responsibilities of the President. With a direct election system, the guidelines are a party platform next election winner is determined platform

¹³BagirManan, *Relationship Between Central and Local According to the principle of decentralization Under the 1945 Constitution*, (Bandung: Padjadjaran University, 1990), p. 15.

¹⁴Yudha Bhakti Ardiwisastra, *Interpretation and Construction Law*,(Bandung: Alumni, 2000), p. 11; BambangSutiyoso, *Legal discovery methods: Effort to Realize Definitely Law and Justice*, (Yogyakarta: UII Press, 2012), p. 113 – 117, 120.

Presidential candidate the winner of the presidency. The President is not accountable to the Assembly, but directly to the voters. Model direct presidential elections indicate that the Guidelines are materials package campaign of President and Vice President. On the basis of work programs campaigned by package President and Vice President, the people making assessments. So that the MPR as (joint session) DPR and DPD does not have the authority to establish guidelines.

Background juridical MPR no longer have the authority to set the guidelines is Article 3 of the Constitution of the Republic of Indonesia 1945 Change (Third), which reads:

Article 3

- (1) The People's Consultative Assembly authorized to change and establish the Constitution.
- (2) The People's Consultative Assembly inaugurated the President and/or Vice President.
- (3) The People's Consultative Assembly can only dismiss the President and/or Vice President of his rule according to the Constitution.

The wording of Article 3 Constitution of the Republic of Indonesia 1945 (Before Amendment) is “the Assembly sets the Basic Law and the Guidelines of State Policy rather than”.

MPR theoretical background no longer have the authority to establish guidelines that sovereignty belongs to the people and carried out in accordance with the provisions stipulated in the Constitution (not MPR) to think about the principle of popular sovereignty, the principle of separation and division of state power. Formulation “Sovereignty is in the hands of the people and carried out in accordance with the Constitution” is “the union of thought” (merger) between *nomokrasi* and democracy as two sides of the same coin. Homeland as a legal state should be democratic (constitutional democracy). And the Republic of Indonesia as a democracy should be based on law (democratic *rechtsstaat*). Homeland Constitutional debate since the 1930s, both (*nomokrasi* and democracy) held by the founding fathers. That is why there is a term in the formulation Supomo constitutional system. The constitutional system to characterize constitutional democracy. So when the MPR is fully implementing the people's sovereignty, he has the authority to define the state policy in outline. But after the people's sovereignty implemented by the rules of the Constitution, the Assembly no longer has the authority to establish guidelines.

While the sociological background MPR no longer have the authority to set the guidelines that the spirit of state officials in the Constitution of the Republic of Indonesia in 1945 as a sovereign people. Previously, the founders of the republic, because the good people then it is believed the person designated. Therefore prioritizing the spirit of state officials. Thus, in sets of MPR and sovereignty, saying that sovereignty is in the hands of the people and carried out entirely by the Assembly.

However, the reality in the development of Indonesian history, state officials turned out not everyone who is appointed has a good spirit. Even grown very ugly. Here, then raised a reaction desire to remove the words completely be not entirely. Because there is sovereignty that still exists in the hands of the people. There is still a sovereign that is not submitted to the MPR agency so he would not be illegal; arbitrarily make a decision so far from the aspirations represented.

3.2. Change Implications Authority MPR Product against the People's Consultative Assembly Decree Law

Amendment to the Constitution of the Republic of Indonesia 1945 put MPR no longer serves as the highest state institutions as fully implementing the people's sovereignty, but only serves as a main or primary state agency.¹⁵ Provisions Art. 1 Paragraph 2 of the constitution of the Republic of Indonesia 1945 (Before Amendment) states: “Sovereignty is in the hands of the people and fully implemented by the People's Consultative Assembly”. The authority that comes from Art. 1 Paragraph (2) The Constitution of the Republic of Indonesia 1945 (Before the Amendment), according to Moh. Kusnardi and Bintan R. Saragih in the book “Structure of Power Distribution System According to 1945” is an authority-the authority of the Assembly are not limited (*enunciatief*)¹⁶.

While the change of Art. 1 Paragraph 2 of the constitution of the Republic of Indonesia in 1945 states: “Sovereignty belongs to the people and carried out according to the Constitution”. MPR membership was changed consisting of all members of the DPR and DPD selected through elections. This is known as a bicameral system, in which the Assembly members consist of all members of the DPR and DPD. DPR is a representation of political parties, while DPD is a representation of the territorial area (DPD is a representative of the Province). As in the US, where Congress is composed of the House of Representatives which is a representation of the political parties and Senator as a state representative. The membership of the Assembly by

¹⁵ Asshiddiqie divide and use the term institution main state or state institutions of primary and which is secondary or auxiliary (auxiliary). See more in Asshiddiqie, *the Constitution and the constitutional Indonesia Contemporary*, (Jakarta: The BiografiInstitue, 2007), hlm. 21.

¹⁶ Moh. Kusnardi, dan Bintan R. Saragih, *The composition of Power Distribution System According to the 1945 Constitution*, (Jakarta: Gramedia, 1978), p. 56.

Art. 2 Paragraph 1 of the Constitution of the Republic of Indonesia 1945 (Before the Amendment) which is composed of members of Parliament plus with representatives from the regions and factions, according to the rules established by the Act. Envoys area and group representatives at that time is not elected directly by the General Election, but lifted proposed by the provincial legislature.

Republic of Indonesia constitutional changes in 1945 have implications for the position and role of the Assembly as a representation of the people's sovereignty. By 1945, the results of the changes no longer the highest state institution. Constitution The Republic of Indonesia 1945 results in a change in state institutions creates functional relationships horizontally, rather than vertically in a structural relationship. MPR is not the highest state institution. Similarly, according to Mahfud.

This is different to the Assembly in the constitutional provision of The Republic of Indonesia 1945 in the manuscript before the changes mentioned in Art. 1 Paragraph (2) that the MPR as the highest state institution. Likewise in the Constitution Explanation Republic of Indonesia 1945 (Before Amendment) Grain Systems Section III State Government which outlines that "the supreme state power in the hands of the Assembly" which later included also in the MPRS Decree No. XX/MPRS/1966 ".

After the Constitution of the Republic of Indonesia in 1945 the results of the changes stipulated that "Explanation of the Constitution of the Republic of Indonesia 1945 (Before the Amendment) and MPRS Decree No. XX/MPRS/1966 Memorandum DPRGR about Source Code RI Law and Rules of Order Legislation RI "The changes are not applicable. Because repealed in 2000 with MPR Decree No. III/MPR/2000 on Source of Law and the Rules of Order of legislation or for the consequences of changing the Constitution of the Republic of Indonesia in 1945 that the MPR is no longer the legislation. MPR is no longer a state agency implementing fully the sovereignty of the people because of Art. 1 Paragraph (2) has been amended with new provisions, "Sovereignty belongs to the people and carried out according to the Constitution". MPR become equal with other state institutions, such as Parliament, the President, Supreme Court, Constitutional Court, and the CPC.

Changes in position and this role would have implications on the authority of the Assembly. Before the amendment to the Constitution of the Republic of Indonesia in 1945, the Assembly has the authority to elect the President and Vice President as well as set guidelines. But after the amendment of the Constitution of the Republic of Indonesia in 1945, this institution no longer had the authority to choose the president and vice president, as president and vice president elected directly by the people through elections.

Moreover there is no longer the guideline made by the Assembly, as president and vice president elected would run the government in accordance with the vision and mission that is delivered during the campaign which was then poured in Law National Development Program (*Propenas*) and Plan for Long-Term Program of the National (RPJPN) and Medium Term Development plan National.

Asshiddiqie found another thing to be a consequence of an amendment to the Constitution of the Republic of Indonesia in 1945 is no longer MPR as legislation. In the past, the more so after the exit MPRSDecree No. XX / MPRS / 1966 regarding the MPR as one of legislation that contain settings. Provisions of the MPR as the legislation were originally interpreted from the wording of Art. 3 Constitution of the Republic of Indonesia 1945 (Before the Amendment) that "the Assembly establishes the Constitution and Outlines than the State Policy". Positioning MPR as legislation in the second degree (under the Constitution of the Republic of Indonesia in 1945) are really just interpretations MPRS only, because the setting (*Regeling*) and the shape of the legislation. Assign it actually can only be interpreted as imposing (*beschikking*) which are concrete and individual.

MPR as a legal product is the principal provisions mirroring the desire and the overall statement of the people to be achieved within a period of 5 years based on Art. 3 Constitution of the Republic of Indonesia 1945 (Before the Amendment). Therefore, the MPR in order to establish the guidelines actually not just a special Decree on the guidelines. However, during the New Order, that the entire MPRDecree product is essentially the Guidelines.

Provisions MPR decree is a legal product in the Constitution of the Republic of Indonesia 1945 (Before the Amendment) does not exist. Type of legislation on the body of the Constitution of the Republic of Indonesia in 1945 there were only three, namely: (1) Act as mentioned Art. 5 in conjunction with Art. 20; (2) decree in accordance with Art. 22; and (3) PP-based Art. Paragraph 5 (2) Constitution The Republic of Indonesia 1945 (Before the Amendment). The legal force MPR and MPRS began to appear in the rule of law in Indonesia since issued MPRS decree No. I/MPRS/1960 regarding the "Political Manifesto of the Republic of Indonesia as Outlines rather than the State Policy".

The legal force MPR/S in the New Order contained in the General Explanation of the Constitution of the Republic of Indonesia 1945 (Before Amendment) of the State Government System No. III. Sovereignty of the people held by the Assembly as an embodiment of all the people of Indonesia (*vertretungsorgan des Willens des staatsvolkes*). MPR sets Guidelines, lifting the Head of State (President) and the Vice President. MPR holds the supreme state power. Moderate President shall pursue the state policy as the outlines of which are set MPR.

Elimination of duties MPR sets Guidelines implies the existence of legal uncertainty MPR/S as a

whole. In order to avoid this event, held agenda a review of the MPR/S issued since 1966 s/d in 2002 as the provisions of Art. I Additional Rules 1945 Constitution of the Republic of Indonesia who commissioned the Assembly to conduct a review of the matter and the legal status of MPR/S to take a decision on ST MPR 2003.

Asshiddiqie outlined that MPR is not the legislation. It can be easily explored and understood from two articles of the Constitution of the Republic of Indonesia in 1945 that Art. 24C Paragraph (1) and the Additional Rules Art. I. More clearly, firmly and surely, can also examine MPR Decree No. I / MPR / 2003 and Law No. 10/2004¹⁷. Thus, in the future should no longer exist MPR that is set as the legislation.

Because there MPR is still declared "valid under certain conditions" especially in his capacity as a source of law is still binding as mentioned in Explanation Art. 7 of Law No. 12/2011. It is as if they give a place for MPR as legislation. But it is already certain that the MPR could no longer be used as legislation that cannot be tested against the Constitution and cannot be used as the basis of judicial review against.

Sources of law, as the opinion of algra¹⁸ includes source material law and procedural law sources. Source material law is a matter of law or the source from which it was taken as a factor that helps the formation of law. For example social relations, relations of political power, socio-economic situation, the tradition, the results of scientific research, international developments, as well as the geographical situation.

While the formal legal sources is a place or source from which a regulatory legal force. Thus, with regard to the form or manner as the formal cause of the rule of law be applicable. Included in the formal legal sources are Law (in the broad sense), Customary Law, the Treaty, Jurisprudence and Doctrine. Thus, the MPR resolutions included in a formal legal source.

MPR is a legal norm. A legal norm applies; if it has the power behavior or have validity (validity or geltung) obtained if formed by regulatory authorities and in accordance with applicable legal norms are valid which have the power to (efficacy). MPR is valid / invalid so that is binding because it was created agency/competent authority (competent) based on higher legal norms that provisions of Art. 3 Constitution of the Republic of Indonesia 1945 (Before the Amendment).

Legal norms as a command binding will still have the basic holding capacity even though the command is not there. Likewise with the existence of MPR after the amendment to the Constitution the Republic of Indonesia, 1945, in which the Assembly no longer has the authority to set the guidelines (MPR)¹⁹. Thus, although the Assembly is now no longer has the authority (authority) produces MPR decree law, but the Decree still existed binding (valid).

As the description on the front of that authority after the amendment in accordance sounds MPR Art. 3 Paragraphs 1, Clause 2, Art. 7A and Art. 7B Paragraph 7, as well as Art. 8 Paragraph 1 and 3 and Art. 37 Constitution The Republic of Indonesia 1945, covering:

1. Changing and determine the Constitution;
2. Inaugurate President and / or Vice President;
3. Breaking the Parliament based on the proposal of the Constitutional Court to dismiss the President and/or Vice President in his post, it is known as impeachment;
4. Installs the Vice President becomes President if the President die, quit, dismissed, or not be able to carry out the obligations of his rule according to the Constitution;
5. Choose the Vice President of the two candidates submitted by the President in case of vacancy of the Vice President in his tenure at the latest within sixty days;
6. Choosing the President and Vice President if both pass away, resign, dismissed, or cannot perform his duties during office simultaneously from the two candidates for President and Vice President are proposed by political parties or coalition of political parties that candidates for President and Vice President of its first gained the most votes and second in the previous election until the end of his tenure.

Based on this authority, it can be concluded that the Assembly does not have the authority in the field of formation of legislation. MPR decree that remains may exist and released by the MPR is the Decree is *beschikking* course; in the form provisions the appointment of the President and/or Vice President, or the decision on the dismissal of the President and/or Vice President.

The use of the term TAP (provisions) to accommodate these needs can be maintained, according Asshiddiqie²⁰. Even MPR still be given the authority to regulate the affairs related to their own household or disciplinary proceedings in respect of the Assembly. Settings are internal matters can be distinguished from the term earlier decision. Both can be distinguished by the term TAP and Decisions (*Tus*) as practiced in the past.

¹⁷JimlyAsshiddiqie, *Constitution ...Op. Cit.*, p. 319.

¹⁸MexasaiIndra, *Dinamika Indonesia Constitutional Law*, (Bandung: PT RefikaAditama, 2011), p. 16.

¹⁹JimlyAsshiddiqie& M. Ali Safa'at, *Hans Kelsen Theory about Law*, (Jakarta: Secretariat General and Registrar of the Constitutional Court, 2006), p. 170.

²⁰JimlyAsshiddiqie, *Subject Law in Indonesia*, (Jakarta: General Secretariat of the Constitutional Court of the Republic of Indonesia, 2006), p. 54

TAP are binding out and in, while only applies to the (internal).

Asshiddiqie²¹ further argues that because given simplification constitutional duties MPR is not a lot, then all product decisions MPR, both externally and internally may be called MPR alone. Moreover, the difference between the nature outside and inside is very thin.

Itself MPR after the amendment to the Constitution the Republic of Indonesia 1945 (i.e. MPR results of the 2004 and so on) must be understood differently understanding with MPR before the changes to the Constitution Homeland. MPR results of the 2004 and beyond is an institution (high) country with different institutional status of his constitutional authority as compared with the previous MPR. If MPR / S previously is set (*Regeling*), then the MPR "new style" only contain legal norms of an administrative nature (*beschikking*)²². MPR regulatory nature only insofar as the provisions of the Assembly Rules of Conduct that applies to the inside.

All state agencies have regulatory authority is internal to the regulatory term. Therefore, a provision on the order of the Assembly should also set forth in the form of law in the form of regulations. Therefore, the MPR decision between the products should distinguish between products that are setting (*Regeling*) and a product which is an administrative determination (*beschikking*). That is set is referred to as a rule, while the administrative determination is called TAP. Both TAP and regulations are equally seen as a product of the decision of the MPR. Thus, products MPR law after amendments to the Constitution Homeland:

1. MPR decree on dismissal of the President / Vice President;
2. MPR of the President/Vice President Elected;
3. Rules of Procedure of the Assembly

Thus, the Assembly after the amendment to the Constitution of the Republic of Indonesia in 1945 can still be issued a legal product in the form of Rules of the MPR and MPR legal product in a different sense than before. There is no longer MPR/S as a product for the general binding rules (*Algemene verbindende voorschriften*). So the regulations issued by the Assembly cannot be categorized as a type of legislation, therefore, not appropriate incorporated into the kind of legislation.

However, there are some MPR still apply as mentioned in MPR Decree No. I / MPR / 2003 regarding the review of the matter and the legal status of MPR / S 1960 s/d in 2002 under the provisions of Art. I Additional Rules and Art. I Transitional Provisions of the Constitution of the Republic of Indonesia in 1945 that: "Any legislation that is still valid for the new has not been held under this Constitution".

Based on this description, then "Change Implications for the Product Authority MPR Decree Law", namely:

1. Product MPR decree law that already exists and has become legislation before the amendment to the Constitution of the Republic of Indonesia in 1945 as referred to Art. 2 and Art. 4 MPR Decree No. I / MPR / 2003 is fixed has a behavior (binding force) so it can still be a source of procedural law for the establishment of laws and regulations; and
2. Product MPR law since a change in the Constitution of the Republic of Indonesia in 1945 is the establishment of an administrative nature (*beschikking*) concrete and individual namely TAP (provisions/Decree) on the appointment or dismissal of the President and / or Vice President. So now MPR is not *Regeling* or arrangement of abstract and general; MPR is not the kind of legislation.
- 3.

IV. CONCLUSION

Elimination of MPR authority in setting the guidelines have good background of the philosophical, juridical, theoretical, or sociological order levels the state institutions. Implications of changes in the authority of the Assembly against the laws MPR existing products before the amendment to the Constitution of the Republic of Indonesia in 1945 as referred to Art. 2 and Art. 4 MPR Decree No. I/MPR/2003 is fixed has a behavior that can still be the source of the formation of a formal law legislation. While the legal product MPR since a change in the Constitution of the Republic of Indonesia in 1945 is the establishment of an administrative nature (*beschikking*) that is concrete and individual.

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²¹*Ibid.*, p. 54 – 57.

²²Jimly Asshiddiqie, *Principles of Constitutional Law at the Indonesia Post-Reformation*, (Jakarta: Populer, 2008), p. 233.

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