



## **POSITION AND FUNCTION OF THE COUNCIL'S COURT OF HONOR IN THE HOUSE OF REPRESENTATIVES**

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### **Abstract**

This paper aims: To determine the position in carrying out the functions of the council's court of honor in the house of representatives. The research method used is in the form of normative research that uses statutory approaches and conceptual approaches. In this study, primary, secondary, and tertiary legal materials were used, which were then collected using a literature study method of collecting legal materials. Furthermore, the legal materials were analyzed using qualitative analysis methods. The position of the Honorary Court of the Council based on Act Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional Representative Council has explained in Article 119 that the Council Honorary Court is an institution formed by the House of Representatives and in the form of complementary tools. The House of Representatives is permanent in nature and has the function and duty to maintain and uphold the honor and dignity of the House of Representatives as a people's representative institution.

Keywords: Position, Function, Honorary Court of the Council

### **A. Introduction**

The institutional system in Indonesia that has evolved according to the times has made it possible to establish an ethical enforcement agency for legislative members. This is based on the consideration that a legislative body that has changed to become very good allows it to be able to monitor every behavior in carrying out its institutional duties. Monitoring the behavior of members of the legislature can originate from outside the legislative institution or from these internal institutions. Direct external supervision can be carried out by constituents without representation or by political parties. Internal supervision can be carried out by an institution formed for this legislative body which is commonly known as the Honorary Board (BK) or the Honorary Court of the Council (MKD).<sup>1</sup>

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<sup>1</sup> Sri Karyati, *Rekonstruksi Kelembagaan Penegakan Etika Parlemen*, Jurnal Etika dan Pemilu, Volume 1 Nomor 1, Juni 2015, p. 60

Based on Act Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional Representative Council (MD3 Law) in the provisions of Article 119 Paragraph (1) and Paragraph (2), it is explained that MKD is an institution established by the Council and constituting a permanent organ of the Council, which has the objective of safeguarding and upholding the honor and dignity of the House of Representatives (DPR).<sup>2</sup>

However, it is so important that the urgency of the existence of a parliamentary ethics enforcement agency needs to be considered. In building a modern parliament, it turns out that there are still serious problems that cause public trust in the institutional ethics enforcer in parliament to be not good and flawed both juridically and politically. There is still a public assumption that, the existence of an ethics enforcement agency is none other than an institution that is not independent and non-impartial, because it is often used as a protector for DPR members who violate the code of ethics, seen from the perspective of unrepresentative membership, wide authority and law events that obstruct the principle of equality before the law.<sup>3</sup>

MKD oversight of the attainment of members of the legislative body, especially the DPR if it is related to the fairly dynamic political constellation in Indonesia between the two coalition camps, will certainly have a very strong impact because members of the DPR and the Honorary Court of the Council also consist of fellow members and party representatives. -parties that get seats as a result of efforts carried out in the Legislative Election competition, with this fact, the war of interests or what in the world of politics and law is more often referred to as conflict of interest affects the ethical judicial process run by the Honorary Council of the Council. The public is very doubtful about the independence of MKD as a supervisor of ethical violations for the DPR.

In connection with the role and duties of the MKD in maintaining and upholding the honor and dignity of the DPR RI as a representative institution for the people. There was a case related to the Chairperson of the Republic of Indonesia DPR for the 2014-2019 period in a case of alleged violation of the code of ethics because it was suspected of asking for a number of shares from PT . Freeport Indonesia by taking the names of the President and Vice President of the Republic of Indonesia some time ago. In this case, MKD received sharp criticism by the public because in solving the alleged

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<sup>2</sup> Undang-Undang Nomor 17 Tahun 2014 tentang Majelis Permusyawaratan Rakyat, Dewan Perwakilan Rakyat, Dewan Perwakilan Daerah, dan Dewan Perwakilan Rakyat Daerah.

<sup>3</sup> Mochtar Kusumaatmadja, *Konsep-Konsep Hukum dan Pembangunan*, Kumpulan Karya Tulis, Pusat Studi Yayasan Nusantara, Bekerjasama dengan PT. Alumni, Bandung, 2006, p. 13-14.

violation of the code of ethics it could not prove that there was a violation of the code of ethics related to this case.

## B. Research Methods

This study uses a normative research type, which is research whose review focuses on positive legal provisions to answer the two predetermined problem formulations. Normative legal research can be defined as well as legal research carried out by way of researching library materials alone.<sup>4</sup> The object of study of normative legal research is the law that is conceptualized as a norm or rule. Norms that are the object of his study include laws, government regulations, and others.

### 1. Types and sources of law

Primary legal material consists of statutory regulations, official records or minutes in the making of legislation and judges' decisions. Secondary legal materials are in the form of all legal publications that are not official documents.<sup>5</sup> Tertiary legal materials are legal materials that can provide guidance and clarity on primary and secondary legal materials.

The source of legal material in this writing is related to the laws and regulations which include: the 1945 Constitution of the Republic of Indonesia, Law Number 17 of 2014 concerning the MPR, DPR, DPD, DPRD, Regulation of the People's Representative Council of the Republic of Indonesia Number 1 2014 concerning Rules, Regulation of the House of Representatives of the Republic of Indonesia Number 1 of 2015 concerning the Code of Ethics for the House of Representatives of the Republic of Indonesia, Regulation of the House of Representatives of the Republic of Indonesia Number 2 of 2015 concerning Procedures for the Honorary Court of the House of Representatives of the Republic of Indonesia.

### 2. Collection of Legal Materials

To obtain correct and accurate legal material in this research, the technique of obtaining legal material is used by means of library research (Library Researc), namely, by collecting legal material which is done by reading, quoting, taking notes and understanding various literatures, laws and regulations and regulations. others both

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<sup>4</sup> Soerjono Soekanto dan Sri Mamuji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Raja Grafindo Persada, Jakarta, 2010, p. 13-14.

<sup>5</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana, Jakarta, 2008, p. 181

books of legal science literature and other legal writings that are relevant to this writing problem.<sup>6</sup>

### 3. Legal Material Analysis

The legal materials analyzed are in the form of statutory regulations and legal issues related to the Position and Function of the Honorary Court of the Council in the People's Representative Council. Furthermore, the results will be interpreted using a deductive way of thinking, namely a way of drawing conclusions from general discussions leading to specific ones.

## C. Discussion

### 1. Position of the Honorary Court of the Council (MKD) in carrying out its functions

The existence of ethics enforcement agencies was introduced at the beginning of reform in the history of parliament in Indonesia, namely when Act no. 4 of 1999 concerning the Composition and Position of the MPR, DPR and DPRD. Explicitly, this Law does not explain the existence of an ethics enforcement agency, in the provisions stipulated in Article 37 paragraph (2) letter c that the formation of the DPR's apparatus is based on the integrity of the DPR, including the organs for board ethics enforcement agencies. It is also implicitly stated that the existence of a device aimed at enforcing ethics in Article 42 paragraph (3) regulates the application of sanctions against prohibitions for DPR members who commit violations. The concept in this law is that a special institution is an ethics enforcement agency specially formed with the aim of providing an assessment and consideration regarding the proposed application of sanctions against DPR members proposed by the factions. The regulation of the mechanism for applying sanctions in this law delegates authority in a DPR Regulation on Procedures.<sup>7</sup>

Along with the developing reform agenda, a representative institution needs to be formed that is considered capable of fighting for and absorbing the aspirations of the people including regional interests and can reflect democratic values in accordance with the demands of the development of the life of the nation and state. Therefore, according to the legal requirements required by the Indonesian parliamentary institution, Act No. 4 of 1999 concerning the Composition and Position of the MPR, DPR and DPRD because they are considered

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<sup>6</sup> Zainuddin Ali, *Metode Penelitian Hukum*, Sinar Grafika, Jakarta, 2011, p. 176

<sup>7</sup> Jimly Asshiddiqie, *Perihal Undang-Undang*, Konstitusi Perss, Jakarta, 2006, p. 242

irrelevant. Regarding the statement above Law No. 22 of 2003 concerning the Composition and Position of the MPR, DPR, DPD and DPRD was born as a new legal basis. In this Law, Article 98 stipulates the provisions of ethical institutions, which this organ is formed as a permanent ethics enforcement agency, which is further regulated in a DPR Regulation on Standing Orders.

The organ of ethics enforcement agency which is named Honorary Board or abbreviated as BK has been regulated in Act No. 22 of 2003 concerning the composition and position of the MPR, DPR, DPD and DPRD. However, the Law does not clearly regulate the functions, duties and authorities of this DPR ethics enforcement agency. This law mandates the provisions regarding the process of upholding and drafting a code of ethics which is established in an order and promulgated later.

In 2009 the term of office of the DPR class of 2003 had ended, after that it was continued by members of the DPR for the period 2009-2014, so that Act no. 27 of 2009 concerning the MPR, DPR, DPD and DPRD replacing Act No. 22 of 2003 concerning the composition and position of the MPR, DPR, DPD and DPRD. This law has undergone a change, the most fundamental of which is the change in the phrase of this law which initially took the form of structure and position to become a law that specifically regulates the institutions of the MPR, DPR, DPD and DPRD.<sup>8</sup> The changes that have occurred have caused the Law to regulate people's representative institutions to be very broad and comprehensive, including regulations regarding supervisory institutions and board ethics enforcement agencies. Then it is explicitly recognized that the institution for monitoring and upholding ethics is a permanent organ of the board, namely the Honorary Board which is contained in Act No. 27 of 2009 concerning the MPR, DPR, DPD, and DPRD in Article 123:

"The Honorary Board is formed by the DPR and is a permanent body of the DPR".<sup>9</sup>

Then regarding the composition of membership in this Honorary Board described in Act no. 27 of 2009 concerning the MPR, DPR, DPD and DPRD in Article 124 paragraph (1) and paragraph (2), namely:

(1) DPR determines the composition and membership of the Honorary Council by taking into account the balance and equal distribution of the number of members

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<sup>8</sup> Sri Karyati , *Rekonstruksi Kelembagaan...*, *Op. cit*, p. 62-63

<sup>9</sup> Undang-Undang Nomor 27 Tahun 2009 tentang Majelis Permusyawaratan Rakyat, Dewan Perwakilan Rakyat, Dewan Perwakilan Daerah, dan Dewan Perwakilan Rakyat Daerah, Pasal 123

of each faction at the beginning of the DPR membership term and at the beginning of the session year.

- (2) There are 11 (eleven) members of the Honorary Council and stipulated in a plenary meeting at the beginning of the DPR membership term and at the beginning of the session year.<sup>10</sup>

In Act No. 27 of 2009 concerning the MPR, DPR, DPD and DPRD also clearly regulates the functions, duties and authorities of the Honorary Council, as mentioned in Article 127 below:

- (1) The Honorary Board is tasked with conducting investigations and verification of complaints against members because:
  - a. does not carry out the obligations referred to in Article 79;
  - b. cannot carry out their duties continuously or is unable to remain a member of the DPR for 3 (three) consecutive months without any information;
  - c. does not attend the plenary meeting and / or the DPR apparatus meeting which becomes their duties and obligations 6 (six) times consecutively without valid reasons;
  - d. no longer fulfilling the requirements as a candidate for DPR member in accordance with the provisions of the laws and regulations concerning the general election for members of DPR, DPD and DPRD; and / or
  - e. violates the prohibition provisions as regulated in this Law.
- (2) Apart from the tasks referred to in paragraph (1), the Honorary Board shall evaluate and refine the DPR regulations regarding the DPR code of ethics.
- (3) The Honorary Body has the authority to summon related parties and cooperate with other institutions.
- (4) The Honorary Board makes a performance report at the end of the membership period.<sup>11</sup>

It can be concluded that according to the description above, the people's representative institutions, which are organs of equipment, are beginning to find their identity as an institution that has a very important position in order to maintain the dignity of members of the Indonesian parliament in the latest idea of Act No. 27 of 2009 concerning the MPR, DPR, DPD and DPRD regarding ethical enforcement institutions. Therefore, it has been explicitly stated in the content contained in several articles concerning the position, duties and authority of the BK which is

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<sup>10</sup> *Ibid*, Pasal 124 Ayat (1) dan (2)

<sup>11</sup> *Ibid*, Pasal 127 Ayat (1), (2), (3), dan (4)

formed as a permanent body of the DPR. This statement shows that there is an expansion of the duties and powers of the BK, where in several previous laws and regulations it was not stated concretely and was only explained implicitly regarding its institutional position.

Not only discussing the Honorary Board which is tasked with strengthening the code of ethics in the DPR RI, Act No. 27 of 2009 concerning the MPR, DPR, and DPRD but also explains the position of the Honorary Board in the Regional Representative Council (DPD) which is a permanent organ. This is different from the arrangement with the Honorary Council of the DPR which specifically regulates its membership, the arrangement for membership of the Honorary Council in the DPD is not regulated regarding membership and filling of membership positions.

The authority and duties of the Honorary Board at the DPD institution are to have the authority to verify and investigate complaints against DPD members, to refine regulations and evaluate DPD regarding the DPD's Tertiary Procedures and Code of Ethics. Doing work together with other agencies and call pihat related.

Institutions that enforce ethics in DPRD institutions according to Act no. 27 of 2009 concerning the MPR, DPR, DPD, and DPRD are also organs of DPRD, but this law does not specifically regulate the duties, powers and membership of the Honorary Council in the DPRD institution. However, during the 2014-2019 period, the ethical institution of the DPR underwent a very significant change through Act No. 17 of 2014 concerning the MPR, DPR, DPD, and DPRD.

## **2. Duties and Authorities of the Council Honorary Court**

The establishment of the MKD institution has enormous implications and aims to enforce the code of ethics of DPR members. Where this institution must be equipped with various functions, duties and authorities, in which these functions, duties and authorities are expected to always be carried out by the MKD institution appropriately, efficiently, accountably and fairly in order to maintain the dignity and dignity of the DPR both institutionally and individually the membership of the DPR.

A task is an obligatory thing to be done or done, in which the work is the responsibility of individuals or institutions that have been charged with the work. Meanwhile, according to G. R Terry, authority is the official power and the power of officials to order other parties to act and obey those who have the authority. Authority according to Robert Bierstedt is institutionalized power. Next, Soerjono Soekanto, made a firm comparison between authority and power. Power is

said to be a person's ability or strength to influence other parties, while authority is power that gets recognition and support from the community.<sup>12</sup> Or in other words, authority is the basis for an institution or person to carry out its responsibilities and duties, so that with the given authority, the tasks can be carried out properly, which in this case the MKD in carrying out the task can give orders to all parties who will be related to the case being examined in the trial.

The functions and duties of the MKD institution are generally outlined in Article 119 paragraph (2) of Act No. 17 of 2014 concerning the MPR, DPR, DPD, DPRD, namely:

"The Honorary Council of the Council as meant in paragraph (1) aims to protect and uphold the honor and dignity of the DPR as a representative institution for the people."<sup>13</sup>

Philosophically, the formation of the MKD has the objective of maintaining and upholding the honor and dignity of the DPR as a representative institution of the people which is a picture and a reflection of the sovereignty of all Indonesian people, in accordance with the meaning contained in Article 1 paragraph (2) of the Constitution of the Republic of Indonesia The 1945 Constitution of the Republic of Indonesia which states that "sovereignty is in the hands of the people and is exercised according to the constitution".

## 2.1 Duties of the Council's Honorary Court

To carry out its function as a DPR ethics enforcement agency as described above, MKD is then given more detailed tasks in Article 2 of DPR Regulation No. 2 of 2015 concerning Procedures for the Honorary Court of the House of Representatives of the Republic of Indonesia, as follows:

- (1) MKD is formed by the DPR which is a permanent apparatus of the DPR and aims to maintain and uphold the honor and dignity of the DPR as a people's representative institution.
- (2) MKD has the duties:
  - a. monitoring in the framework of the function of preventing Member behavior so as not to violate the obligations of Members as referred to in the law concerning the People's Consultative Assembly, the People's Representative

<sup>12</sup> Menurut Para Ahli Terkait Definisi *Wewenang*, dalam <http://www.rinodpk.blogspot.co.id>, diunduh pada tanggal 29 Maret 2020.

<sup>13</sup> Undang-Undang Nomor 17 Tahun 2014 tentang Majelis Permusyawaratan Rakyat, Dewan Perwakilan Rakyat, Dewan Perwakilan Daerah, dan Dewan Perwakilan Rakyat Daerah, Pasal 119 Ayat (2)

Council, the Regional Representative Council and the Regional People's Representative Council as well as the DPR regulations governing the Rules of Procedure and Code of Ethics;

- b. investigate and verify complaints against Members because:
  - 1) does not carry out the obligations referred to in the law concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council;
  - 2) is unable to carry out the task continuously or is unable to remain a member for 3 (three) consecutive months without valid information;
  - 3) no longer fulfilling the requirements as a Member as stipulated in the requirements for a candidate Member as regulated in the law regarding general elections for Members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council; and / or
  - 4) violates the prohibited provisions as regulated in the law concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council.
- c. hold a session to accept actions and / or events that the Member should suspect as a violation of the laws governing the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council, as well as the DPR regulations governing the Rules of Procedure and Code Ethics;
- d. receive letters from law enforcement authorities regarding notification and / or summons and / or investigations of Members on suspicion of committing a criminal act;
- e. request information from law enforcement authorities regarding notification and / or summons and / or investigations of Members on suspicion of committing a criminal act;
- f. request information from Members who are suspected of committing a criminal act;
- g. giving approval or not giving written approval regarding summons and requests for information from law enforcement officials to Members suspected of committing a criminal act; and

- h. assist law enforcers in conducting searches and confiscations at the premises of Members suspected of committing criminal acts.<sup>14</sup>

## 2.2 Authority of the Council's Honorary Court

As a supporter in carrying out the functions and duties described above, the authority of the MKD is explained very clearly in the Regulation of the House of Representatives No. 2 of 2015 concerning Procedures for the Honorary Court of the House of Representatives of the Republic of Indonesia in Article 2 paragraph (3), as follows:

- Paragraph (3): In carrying out its functions and duties, MKD is authorized to:
- a. issue a circular on advice to comply with the Code of Conduct and prevent violations of the Code of Ethics for all Members;
  - b. monitor the behavior and attendance of Members in DPR meetings;
  - c. provide recommendations to related parties to prevent violations of the Code of Ethics and maintain the dignity, honor, image and credibility of the DPR;
  - d. follow up on suspected violations of the Code of Ethics committed by Members, either based on Complaints or without Complaints;
  - e. summon and examine every person related to actions and / or incidents that should be allegedly committed by a Member who does not carry out one or more obligations and / or violates the prohibited provisions as referred to in the DPR Regulation on Procedures for MKD Sessions;
  - f. collaborating with other institutions;
  - g. call related parties;
  - h. stop the process of case examination in each trial in the event that the Complainant withdraws his complaint or is decided by the MKD Meeting;
  - i. decide cases of violations that should be allegedly committed by Members who do not carry out one or more obligations and / or violate the prohibited provisions as referred to in the law concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council and the Regional People's Representative Council, DPR Regulations governing the Rules of Conduct and Code of Ethics;
  - j. prepare a draft budget for the implementation of its duties according to the needs which is subsequently submitted to the household affairs agency; and

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<sup>14</sup> Peraturan Dewan Perwakilan Rakyat Nomor 2 Tahun 2015 tentang Tata Beracara Mahkamah Kehormatan Dewan Perwakilan Rakyat Republik Indonesia, Pasal 2

- k. perform evaluation and improvement of Parliament Regulation governing the Code of Conduct.<sup>15</sup>

From the point of view of decision making in the MKD Institution, it can be seen because full authority is given to this institution and ethics enforcers are independent, because decisions by the Court are final and binding, however, decisions related to permanent dismissal of members must obtain approval from plenary meeting. Meanwhile, the intervention efforts made by members, faction leaders, and / or DPR leaders to the MKD decisions are completely unjustified, because the intervention attempts to the MKD decisions are a violation of the Code of Ethics.

#### **D. Closing**

The position of the Honorary Court of the Council is explicitly explained in Article 119 of Act 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. Where it is stated that the Honorary Court of the Council is an institution formed by the House of Representatives of the Republic of Indonesia and is a complement to the Council which has a permanent character and has functions and duties to maintain and uphold the honor and dignity of the House of Representatives as a representative body of the people.

The Honorary Court of the Council has a very important position in order to maintain the dignity and dignity of the Members of the House of Representatives of the Republic of Indonesia. The explanation of the duties of the DPR Honorary Court can be seen in Article 2 Paragraph (2) of the Regulation of the House of Representatives Number 2 of 2015 concerning Procedures for the Honorary Court of the Council of the Republic of Indonesia. The authority of the Honorary Court of the Council is explained in the Regulation of the House of Representatives Number 2 of 2015 concerning Procedures for the Honorary Court of the Council of the Republic of Indonesia in Article 2 Paragraph (3).

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<sup>15</sup> *Ibid*, Pasal 2

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