

The Immunity Rights of the House of Representatives of the Republic of Indonesia in Principles of the Rule of Law

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Abstract. *The goal of the nation is to maintain the unity of the Republic of Indonesia, therefore the State has built an instrument to carry out democracy, namely the People's Representative Council (DPR) which is the embodiment of the will in a unitary State as well as the people participating in determining the direction of a State's policies through statutory regulations. -invitations as an illustration of popular sovereignty. In carrying out its functions, the DPR is equipped with the rights, authorities and duties regulated in the MD3 Law. Not only functions, authority and duties, the DPR also has Immunity Rights. Therefore, the author wants to know and study the limits and application of DPR Immunity Rights in the principle of the rule of law, namely equality before the law. The method used in this research is a normative juridical method, namely focusing research on library research, the data sources are taken from books and statutory regulations. Equality before the law is a fundamental principle in the context of law and human rights in the constitution by the formation of the State, namely in Article 27 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, based on this article which contains the meaning of the legal principle, namely equality before the law. The law in reality forces the legal immunity rights of the DPR or members of parliament to be enforced on a limited basis.*

Keywords: *Democracy, DPR, Immunity.*

1. Introduction

The Unitary State of the Republic of Indonesia is a democratic state which is based on popular sovereignty and relies on the constitution or the 1945 Constitution. Popular Sovereignty has a very important meaning in exercising state power as a basis for formulating policies regarding various government affairs so that it has the power in accordance with what is mandated. by the

people. Thus, the people have the right to determine or influence the formulation of decisions issued by the government. To implement the essence of popular sovereignty, it is carried out through people's representative institutions.

People's representative institutions are the embodiment of a democratic system that will implement the wishes or needs of the people. Therefore, the existence of people's representative institutions is formed to process government administration carried out by government institutions, which in this case is the executive function. In reflecting the elements of the people who will be represented, this must be done through a general election process. Through general elections, the people can exercise their political rights in electing people's representatives as the embodiment of a democratic government system. "According to Abraham Lincoln, a democratic country is a country that has a form of government by the people and for the people, which is the meaning of democracy where the people have the right to supervise its running and participate in government."¹

The People's Representative Council as a legislative institution has a strategic role in state life because it represents the people. In Indonesia, representative institutions or parliaments are divided into three functions, namely the legislative function, the supervisory function and the budget function.²The People's Representative Council of the Republic of Indonesia (DPR RI) also has a very important position in accordance with the democratic principles that we adhere to. The DPR has functions and rights that greatly determine the administration of the State.³The functions and authority of the DPR in carrying out its institutional duties are regulated in Law Number 2 of 2018 concerning the Second Amendment to Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council and the Regional People's Representative Council (hereinafter referred to as the Law -Law Number 2 of 2018 concerning the second amendment to Law number 17 of 2018 concerning MD3).

In carrying out its functions, the DPR is equipped with the authority and duties which are clearly regulated in Law Number 2 of 2018 concerning the Second Amendment to Law Number 17 of 2014 concerning MD3. The duties of the DPR are intended as a reference for carrying out the functions as provided by the Basic Law. Not only that, apart from its authority and duties, the DPR also has rights, namely institutional rights and the right to become a member. The

¹Leo Agustino, 2005. *Legal Politics and Regional Autonomy*, Banten: Untirta Press, p. 15

²Jimly Asshiddiqie, 2007. *Principles of Indonesian Constitutional Law*, PT. Bhuana Popular Science, Jakarta, p. 160.

³Gaffar, Janedri M. 2012. *Constitutional Democracy; Indonesian Constitutional Practices After the Amendment to the 1945 Constitution*. Jakarta: Constitution Press. P. 60

institutional rights possessed by the DPR include interpellation, questionnaires and expressing opinions. Apart from that, as a member of the DPR, you are given several rights, one of which is the right to immunity. Constitutionally, its existence is regulated in the 1945 Republic of Indonesia Constitution, Article 20A Paragraph 3, which states that apart from the rights regulated in other articles of this Constitution, the DPR has the right to immunity, the right to ask questions,

The right to immunity is regulated in Article 80 of Law Number 17 of 2014 in conjunction with Law Number 2 of 2018 concerning the MPR, DPR, DPD, DPRD. The right to immunity that members of the DPR have is the right to be immune from the law where members of the DPR cannot be sued before or outside the court because of statements, questions and opinions expressed orally or in writing in DPR meetings. However, this special right does not apply if DPR members violate the Rules and Regulations and the Code of Ethics. Specifically, the right to immunity for members can be described into two parts, namely the right not to be prosecuted in court, and the right not to be replaced over time. These two things relate to the duties and position of a member in or outside DPR meetings.⁴

In addition, the principle of equality before the law is the main support for the building of a legal state (*rechstaat*) which prioritizes the law above all else (supreme of the law). The recognition of each individual before the law is the same, there is no distinction between one and another without regard to race, ethnicity, ethnic group, culture or degree. In the amendment to the 1945 Constitution, the theory of equality before the law is contained in Article 27 paragraph (1) of the 1945 Constitution which states that "all citizens have equal status under the law and government with no exceptions".⁵

The immunity rights of DPR members are further regulated in Law Number 2 of 2018 concerning the Second Amendment to Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council and the Regional People's Representative Council (MD3) Article 224 which consists of from (4) point which briefly states that the DPR cannot be sued in court because of the statements it makes, whether oral or written, which will be discussed further in the next chapter. The right to immunity in question contains a lot of ambiguity regarding the limitations and regulations regarding the Right to Immunity which are increasingly developing in public opinion, which gives rise to legal opacity.

⁴Arief Supriyadi, 2019. "Deconstructing the Immunity Rights of DPR Members from the Perspective of Equality Before the Law", *Jambura Law Review*. Vol 1 No. 1 p. 29

⁵Yasir Arafat, 2014. *The 1945 Constitution of the Republic of Indonesia and its Amendments*, Jakarta: gem Press. P. 26

Based on this background, the author is interested in researching how the immunity rights of DPR members apply within the principles of a rule of law which adheres to the principle of equality before the law and what are the limits of the immunity rights of DPR members from the perspective of the principle of equality before the law.

2. Research Methods

The approach method used in this research is a normative juridical approach. The normative juridical approach is legal research carried out by examining library materials or secondary data as basic material for research by conducting searches on regulations and literature related to the problem being researched.⁶The type of research used in completing this writing is analytical descriptive research, namely literature study as secondary data, then discussing, listening to and comparing conceptually with statutory regulations. The data that has been obtained from this research will be processed and analyzed using qualitative analysis, namely giving meaning and interpreting each data, after processing it is then translated into sentences systematically to draw a conclusion.

3. Result and Discussion

3.1. Applicability of the Right to Immunity before the Principles of the Rule of Law, namely Equality Before the Law

Rights are everything that must be obtained by every person from birth or even before birth. When born, humans essentially have rights and obligations. Every human being has different rights and obligations, depending on, for example, their position or position in society. In the Big Indonesian Dictionary, rights have the meaning of something that is right, possession, ownership, authority, power to do something (because it has been determined by law, rules, etc.), right power over something or to demand something, degree or dignity;⁷The definition of rights is ultimately also used to mean immunity from the legal authority of others. Just as power is the ability to change legal relationships, this immunity is exemption from the existence of a legal relationship so that it can be changed by someone else.⁸

⁶Soerjono Soekanto & Sri Mamudji, 2015. Normative Legal Research (A Short Review), Jakarta: Rajawali Pers, p. 13-14

⁷Roichatul Aswidah, 2014. Immunity Rights of DPR Members, Institute for Criminal Justice Reform. p. 10

⁸Achmad Ali, 2017. Revealing the Legal Veil, Jakarta: PT Fajar Inter pratama Mandiri, p. 256

The right to immunity is immunity from the law where members of the DPR cannot be sued before or outside the court because of statements, questions and opinions expressed orally or in writing in DPR meetings. However, this special right does not apply if DPR members violate the Rules and Code of Ethics.

In law, there are two types of immunity rights, namely (1) absolute immunity rights, and (2) qualified immunity rights. The right to absolute immunity is a right that cannot be revoked by anyone. Meanwhile, the right to qualified immunity is relative, in the sense that this right to immunity can still be waived if the use of this right is "deliberately" carried out to insult or degrade the good name and dignity of another person. What is included in the right to absolute immunity is every statement made in (1) parliamentary sessions or meetings, (2) court hearings, (3) made by high-ranking public officials in carrying out their duties, (4) and others. Meanwhile, those included in the right to qualifying immunity include press releases regarding the contents of parliamentary meetings or court hearings,⁹

Regarding the right to immunity, seen from the perspective of the rule of law which has the principle of equality before the law in the State of Indonesia, which in fact is a forum for a pluralistic, multi-cultural society, it contains a meaning and meaning that provides protection for a minority group. Counteracting discrimination in the form of protection and providing a sense of security in the form of minority groups. In this interpretation, developing in Indonesian society is an order to the Government not to separate and differentiate in the form of legal treatment of one citizen versus another.

In a structured social group, this means not giving special treatment or privileges to members of certain classes. Especially in certain cases, the class of state officials and/or rich people receive special or preferential treatment from the state. So, in this case, equality in law and before the law applies as adopted by the State and as outlined in the constitution, namely the principle or principle of Equality before the Law.¹⁰

In the general public opinion, legal products in this country are still discriminatory. The principle of equality before the law or equality before the law as a concept is the main principle in the Universal Declaration of Human Rights and is recognized in the 1945 Constitution of the Republic of Indonesia. This principle originates from the recognition of person or individual freedom. The most basic of these principles is that the relationship to basic human rights is

⁹Munir Fuady. 2010. *The Concept of a Democratic State*. Bandung: PT Refika Aditama. p. 264-265

¹⁰Jorawati Simarmata. 2018. *Interpreting the Immunity Rights of Members of the Regional People's Representative Council (Analysis of the Ministry of Home Affairs Letter Number 331/9914/Otda Dated 14 December 2016)*. Indonesian Legislation Journal. Vol 15 no 1. P. 3

stated more clearly in Article 27 A paragraph (1) of the Constitution of the Republic of Indonesia, that every citizen has the same status before the law and is obliged to uphold the law and government without exception. ;¹¹

In positive law, it is known that there is the nature of equal treatment before the law, without any discrimination, but this treatment does not apply to all people, but there is special treatment or legal leniency for members of the legislature and executive, better known as the right to immunity, this right to immunity is given by The aim is that they can carry out their duties safely and have the courage to express their opinions in court without fear of being subject to criminal punishment.

The implementation of the principle of equality before the law at an empirical level means that there is no equal treatment before the law between ordinary individuals and state officials. In this way, individual rights to obtain justice are neglected. In fact, this is a form of violation of someone's human rights. It is clear that legal certainty has been ignored with the position of state officials seen to be above the law. With the existence of the right to legal immunity by state officials, members of parliament receive a very strong stance against the principle of equality before the law.¹²

Privileges for council members are known in various state practices. Parliamentary privileges (in the tradition of the British parliament / Westminster or Privileges for the House of Representatives in the United States) have two purposes:¹³

a. Providing immunity for members of representative institutions so that they cannot be sued civilly before the law because of what they stated in court. Without the right to immunity, legislators may not feel free to express their opinions and encourage improvements for their constituents because they are always at risk of being sued legally by their political opponents. This essence of freedom of speech is the only reason why legislators appear to be above the law. But they are not completely immune. They just cannot be punished for what they said in court. Beyond their capacity as people's representatives, legislators remain ordinary citizens. For this reason, parliamentary privilege or immunity rights only apply to civil lawsuits, especially for matters of defamation or the like.

¹¹Marisa Nurfaizzah. 2021. Immunity Rights of Members of the House of Representatives According to the Principle of Equality Before the Law. *Al Balad: Journal of Constitutional Law* Volume 3 Number 3. p. 8

¹²Finny Alfionita Massie. 2018. Juridical Study of the Immunity Rights of DPR Members in the Indonesian Constitutional System. *Lex Administratum*, Vol. VI No. 4. P. 145

¹³F. Harianto Santoro, 2000. *The face of the People's Representative Council of the Republic of Indonesia in the 1999 General Election*, Jakarta: Kompas, p. 25

Then, To limit freedom of speech, a set of assembly rules were also created regarding language that could not be used in parliamentary sessions. Harsh words, insults and lies must not be used in parliamentary sessions. In British parliamentary tradition, this is called “unparliamentary language.”

b. The effectiveness of their work as board members. The form is protection for council members from being detained for civil cases during the trial period. If detained, they will not be able to participate in the trial. For the same reason, in countries with a jury system, they are not exempt from their obligations as jury members and are also not allowed to be witnesses, which makes them absent from the trial. It should be noted that outside the trial period they can still be detained for civil cases. And more importantly, there are no exceptions at all for them for criminal cases.

A number of provisions in positive law in Indonesia which basically give a person the right to immunity so that they cannot be criminally prosecuted in order to carry out their duties are not a new concept. The principle that there is no punishment for actions that occur in the context of implementing the law at least provides a firm confirmation of the existence of legal immunity for certain actions where these particular actions occur in the context of harmony with good things that are in the corridor of carrying out duties.

The argument for granting specialization that is more acceptable in the context of a legal state and is commonly practiced in contemporary constitutional practice is the argument for the implementation of duties. Especially in the current context of law enforcement in Indonesia which still cannot provide certainty regarding the timing of the judicial process. The principles of the rule of law are basically the result of reflection on practices and thoughts regarding how the social order should be regulated by law. These principles are general benchmarks. There are many aspects of practice that require sufficient thought and rationale. One of them is specialization in the legal process for board members. There needs to be procedures that are accelerated, open and accountable,

3.2. Limits of the Immunity Rights of DPR Members in the Perspective of the Principle of Equality Before the Law

The legislative institution is an institution that holds the power to make laws as a system of people's representative institutions. The legislative branch of power is the branch of power that first reflects the sovereignty of the people.¹⁴The immunity rights of members of the DPR are constitutionally regulated in article

¹⁴Jimly Asshiddiqie, 2013. Introduction to Constitutional Law, (Jakarta: Raja Grafindo Persada, p. 299

20A paragraph (3) of the 1945 Constitution which reads: "in addition to the rights regulated in other articles of this Constitution, every member of the DPR has the right to ask questions, convey suggestions and opinions as well as the right to immunity".

The Right to Immunity can also be seen in Article 80 of Law No. 17 of 2014 concerning MD3 which has now been amended by Law Number 2 of 2018 concerning Amendments to Law No. 17 of 2014 concerning MD3, which states that DPR Members have the right to: submit proposing draft laws, asking questions, conveying opinions, voting and being elected, self-defense, immunity, protocol, finance and administration, supervision, proposing and fighting for electoral district development programs, and socializing laws.

Furthermore, it was reaffirmed regarding the immunity rights of DPR members in Article 224 of Law Number 2 of 2018 concerning Amendments to Law Number 17 of 2014 concerning the MPR, DPR, DPD and DPRD (MD3) which reads:

(1)Members of the DPR cannot be prosecuted in court because of statements, questions and/or opinions expressed either orally or in writing in DPR meetings or outside DPR meetings which are related to the functions, authority and duties of the DPR.

(2)Members of the DPR cannot be prosecuted in court because of attitudes, actions, activities in DPR meetings or outside DPR meetings which are solely due to the constitutional rights and authority of the DPR and/or DPR members.

(3)Members of the DPR cannot be replaced from time to time because of statements, questions and/or opinions expressed either in DPR meetings or outside DPR meetings which relate to the functions, authority and duties of the DPR.

(4)The provisions as referred to in paragraph (1) do not apply in the event that the member concerned announces material that has been agreed in a closed meeting to be kept confidential or other matters that are declared as state secrets according to the provisions of statutory regulations;

The immunity rights of DPR members are then explained again in Law Number 2 of 2018 concerning Amendments to Law Number 17 of 2014 concerning the MPR, DPR, DPD and DPRD Article 245 which reads:

(1)Summons and requests for information from members of the DPR regarding the occurrence of criminal acts that are not related to the implementation of their duties as intended in Article 224 must obtain written approval from the President after receiving consideration from the Council's Honorary Court.

(2) The written approval as intended in paragraph (1) does not apply if a member of the DPR: a. caught red-handed committing a criminal act: b. is suspected of committing a crime which is punishable by the death penalty or life imprisonment or a crime against humanity and state security based on sufficient preliminary evidence; or c. Suspected of committing a special crime.

Then Ramly Hutabarat in his book, *Equality before the law in Indonesia*, explains that Equality can be divided into four types, namely Natural Equality, Civil Rights Equality, Political Equality and Economic Equality. According to the principle of Natural Equality, every citizen receives equal protection and justice before the law. This principle has developed widely in various countries, including Indonesia. Natural Equality, can be seen in the 1966 International Covenant on Civil and Political Rights (ICCPR), which states that: "Everyone has the right to be recognized everywhere as a person before the law," which means that everyone has the right to receive equal treatment before the law. Then, Article 17 paragraph (2) also emphasizes that everyone has the right to protection under the law.¹⁵ It can be concluded that all people are equal before the law, when it comes to things like crimes or between living creatures. The statement above emphasizes the principle of equality before the law, which means that there is equality before the law for everyone. Therefore, there must be no discriminatory behavior against any of the parties seeking justice before the law in a judicial process in court. So the rights and essence of DPR members are the same. Even if they have the right to immunity, this right does not affect the essence that they are human beings whose position will ultimately be the same before the law. The right to immunity only protects some of the risks of members of the DPR if in carrying out their duties there are risky obstacles in expressing opinions.

From the explanation above, DPR members have limitations, namely that they do not apply when it comes to other rights that concern individuals. This is proven by the explanation of the limitations of the right to immunity, it only stops and only applies when carrying out their duties and does not apply in the event that the member concerned announces material that has been agreed in a closed meeting to be kept secret or other things that are declared as state secrets according to the provisions of statutory regulations. . Then, this right to immunity also does not apply when DPR members violate their individual rights as individuals by relinquishing their status as Council members, which includes specific crimes such as corruption, terrorism and drug cases. A Member of the DPR will still be subject to sanctions if they violate their rights as an individual. Therefore,

Apart from that, members of the DPR RI have the same position, namely as citizens, but members of the DPR also have a special position as People's

¹⁵Arief Supriyadi, 2019. Op.cit. p. 28

Representatives. To realize security in carrying out their duties as representatives of the people, they are given the right to immunity. So in terms of position and privileges, members of the DPR are not distinguished by criminal status, in this case, special crimes such as corruption, terrorism and drug cases.

4. Conclusion

Actions Equality before the law or often called Equality before the law is a fundamental principle in the context of law and human rights in the constitution by the formation of the State, namely in Article 27 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, based on that article which it contains the meaning of a legal principle, namely equality before the law or equality before the law, in reality forcing the right of legal immunity for the DPR or members of parliament to be enforced on a limited basis. It is said that it is enforced on a limited basis, which can be seen from the substance of article 224 of Law Number 2 of 2018 concerning Amendments to Law Number 17 of 2014 concerning the MPR, DPR, DPD. The immunity rights of DPR members are something that DPR members really need. The immunity rights of DPR members are guaranteed by the 1945 Constitution and also Law Number 2 of 2018 concerning Amendments to Law Number 17 of 2014 concerning the MPR, DPR, DPD and DPRD (UU MD3). The right to immunity for every member of the DPR is the most effective weapon. Because apart from being a legal umbrella, it is also able to save people from legal problems as far as the duties of the DPR are concerned. However, the immunity rights attached to DPR members are still limited to certain actions. This means that the right to immunity does not apply when a member of the DPR commits a serious crime. So that DPR members can be sued before court if they are proven to have violated the provisions of the constitution or law. Therefore, DPR members must avoid creating conflicts that have implications for the privileges they have being sued by the courts. If members of the DPR are proven to have implemented the provisions of the applicable code of ethics and rules, based on a legally binding court decision, they will still be subject to sanctions in the form of light sanctions, medium sanctions and heavy sanctions.

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