



Explanation of the Meaning of Article 1 Paragraphs (2) of the 1945 Constitution of Republic of Indonesia to the Concept of the Constitutional Conventions in the Annual Achievement Reports of State Institutions

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ABSTRACT

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Amendments to Article 1 paragraph (2) of the 1945 Constitution have changed the Indonesian state administration system, including the power and position of state institutions. This change is a new thought towards state institutions that place the People's Consultative Assembly which was originally the highest state institution and fully implementer of people's sovereignty. Furthermore, the people's mandate is carried out by branches of state power or state institutions based on the Constitution and does not recognize the Supreme State Institution and all state institutions have the same position in the state administration system as executor of people's sovereignty. This study is to find and formulate legal arguments through an analysis of the subject matter, namely the concept of constitutional conventions. The results of this study explain that Article 1 paragraph (2) of the 1945 Constitution which has been amended gives meaning to the Indonesian state administration system, namely that it has changed the existence of state institutions as implementers of people's sovereignty. The meaning of Article 1 paragraph (2) of the 1945 Constitution is extended to the customary practice of state administration. Because all state institutions are executor of people's sovereignty, all these state institutions submit annual performance reports to the people through the convention mechanism.

Keywords:

Constitutional Conventions, People's Sovereignty, State Institutions.

I. INTRODUCTION

The amendments to the 1945 Constitution, which were implemented between 1999 and 2002, changed Indonesia's constitutional system. The amendment to the 1945 Constitution is a thought process by the components of the nation in changing the constitutional system to keep up with the development of global society. One of the main substances in the 1945 Constitution that was amended was Article 1 paragraphs (2), which then resulted in a new thought, namely about the implementation of people's sovereignty. Prior to the amendment of Article 1 paragraphs (2) of the 1945 Constitution which reads: "Sovereignty is in the hands of the people and carried out entirely by the People's Consultative Assembly", it was changed to "Sovereignty is in the hands of the people and implemented

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according to the Constitution". This change is a new thought for state institutions that place the People's Consultative Assembly which was originally the highest state institution and fully implements people's sovereignty. According to Soewoto (2004, p.3), "the People's Consultative Assembly, which was originally conceived as the holder of a full mandate from the people", has shifted towards an understanding that the People's Consultative Assembly is no longer the holder of the highest mandate, but that the mandate is carried out according to the Constitution. Furthermore, the people's mandate is carried out by the branches of state power or state institutions based on the Constitution.

The above opinion explains that the real meaning of the amendment to Article 1 paragraph (2) of the 1945 Constitution is about changes in people's sovereignty which are carried out according to the 1945 Constitution and implementing people's sovereignty or those who exercise people's sovereignty which has shifted from the People's Consultative Assembly as the holder of the highest people's sovereignty. The existence of the MPR as an institution is an embodiment of the representation of all the people of

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Indonesia, and has the highest authority in the State (Marzuki & Sitompul, 2020, p.948), but then those who exercise people's sovereignty according to the 1945 Constitution are all state institutions mentioned in the 1945 Constitution as state institutions implementing people's sovereignty. Amendment to Article 1 paragraphs (2) of the 1945 Constitution is a necessity that is part of the real life of the Indonesian people to improve the Indonesian constitutional system. The amendment to Article 1 paragraphs (2) of the 1945 Constitution is an idea about who actually acts as the implementing of the highest power. Soewoto (2004, p.4) stated: "change in Article 1 paragraphs (2) of the 1945 Constitution is a change towards a condition that reflects the actual situation regarding the arrangement of the highest power", that the owner of the highest power in the state is the people. New thoughts on implementing sovereignty in the 1945 Constitution were also followed by changes in the way the people gave mandates to state administrators.

The change in the formulation of Article 1 paragraphs (2) of the 1945 Constitution means that sovereignty or the highest power lies with the people, then who is the executor of people's sovereignty which is carried out according to the Constitution. Previously, the People's Consultative Assembly as the full implementer of people's sovereignty turned to the People's Consultative Assembly, which was no longer the full implementer of people's sovereignty. Furthermore, the 1945 Constitution regulates and gives constitutional authority to state institutions which are the implementers of people's sovereignty. Therefore, these changes have implications for the structure and mechanism of state institutions as implementers of people's sovereignty. Because all state institutions have the same position as implementers of people's sovereignty.

This means that all state institutions must account for their achievements to the people through the Annual General Assembly of the People's Consultative Assembly, so that the submission of reports on the annual achievements of state institutions is a constitutional practice to ask for accountability for annual achievements through the General Assembly of the People's Consultative Assembly. So far, those who submit annual reports on achievements are submitted by the President who represents all state institutions known as constitutional conventions. The problem in this study is how to expand the meaning of Article 1 paragraphs (2) of the 1945 Constitution to the constitutional convention on the submission of annual reports on the achievements of state institutions.

II. DISCUSSION

2.1. Implementing the People's Sovereignty before the Amendment of the 1945 Constitution

The content of meaning contained in Article 1 paragraphs (2) of the 1945 Constitution is regarding the sovereignty of the people and the implementer of sovereignty.

Sovereignty which means the highest power, it can also be said that power is the power to regulate an object according to its will (Airlangga, 2019, p.2). Thus, people's sovereignty means that the highest power is the people, if this is the case, then the people who actually implement sovereignty are the people themselves. Reviewing Article 1 paragraphs (2) of the 1945 Constitution before the amendment which stated "sovereignty is in the hands of the people and is carried out entirely by the People's Consultative Assembly. This article regulates very basic problems in Indonesian constitutional life, because it regulates the owner of the highest power in the state, which in this case owned by the People's Consultative Assembly.

Thus, the consequence of the position of the MPR as the full implementer of people's sovereignty is the power in a vertically divided state which culminates in the MPR as the highest state institution. Sri Soemantri (1989, p.99) argued, who was of the opinion that in order to prevent high state institutions from taking arbitrary actions, the People's Consultative Assembly set out various guidelines that must be adhered to and implemented by the state's high institutions. In addition to the Constitution, these guidelines are also contained in the MPR's decree on the Outlines of State Policy. Article 1 paragraphs (2) of the 1945 Constitution (before the amendment) means that state power rests with the people and is entrusted to the People's Consultative Assembly, and then the People's Consultative Assembly delegates its power to other state institutions.

2.2. Implementing People's Sovereignty after the Amendment to the 1945 Constitution

The new formulation of Article 1 paragraph (2) of the 1945 Constitution is intended: first, to emphasize that sovereignty will always be in the hands of the people, because so far there has been a kind of interpretation that the People's Consultative Assembly holds the sovereignty of the people. The people seem to transfer sovereignty to the People's Consultative Assembly, so that the people depend on the will of the People's Consultative Assembly. Second, the people's sovereignty is implemented according to the Constitution. It also means that the People's Consultative Assembly is not the only one that implements people's sovereignty, the people's sovereignty is also carried out by other state institutions (Manan, 2004, p.53-54). This provision also means that the power of all state apparatus is limited, that is, it is limited by the Constitution. The same thing was stated by the Constitutional Commission (2004, p.39), that the new formulation of Article 1 paragraphs (2) of the 1945 Constitution, namely "Sovereignty is in the hands of the people and carried out according to the Constitution", means that the People's Consultative Assembly is no longer the determining institution in the Indonesian constitutional system, the People's Consultative Assembly is not again as the highest state institution holding people's sovereignty, but

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only a state institution consisting of members of the House of Representatives and the Regional Representative Council, all of whom are elected, either through political parties or individuals.

In the context of the amendment to Article 1 paragraphs (2) of the 1945 Constitution which places and positions the position of the MPR which was originally a fully implementing agency for people's sovereignty to become an MPR as one of the state institutions implementing people's sovereignty which is also the same as other state institutions as implementing people's sovereignty, it has an important role in state administration whose authority is constitutionally regulated in the 1945 Constitution. Jimly Asshiddiqie (2002, p.2-3), argued that with this change (change in the formulation of Article 1 paragraph (2) of the 1945 Constitution), the MPR no longer has an exclusive position as the sole agent or implementer of people's sovereignty, the MPR no longer fully exercises people's sovereignty because in addition to the MPR there are also other state institutions that are also actors or implementers of people's sovereignty. In addition, the amendment to Article 1 paragraph (2) of the 1945 Constitution not only changed the position of the MPR but also changed the position of all state institutions.

Institutions regulated in the 1945 Constitution can be grouped according to their respective power clumps. This kind of grouping is a grouping in terms of the functions carried out by these state institutions. The grouping based on organs means that each state institution whose powers are stated in the 1945 Constitution (amendment) separately stands alone as an autonomous state institution. The organs of power that are regulated in the 1945 Constitution (amendment), some are explicitly named, and some are explicitly only their functions, there are also institutions or organs that are mentioned that both their names and their functions or authorities will be regulated by lower regulations (Anwar, 2008, p. 198).

State institutions whose existence is mentioned in the 1945 Constitution and whose authorities are determined in the 1945 Constitution, are: the People's Consultative Assembly (MPR); House of Representatives (DPR); Regional Representative Council (DPD); President and vice president; Supreme Court (MA); Constitutional Court (MK); the Supreme Audit Agency (BPK); and the Judicial Commission (KY). So, in the institutional structure of the Republic of Indonesia, there are eight state organs that have equal positions which directly receive constitutional authority from the Constitution (Huda, 2005, p.151). Furthermore, there are state institutions whose existence is mentioned in the 1945 Constitution but whose authority is not explicitly stipulated in the 1945 Constitution. The author deliberately analyzes state institutions whose institutional structure is the Republic of Indonesia whose existence is explicitly determined and their authorities are directly related to the implementation of popular sovereignty, although not all of

the procedures for recruiting membership are directly through elections.

2.3. The Concept of Constitutional Conventions in the Annual Achievement Reports of State Institutions

In a country that adheres to the common law principle, constitutional conventions are something that is commonplace, even basically almost all administrative processes are not regulated by law, but are only regulated by conventions or constitutional customs (Mahardika, 2019, p.56). The process of constitutional customs in Indonesia is still carried out every year and becomes a tradition that must be carried out by the President every August 16. In the end, constitutional conventions have the same legal force as laws, because they are accepted and implemented, and often constitutional conventions shift written legislation (Rawung, 2020, p.191).

Conventions are part of the growing constitutional rules which are then adhered to in constitutional practice, although they are not written legal norms, constitutional conventions complement the constitution. Constitutional conventions not only function to complement the existing constitutional law rules, but also to make legal rules, especially the constitution (UUD), work in accordance with the development of the times. Constitutional conventions are a factor in the dynamics of a country's constitutional system (Rumokoy, 2010, p.12).

The first time the constitutional convention in Indonesia was put into practice was in 1945 when the new 1945 Constitution was ratified, that: The Minister of State is responsible to the President, because he is an assistant to the President. The development of the Indonesian state administration in 1945 turned out to be a Minister of State who was responsible to the President, because the constitutional habit of the Minister of State was responsible to the Working Body of the Central Indonesian National Committee (a kind of DPR). This happened because with the issuance of the Vice President's Edict No. X dated October 16, 1945, followed by the issuance of the Government's Declaration dated November 14, 1945, that the Central Indonesian National Committee, which originally assisted the President in carrying out his authority based on the Transitional Rules of Article IV of the 1945 Constitution, became a body which equal to the President, and where the Minister of State is responsible. This happened in the Cabinets of Sjahrir I, II, and III, as well as the Cabinet of Amir Sjarifudin who replaced him (Kusnardi & Ibrahim, 1983, p. 50-51).

The practice of constitutional customs or other constitutional conventions which are then routinely practiced in the annual agenda every August 16 is the President's state speech. This custom was uttered by the President as a state speech which was essentially an annual performance report achieved. The President delivered the state speech in the

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session of the House of Representatives, which is essentially more than an annual report that is informative by the President, because the report also contains a plan regarding the policies that will be pursued in the coming year (Kusnardi & Ibrahim, 1983, p. 50-51). During the time of President Soekarno, such a speech was uttered directly in front of the people in front of the palace called the "August 17 mandate", every August 17 in his responsibilities as the Great Leader of the Revolution, not as President (Kusnardi & Ibrahim, 1983, p. 50-51).

The state speech which is said every August 16 is an annual report on the performance that has been achieved by the President for one year to the people, so that the people know the performance of the President in carrying out his duties. The state speech, although it is a convention, is an obligation that must be carried out by a President. The obligation to make a state speech every August 16, which is a convention, becomes a necessity for a President to give or convey his success during the one year of work.

The Republic of Indonesia is a sovereign state of the people, the convention is one of the means to guarantee the implementation of the people's sovereignty. Because the 1945 Constitution divides state institutions according to their authority, Article 1 paragraphs (2) of the 1945 Constitution (amendment) which also places all state institutions as implementing people's sovereignty. Therefore, the practice of constitutional conventions should also be developed with accountability reports or annual achievement reports of other state institutions other than the President. This is to streamline the functions and authorities of the state institutions themselves, as well as to facilitate the implementation of state life. So far, it is the President who submits the annual achievement report every August 16 at the MPR annual session, so other state institutions also have the same position to submit their annual achievement reports.

The conception of people's sovereignty according to Article 1 paragraphs (2) of the 1945 Constitution of the state institutions implementing people's sovereignty is directed at the powers, duties and authorities of the main state institutions or directly receives the constitutional authority of the 1945 Constitution. First, is an institution called the People's Consultative Assembly. The MPR, which before the amendment to the 1945 Constitution was the full implementer of people's sovereignty, and as the highest state institution, has now changed both its position and status, namely the same as other major state institutions. Based on the amended 1945 Constitution concerning the existence, functions, duties, and authorities of the People's Consultative Assembly, it is no longer the highest and highest representative institution of the people, nor is it a very powerful institution as before (Santika & Sujana, 2021, p. 93-94). The People's Consultative Assembly's powers such as the duties and authorities specified in the 1945 Constitution are a form of implementing people's sovereignty, so that the People's Consultative

Assembly institution should also convey its performance in the People's Consultative Assembly annual report before the people through a constitutional convention.

Next is the People's Representative Council as a state institution implementing people's sovereignty, which is a political representative institution with members of the People's Representative Council elected through general elections. The People's Representative Council as a political representative, which means that political parties basically have a central and important position (status) and role in every democratic system because it plays an important role as a liaison between the state government (the state) and its citizens (Muttaqien, 2020, p.1). The affirmation that members of the People's Representative Council are elected through general elections in accordance with Article 19 paragraphs (1) of the 1945 Constitution, making all members of the People's Representative Council elected through general elections. Membership in the People's Representative Council is ultimately a legislative body, a political institution, a people's representative institution which is essentially a people's representative, and as the implementer of people's sovereignty. Because of its nature as people's representatives, in constitutional theory the determination of people's representatives can only be determined through general elections.

Ensuring that people's rights are not ignored, the people also have an important role in the performance of their representatives. This aims not to ignore the interests of the people and also the rights of the people so that the achievement of the People's Representative Council as a representative of the people has actions and decisions that prioritize the people (Qoroni & Winarwati, 2021.p.58). The People's Representative Council as the implementer of people's sovereignty should report every achievement of its achievements to the people every year. The People's Representative Council achievement report can be submitted through a constitutional convention, every 16 August.

Like the People's Representative Council, the Regional Representative Council is also a legislative body that participates in determining and supervising the course of politics and state management. The Regional Representative Council with all its powers and authorities should be able to carry out a balancing function against the various functions carried out by the People's Representative Council (checks and balances system) in the representative body (Alfaris, 2018, p.212). This is despite the limited authority of the Regional Representative Council, but all members of the Regional Representative Council are elected through general elections. The number of Regional Representative Council members from each province is the same for each province, namely 4 (four) people or seats regardless of the area and population, meaning that the determination of the number of Regional Representative Council members is determined based on regional administration. Thus, the Regional

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Representative Council is also the implementer of people's sovereignty, which is also accountable for its achievements to the people through the mechanism of constitutional conventions.

Next is the presidential institution which, and he president is the head of state as well as the head of government (single executive) whose position is separate from the parliament. The great authority possessed by the President is based on the will to guarantee a strong and stable government power. Regarding the authority possessed by the President according to the 1945 Constitution, the President in exercising his power, both in the field of government administration, legislation, and judicially, must be accountable for the implementation of his power to the people (as the owner of people's sovereignty) through the mechanism of constitutional conventions.

Next is the Judiciary which is an independent institution that is free from the influence of any institution. In addition to the Supreme Court, the judicial power in Indonesia has additional new state institutions, namely the Constitutional Court and the Judicial Commission which are authorized by the Constitution to propose the appointment of Supreme Court justices and other authorities in order to maintain and uphold honor, nobility, dignity and conduct of judges. Article 24 paragraph (1) of the 1945 Constitution expressly states that the judicial power is an independent power to administer the judiciary in order to uphold law and justice. The guarantee of an independent judicial power needs to be stated in the 1945 Constitution, because court decisions must be fair and free from the influence of any institution. This is then emphasized in Article 24 paragraph (2) of the 1945 Constitution which states: judicial power is exercised by a Supreme Court and judicial bodies under it in the general court, the religious court, the military court, the state administrative court, and by a Constitutional Court.

The Supreme Court as one of the implementers of judicial power with the authority specified in Article 24A paragraph (1) of the 1945 Constitution and its authority is the result of reforms so that public justice is fulfilled. Article 24A paragraph (1) of the 1945 Constitution explains that "The Supreme Court has the authority to adjudicate at the level of cassation, examine statutory regulations under the law against the law, and has other powers granted by law. The power of the Supreme Court that it has in accordance with the 1945 Constitution is the embodiment of legal sovereignty, but related to the concept of people's sovereignty, the Supreme Court in carrying out its authority granted by the 1945 Constitution is the executor of legal sovereignty, who is responsible for the implementation of its duties to the people. One of the tasks that must be seriously accounted for by the Supreme Court is to pay attention to the people's sense of justice as the main basis in carrying out the law or enforcing law and justice. This accountability needs to be reported

through the mechanism of constitutional conventions as a form of accountability for its achievements to the people.

The same applies to other judicial institutions, namely the Constitutional Court and the Constitutional Court, which is a new state institution in the Indonesian constitutional system. The existence of the Constitutional Court in Indonesia through the third amendment to the 1945 Constitution, which is regulated in the provisions of Articles 24A and 24C of the 1945 Constitution, while its authority is regulated in Article 24C paragraphs (1) and (2) of the 1945 Constitution. The presence of the Constitutional Court is actually a manifestation of the principles of the rule of law espoused in the 1945 Constitution, and also directly embodies and implements people's sovereignty. Therefore, in carrying out its authority by complying with the principles of the rule of law, the instruments are the Indonesian state of law and the 1945 Constitution, must also seriously pay attention to the sense of justice of the community as the owner of people's sovereignty. Thus, through the mechanism of constitutional conventions, the Constitutional Court as the implementer of people's sovereignty should submit its annual achievement report before the people.

Next is the Judicial Commission, which is a judicial power structure formed outside the official structure of the judiciary with the aim of appointing, evaluating performance and possibly dismissing judges. The purpose of establishing a Judicial Commission is to maintain and uphold the honor, nobility of dignity, and the behavior of judges in the context of realizing truth and justice based on God Almighty. This affirmation is regulated in Article 24B paragraph (1) of the 1945 Constitution which reads: "The Judicial Commission is independent in nature which has the authority to propose the appointment of supreme judges and has other powers in order to maintain and uphold the honor, nobility of dignity, and the behavior of judges". The Judicial Commission has a position that is at the same level as the judicial power institution, because of its duties and authorities as described in the 1945 Constitution, so that it is accountable to the people. The Judicial Commission with the authority described above means that the Judicial Commission exercises people's sovereignty in order to assist the judicial power by proposing the appointment of Supreme Court justices and upholding the honor, dignity and behavior of judges. Because as the implementer of people's sovereignty, the Judicial Commission should also convey its achievements to the people every year through the mechanism of constitutional conventions.

The next institution is the Supreme Audit Agency, and the existence of the Supreme Audit Agency in the Indonesian state administration is now increasingly important, because it carries out its functions in the context of creating clean governance. This is in accordance with Articles 23E, 23F and 23G of the 1945 Constitution as the basis for the existence of the Supreme Audit Agency. The Supreme

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Audit Agency's authority in the form of financial audits or examining the management and responsibilities of state finances is a very important state institutional authority. The financial audit function associated with this institution is actually closely related to the oversight function by the parliament. As a consequence of the adoption of popular sovereignty in the 1945 Constitution, the Supreme Audit Agency is also the implementer of people's sovereignty, so that through the mechanism of conventions or constitutional customs every year the State Audit Board can also submit performance reports to the people.

III. CONCLUSION

The amendment to Article 1 paragraphs (2) of the 1945 Constitution has changed the state administration system which is quite important, namely it has changed state institutions which place all state institutions constitutionally on the same position. This constitutionally equal position resulted in all state institutions being the executor of people's sovereignty. Because in the life of the state, it is not only regulated in the 1945 Constitution, but there are also constitutional practices that are carried out repeatedly which are then known as constitutional conventions. This is despite the fact that the constitutional convention is a customary practice, but there is nothing wrong if Article 1 paragraphs (2) of the 1945 Constitution provides a broader meaning in constitutional practice, namely the basis for the existence of a constitutional convention in the form of all state institutions which are structurally institutionalized by the Republic of Indonesia. directly received the authority from the 1945 Constitution to submit an annual performance report. Through the expansion of the meaning of Article 1 paragraphs (2) of the 1945 Constitution which provides space for other state institutions besides the President to provide performance reports to the people through the mechanism of constitutional conventions.

Recommendations that can be suggested to state administrators, namely if the constitutional convention that has been practiced every August 16 is the President's state speech in submitting the annual achievement report at the annual session of the People's Consultative Assembly, and the submission of the annual achievement report by the President is reported on all matters in the implementation the state in one year of work, for example performance in the legislative, judicial, executive, and as if the accountability report for these achievements belonged to the President alone. Thus, other state institutions also have the same position which have duties and authorities according to the constitution, should submit their annual achievement reports to the people at the annual session of the MPR every August 16.

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