
REVIEW OF POLITICAL DEVELOPMENT

The People's Consultative Assembly (MPR) and the State Policy Outlines (PPHN) in the Post-Fourth Amendment Era of the 1945 Constitution

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Prologue

The movement and endeavour of the People's Consultative Assembly of the Republic of Indonesia (MPR RI) to propose the implementation of the State Policy Outlines (PPHN) have become a unique constitutional law phenomenon to be observed. In terms of timelines, this treatise has been rolling along with the constitutional discourse that has been taking place from 2021 to 2022. As such, the fifth amendment to the 1945 Constitution included the extension and the addition of the Presidential term limitation to three terms.¹

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There are four reasons why the MPR RI wants the PPHN to be implemented. First, the idea of implementing the PPHN is a recommendation of the MPR RI of the 2009-2014 service period, which also was followed up and re-established by the MPR RI of the following service period (2014-2019).² Second, there is a need for national and regional development to have the same vision, both in the long, medium, and short term. Third, the PPHN becomes the basis for ensuring that national development aligns with the state's goals, as stated in the Preamble of the 1945 Constitution. Lastly, regarding the characteristics of the PPHN itself in the form of a directive that does not reduce the government's authority in drafting a blueprint for national development, both in the form of the National Long-Term Development Plan (RPJP) and the National Mid-Term Development Plan (RPJM). On the other hand, PPHN also contains philosophical characteristics reflecting Indonesia's outlook in the next 50 to 100 years.³

In spite of the four reasons for the MPR's willingness to implement the PPHN, there are several obstacles to realize it. First, it relates to the authority of the MPR RI after the fourth amendment to the 1945 Constitution. Second, it relates to the legal umbrella that covers the PPHN. Third, it relates to the option of a constitutional convention as a legal umbrella for PPHN. This phenomenon provides attention and analysis of the authority of the MPR RI regarding their plan to implement the PPHN through the legal umbrella of constitutional conventions.

MPR RI Landscape: Pre and Post the Fourth Amendment of 1945 Constitution

The position of the MPR RI in the constitutional system is a unique condition and is a peculiarity of a state institution. There are several reasons to describe that condition. First, the MPR RI is a state institution that results from the creation of the political philosophy of the Indonesian people. Muhammad Yamin, in the Session of the Indonesian Independence Preparation Investigative Assembly (BPUPKI), stated that the MPR RI is a forum that accommodates the highest power, namely, the people's sovereignty, which reflects representatives of the Indonesian people who have various socio-political, socio-economic, and socio-cultural backgrounds, territorial representatives, and group representatives.⁴

Second, the MPR RI is an institution that reflects the Fourth Principle of Pancasila, in which Pancasila acts as the state's fundamental norm. MPR RI is an institution that carries out negotiations and a mechanism for deliberation democracy in which the rights of MPR RI members are to be heard, considered, and explained. In the view of Mohammad Yamin, the word deliberation in the MPR RI is a condition where negotiations between representatives who represent the Indonesian people negotiate about state or general needs.⁵

Third, suppose we observe the original text of the 1945 Constitution⁶ Article 1 paragraph (2) constitutionally and conceptually places the people's sovereignty in the hands of the MPR RI to be fully implemented.⁷ In that case, this situation constitutionally shows the principle of parliamentary sovereignty.

Furthermore, AV Dicey in *the Law of the Constitution* provides a brief definition of parliamentary sovereignty in the context of the British Constitution as a right to enforce or cancel any law. Consequently, first, no particular person or institution/agency overrides the decisions made by the parliament. Second, the judiciary will obey the parliament's decision as applicable law. In other words, it is an absolute and uncontrollable authority.⁸

In the context of the MPR RI in the original 1945 Constitution, the MPR RI is the highest state institution as a constituent⁹ institution (stipulate the constitution) and the highest state institution that establishes the State Policies Guideline (GHBN) and appoints the President and Vice President.¹⁰ The impact on the President and Vice President being appointed by the MPR RI is that they should apply the mandates granted by the MPR RI. They must be constitutionally responsible to the MPR RI and comply with the GBHN stipulated by the MPR RI.

Furthermore, the impact of constructing the MPR RI as the highest state institution is that members of the MPR RI elect the President and Vice President. Also, the periodization of the presidency depends on the will of the MPR RI. Therefore, the government construction adopted is semi-presidential, where the continuity of the presidency as the head of government depends on the political constellation in the MPR RI.

The current political and law reforms in 1998, which led to the amendment of the 1945 Constitution, fundamentally changed the construction of the state administration drastically. That reform, which has a core on politics and law democratization, changed the main tasks, functions, and powers of the MPR RI. The amendments impacted the

articles of the 1945 Constitution concerning the MPR RI, removed most of its authority, and placed the MPR RI only as an ordinary state institution.¹¹

Suppose we focus on the amendments to Article 1 paragraph (2), where there is a change in the construction of the article, which initially reads, “sovereignty is in the hands of the people. It is carried out entirely by the MPR RI” (*“kedaulatan adalah di tangan rakyat, dan dilakukan sepenuhnya oleh Majelis Permusyawaratan Rakyat”*), which is then changed to “sovereignty is in the hands of the people and implemented according to the Constitution” (*“kedaulatan adalah di tangan rakyat dan dilaksanakan menurut Undang-Undang Dasar”*). In fact, it ends the principle of parliamentary sovereignty, which was previously in the hands of the MPR RI. Nevertheless, there was a different opinion regarding that amendment article in terms of the formulation of the article. Maria Farida conveyed a critical analysis that the formulation of Article 1 paragraph (2) of the 1945 Constitution before the amendment was more appropriate because, in that formulation, it was clear which perpetrators were appointed to be addressed.¹²

The end of this principle has succeeded in giving rise to several principles of constitutional democracy rooted in the liberal tradition, including the following. First, the emphasis is on the checks and balances mechanism between state institutions, mainly the House of Representatives (DPR), the Regional Representatives Council (DPD), the President, the Constitutional Court (MK), and the Supreme Court (MA). Due to the existence of a mutually compensating mechanism that demands equality between state institutions. So, the consequence is that the highest state institution is no longer known, which was known in the pre-amendment period.

Second, the development of judicial institutions was marked by the delivery of the Constitutional Court (MK). The presence of the MK in the constitutional system has taken over the authority of the MPR RI in interpreting the 1945 Constitution. In other words, during the pre-amendment period of the 1945 Constitution, the MPR RI, through its authorization, interpreted the 1945 Constitution so that the MPR RI Decree (TAP MPR RI) provides interpretation and explanation further of the provisions in the 1945 Constitution in line with societal changes. Thus, through its functions and authorities, the MK carries out judicial interpretation of the 1945 Constitution to examine the constitutionality of a law.¹³ A clear example of the balance of power is when the MK formally tested and declared the Job Creation Law (UU Cipta Kerja)

conditionally unconstitutional, suspected to be a prestigious government policy.¹⁴

Third, increasingly the role, function, and authority of the MPR RI were limited, marked by the reduction of control of the MPR RI in the 1945 Constitution. The authority to amend and enact the constitution of the existing powers still displays the characteristics of the MPR RI as in the pre-amendment period. It indicates that the MPR RI still holds a constituent function.

The MPR RI still owns other strategic functions. First, regarding the authority to decide on the DPR's proposal based on the results of the MK's decision to dismiss the President and/or Vice President during their term of office after the President and/or Vice President is allowed to deliver an explanation at the MPR RI Plenary Meeting. Second, electing the Vice President if there is an emptiness for the Vice President position during the term of office and selecting both President and Vice President if they stop simultaneously during the period of office.¹⁵

Furthermore, amendments to articles that relate to the MPR RI impact the reorganisation of the MPR RI. Previously, the MPR RI members consisted of the DPR plus regional and group delegates.¹⁶ Based on Article 2 No. 17/2014, MD3, the MPR RI member consists of the DPR and DPD elected through general elections.¹⁷ On the other hand, this also shows that the MPR RI is not entirely a joint session, and it does not fully indicate a non-permanent institution either because it has completed organizational tools. Fundamentally, the MPR RI, as an institution consisting of members of the DPR and DPD, the fulcrum lies with the DPR. So that its distinctive character is a unicameral system.¹⁸

However, with the amendment of Article 3 of the 1945 Constitution, the original text based on the MPR RI's authority in determining state government policies, the MPR RI can no longer issue a decree to stipulate the GBHN. Therefore, this matter has become a constitutional issue centred on the MPR RI's desire to establish a PPHN in the post-amendment period of the 1945 Constitution.

Fundamentally, the constitutional issue that wants the MPR RI to stipulate a PPHN as a substitute for the GBHN has narrowed itself to a constitutional problem. In this case, first, the absence of authority to legitimise PPHN in the 1945 Constitution. Therefore, limited amendments to the power of the MPR RI are a constitutional step needed.

Second, the MPR RI issues an MPR RI Decree based on Article 100 paragraph (2) of MPR RI Regulation No.1/2019, which is regulatory

(*regeling*) that binds inside and outside the MPR RI. On the other hand, it is also possible to use the MPR RI Decree based on Article 100, paragraph (4), determinative or stipulating (*beschikking*) and binding inside. The Decree, which has the core of a guideline and principle of national development, becomes a direction for MPR RI members to prepare the National Long Term Development Plan (RPJPN) with the government. Finally, taking a bold step through a constitutional convention with initial requirements to implement the consensus, namely, a national consensus.

Based on these three steps, if we follow the public discourse in the last few months, the option of a constitutional convention is the option most preferred by the MPR RI leadership. It is reflected in forming an Ad Hoc Committee consisting of 10 MPR RI leaders and 45 members of political party factions (Parpol) and DPD. Furthermore, the mission carried out by the Ad Hoc Committee is to find a legal form, whether the PPHN is formed through law or a constitutional convention. As an important note, according to the Chairperson of the MPR RI for the 2019-2024 term, Bambang Soesatyo, the constitutional convention has binding power and has a higher position, and is a breakthrough for the MPR RI Review Board to avoid amending the 1945 Constitution.¹⁹

Thus, the option of implementing the PPHN remains open, given the concrete encouragement and political work within the MPR RI internals. However, the fundamental problem is what legal instrument should be used to enforce the PPHN so that it binds inside and outside the MPR RI. Moreover, PPHN has strong legal force and binds the President and other state institutions.

State Policy Outlines (PPHN) and Constitutional Conventions

The relation between the idea of PPHN and the appetite to form a constitutional convention cannot be separated from the needs and strategic support in today's state government. First is the need for direction or guidance to construct a national development system integrated with regional development. MPR RI Decree No. 4/MPR/2014²⁰ shows the MPR RI's recommendation to reformulate the national development planning system as the direction of state administration using the GBHN model.²¹

Second, President Joko Widodo's political support for the PPHN idea.

This political support was stated by President Jokowi in a Presidential Speech at the Annual Session of the Indonesian People's Consultative Assembly on August 16, 2022.²² The President's political support becomes crucial if we pay close attention to the strong relationship with the development policy of the New Capital City; Nusantara (IKN). A robust legal umbrella is also needed to ensure the sustainability of IKN development integrated with the national development planning system.

Starting from these strategic needs and support, if the implementation of the PPHN is placed in the legal instruments of constitutional conventions, then we first map out three main things. First the definition of constitutional conventions. The second is how to do the convention. Finally, what are the political and legal consequences if there is a constitutional convention?

First, regarding the definition of constitutional conventions, the core is a mutual agreement or understanding within the scope of parliament, which relates to how something should be done. It is not in the form of formal provisions but is also widely adhered to. The Constitutional Unit of University College London²³ explains that the constitutional convention is a rule of good political behavior, which usually aims to control "political actors". Furthermore, in *Black's Law Dictionary* (2019)²⁴ constitutional conventions are classified into three primary forms. The first form, the convention, required formal or official attempts (authorised convention) to achieve legitimacy. In this case, the convention's implementation must refer to the provisions contained in the constitution.

The second form is called the popular convention. The popular convention is formed by ignoring the provisions in the constitution. However, there is a strong correlation with the broad involvement of public elements so that it impacts support and is widely appreciated. The third form is called the revolutionary convention, where the convention is formed without a legal umbrella or legal authority. In another sense, it takes extraordinary measures and conditions to implement revolutionary conventions.

Of the three forms of the Constitutional Convention described above, the possible option that the MPR RI can take is the second form, namely, Popular Convention. Why is that? Because this is correlated with the survey results of the Kompas Research and Development Department (Litbang), where we will know the mapping of how to support the PPHN idea is.

First, around 65.2% of respondents considered the importance of

having PPHN as the basis for state development to continue sustainability. Second, approximately 49.5% of respondents stated that they believe the PPHN would guarantee sustainable development to ensure a more prosperous Indonesia. Finally, about 31.2% of respondents stated that implementing the PPHN is urgent to ensure that growth can continue. About 23.4% said it is not binding because of a pandemic, and about 19.3% said it is not compulsory because of political content.²⁵

If we use the results of the Kompas Litbang mapping, the PPHN is an idea accepted by the public. It is met with the current situation that the MPR RI assessment agency has agreed that the legal umbrella for the PPHN is a constitutional convention, where an ad hoc committee will be established at the Assembly's Plenary Session on September 5 or September 7, 2022. The ad hoc committee will consist of 10 MPR RI leaders and 45 political party factions in the MPR RI and DPD.²⁶ Thus, the constitutional convention, which contains the substance of PPHN, has significant momentum to be accepted by the broader public as a popular step.

The second is how to carry out the constitutional convention amid limitedness. Conceptually, popular conventions ignore a constitutional provision regulated in the 1945 Constitution and the MPR RI code of conduct. When the convention is implemented, two crucial steps are needed: a compromise between state institutions that results in a political consensus and broad public assistance to produce solid political support.

More profoundly, this chance is at odds with the idea of constitutional thought that focuses on legal-textual where Article 37 paragraphs (1), (2), (3), and (4) of the 1945 Constitution are the fundamentally constitutional provisions to amend the articles in the 1945 Constitution of the Republic of Indonesia. Although Kompas Litbang survey said the majority of respondents, around 67.8%, stated their agreement if the amendment to the 1945 Constitution regulates the issue of PPHN.²⁷ Therefore, if the MPR RI makes a limited amendment by establishing a single agenda regarding the MPR RI's authority to determine the PPHN, it seems that this will get broad support from the public.

Furthermore, the difficulty that impedes the implementation of constitutional conventions is the legal umbrella or the type of legal product. If we align with Article 7 of Law No. 12/2011 concerning the Establishment of Legislation (UU P3), then the form of a convention is not to be obtained in the hierarchy of legislation. Thus, conventions that

have a popular character will lead to a profound constitutional discourse due to the neglect of constitutional provisions.

So how to realize the constitutional convention with the agenda of ratifying the PPHN? To achieve this, the MPR RI needs to enlarge the status of the Consultation and Coordination Meeting with the President and/or the leadership of other state institutions to produce a national consensus based on Article 26 and Article 65 of the MPR RI Regulation Number 1 of 2019 concerning the code of conduct of the MPR RI.²⁸ Then, the consensus ratified as a decision in the MPR RI Special Session with a single PPHN agenda. It is also reflected directly or indirectly into a constitutional practice that can become a new constitutional convention.

Third, what kind of legal and political consequences will arise when a constitutional convention with the agenda of ratifying the PPHN is on the agenda? There are several consequences when a convention is implemented. First, as a legal consequence, a constitutional convention is formed when the MPR RI manifests the state administration by obtaining mutual consent from the President and other state institutions. Even though the convention is an unwritten law, if it continues, it will become part of the fundamental law in the country.

Second, as a political consequence, Bagir Manan argues that politically binding power encourages obedience that is no less than legally binding force.²⁹ The reason lies in the characteristics of constitutional law, which highlight the strong relationship between law and politics in forming a policy. On the other hand, the object of constitutional law is the organisation of power which is not only limited to institutions but the process and method of obtaining, executing, and preserving the authority itself. Therefore, conventions have politically binding power, mainly those generated through political consensus. As an important note, conventions that have political power at the elite level must have political legitimacy from the public to be accountable to the public.

Epilogue

MPR RI is authentically the incarnation of all Indonesian people, reflecting political, territorial, or regional representation. Although the main tasks, functions, and authorities have changed after the fourth amendment to the 1945 Constitution, the MPR RI is still the embodiment of the entire Indonesian people.

Relying on the MPR RI landscape after the fourth amendment to the 1945 Constitution, there is little scope for manoeuvring the MPR RI to pursue constitutional conventions to restore the authority from establishing PPHN. However, if the MPR RI uses its authority to amend its powers to a restricted extent in the 1945 Constitution, it gets a substantial gap in public support. As an important note, the MPR RI is encouraged to consider other agendas to include in the amendment process.

Furthermore, when the MPR RI continues to expand its authority to produce constitutional conventions by holding a Special Session or other nomenclature, the core is the agenda for ratifying the PPHN. Therefore, the MPR RI requires a convention resulting from a national consensus to have strong political and legal legitimacy and, of course, strong public support.

In sum, the idea of a constitutional convention that aims to restore the MPR RI's authority in determining the PPHN is fundamentally a constitutional discourse that reaps pros and cons in public. A good spirit of state administration—which has a core of virtue, justice, and truth—is needed and is oriented to the general welfare. All those things are for restoring authority and determining PPHN to remain in line with the law, the public, and national behalf.

Endnotes

- 1 Also, read CSIS Analysis: D. Nicky Fahrizal, *Observasi Wacana Amandemen Kelima UUD 1945: Isu dan Dampaknya*, Centre for Strategic and International Studies: Jakarta, 2021; to read the mapping of support and constitutional arguments of political parties and potential amendments and threats of failure of the 1945 Constitution.
- 2 the People's Consultative Assembly News, *Bamsoet Ingatkan Pentingnya PPHN Bagi Pembangunan Nasional*, <https://www.mpr.go.id/berita/Bamsoet-Ingatkan-Pentingnya-PPHN-Bagi-Pembangunan-Nasional>, published on August 3, 2022.
- 3 Hanna Pratiwi, *Bamsoet Sebut Alasan Penting PPHN*, <https://rri.co.id/nasional/politik/1152647/bamsoet-sebut-alasan-penting-pphn>, published on August 16, 2022.
- 4 Treatise of the Session of the Indonesian Independence Preparation Investigative Assembly (BPUPKI) and Indonesian Independence Preparation Committee (PPKI), State Secretariat: Jakarta, 1995, p.181.
- 5 *Ibid*, p.182.
- 6 The 1945 Constitution was ratified for the first time by PPKI on August 18, 1945.
- 7 Article 1 paragraph (2) of the 1945 Constitution and the Elucidation of the State Government System section (before it was amended), in Roman numerals III point 3, the MPR RI is positioned as the highest state institution, the holder of the entire people's sovereignty. The rationale is that the MPR RI is considered the embodiment of the Indonesian people because the composition of its membership consists of members of the DPR plus regional and group delegates.
- 8 AV Dicey, *Introduction to Study of the Law of the Constitution*, Liberty Fund: United States, 2014, p. 4-5.
- 9 According to the General Indonesian Dictionary, the Constituent Assembly is a deliberative body tasked with drafting the state constitution. General Indonesian Dictionary, JS Badudu and Sutan Mohamad Zein, Sinar Harapan Library, Jakarta, 1994.

- 10 Article 3 and Article 6 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (before the amendment), as well as Article 3 of MPR RI Decree No. 1/MPR/1983.
- 11 After the amendment, the MPR RI has the following duties and authorities: Inaugurating the President and Vice President (Article 3 paragraph (2) of the 1945 Constitution of the Republic of Indonesia), impeachment (Article 7b of the 1945 Constitution of the Republic of Indonesia), amending and enacting the constitution (Article 3 paragraph (1) and Article 37 paragraph (1) of the 1945 Constitution of the Republic of Indonesia), the decision making of the MPR RI (Article 2 paragraph (3) of the 1945 Constitution of the Republic of Indonesia).
- 12 Maria Farida, *Ilmu Peraturan Perundang-Undangan 1: Jenis, Fungsi, dan Materi Muatan*, PT Kanisius: Special Region of Yogyakarta, 2020, p. 175.
- 13 Indonesian Parliamentary Concerned Community Forum, *Lembaga Perwakilan Rakyat: Studi Analisis Sebelum dan Sesudah Perubahan UUD 1945*, Formappi: Jakarta, 2005, pp. 195-196.
- 14 In Constitutional Court Decision No. 91/PUU-XVIII/2020, the doctrine of meaningful participation was the ratio decidendi of the Constitutional Court (MK) on the review of the Job Creation Law (UU Cipta Kerja). The Court declared Law No. 11/2020 conditionally unconstitutional in its ruling. Even though the legal has a strategic objective, the formal requirements - one of the main ones is public participation - must be met to obtain a law that fulfills the elements of legal certainty, benefit, and justice. The community then uses the doctrine as a standard that must exist in forming the law.
- 15 Article 42 of Law 17/2014, MD3. (1) In the event of a position of President, the MPR RI shall immediately convene an MPR RI plenary session to inaugurate the Vice President as President. (2) if the MPR RI cannot hold the session as referred to in paragraph (1), the President takes an oath according to his religion or makes a solemn promise before a plenary session of the DPR. (3) If the DPR cannot hold the meeting as referred to in paragraph (2), the President shall solemnly swear before the leadership of the MPR RI in the presence of the leadership of the Supreme Court.
- 16 Law No. 4/1999 on the Structure and Position of the People's Consultative Assembly, the People's Representative Council, and the Regional People's Representative Council.
- 17 Article 76 paragraph (1) of Law 17/2014 concerning MD3 □ Members of the DPR is 560 (five hundred and sixty) people. Article 252 paragraph (1) of Law 17/2004 concerning MD3 □ DPD members from each province are set at four people.
- 18 Op Cit, Formappi, p.215.
- 19 Nikolaus Harbowo, *Pembentukan Pokok-Pokok Haluan Negara Berlanjut*, Kompas Daily, 26 July 2022.
- 20 Regulation of the People's Consultative Assembly of the Republic of Indonesia No. 1/2014 on the Order of the People's Consultative Assembly of the Republic of Indonesia.
- 21 MPR RI Assessment Agency, *Kajian Akademik Penataan Wewenang dan Tugas MPR RI*, Jakarta, 2020, p.10.
- 22 Ministry of State Secretariat, the President's speech at the Annual Session of the MPR RI and Joint Session of the DPR RI and the DPRD RI in the context of the 77th Anniversary of the Indonesian Declaration of Independence, Jakarta, August 16, 2022.
- 23 *The Constitution Unit, What are constitutional conventions?*, <https://www.ucl.ac.uk/constitution-unit/explainers/what-are-constitutional-conventions>, accessed on 20 August 2022.
- 24 *Black's Law Dictionary, Editor in Chief: Bryan A. Garner, Thomson Reuters, 11th edition*, 2019, p. 418-419.
- 25 Kurnia Y. R., Nikolaus H., *Usulan Amandemen Terbatas Setelah Pemilu 2024 Menguat*, <https://www.kompas.id/baca/polhuk/2022/08/16/usulan-amandemen-terbatas-setelah-pemilu-2024-menguat>, Kompas.id, published on August 16, 2022.
- 26 Op.cit. Nikolaus Harbowo, *Usulan Amandemen Bergulir Lagi*, <https://www.kompas.id/baca/perjalanan/2022/08/09/usulan-amandemen-terbatas-bergulir-kembali-1>, accessed on August 25, 2022.
- 27 Op.cit. Kurnia Y. R., Nikolaus H., *Usulan Amandemen Terbatas Setelah Pemilu 2024 Menguat*, <https://www.kompas.id/baca/polhuk/2022/08/16/usulan-amandemen-terbatas-setelah-pemilu-2024-menguat>, Kompas.id, Published on August 16, 2022. As additional information, if the amendment to the 1945 Constitution is intended to regulate the question of extending the President's term of office, most of the respondents disagree (49.8% disagree, 9.5% strongly disagree).
- 28 Regulation of the People's Consultative Assembly of the Republic of Indonesia No. 1/2019 on the Order of the People's Consultative Assembly of the Republic of Indonesia.
- 29 Bagir Manan, *Konvensi Ketatanegaraan*, Yogyakarta: FH UII Press, 2006, p. 41.

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