

### THE URGENCY OF AN EXTERNAL OVERSIGHT INSTITUTION ON THE LEGAL PRODUCTS OF THE PEOPLE'S CONSULTATIVE ASSEMBLY (MPR)

Rofila<sup>1</sup>, Yudi Widagdo Harimurti<sup>2</sup>, Nurus Zaman<sup>3</sup>

<sup>1</sup>Legal Studies Program, Faculty of Law, Trunojoyo University, Madura, Indonesia

Correspondent email: rofalafala123@gmail.com

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#### Abstract

*The People's Consultative Assembly is a State Institution regulated in the 1945 Constitution of the Republic of Indonesia, has the authority to determine and amend the 1945 Constitution of the Republic of Indonesia, appoint and dismiss the President and Vice President, is a very large authority in running the wheels of government, there is a decree of the People's Consultative Assembly No. MPR No XI / MPR / 1998 concerning State Administrators who are clean and free from Corruption, Collusion, and Nepotism, this decree invites public polemic because it contains efforts to eradicate KKN must be firmly against anyone who is wrong including President Soeharto while still paying attention to the principle of presumption of innocence and human rights, so that a conflict of interest arises in it, until now there is no external supervisory institution but an Internal supervisor, especially in legal products issued by the MPR, while great power tends to abuse power, the purpose of this study 1) to determine the position of the People's Consultative Assembly in the administration of the State in Indonesia 2) to determine the formulation of an external supervisory institution in the legal products of the People's Consultative Assembly People's Consultative Assembly, the research method used in this research is a type of normative research (Normative Legal Research), with a conceptual approach (conceptual approach), and a statute approach (statute approach), the results of this research are : 1) The position of the People's Consultative Assembly in the Indonesian constitutional system is equal to other state institutions such as the DPR, DPD, KY, MA, MK, and so on, the difference lies in the scope of power or authority held by the People's Consultative Assembly and state institutions whose members consist of the DPR and DPD which should be supervised. 2) The urgency of an External Supervisory Institution to the*

*People's Consultative Assembly (MPR) There are several fundamental reasons: The authority held by the MPR can change and determine the 1945 Constitution of the Republic of Indonesia, can appoint and dismiss the President and Vice President, and there has been a conflict of interest in the MPR Decree Number XI/MPR/1998 concerning State Administrators who are clean and free from Corruption, Collusion, and Nepotism, so the formulation of the MPR State institution is that the Constitutional Court is the right institution to carry out external supervision of the MPR's legal products by conducting a Judicial Review because the MPR's strictness is certain regarding the provisions for changing and determining the 1945 Constitution of the Republic of Indonesia. The purpose of this reformulation is to minimize the occurrence of abuse of authority, conflict of interest, which can harm the community and as a form of responsibility for the authority held by the MPR.*

*Keywords: Presidential Threshold, Constitutional Court, Presidentialism.*

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## A. INTRODUCTION

Trias Politica is the concept of separation of powers consisting of the executive, legislative, and judicial branches. These three branches play a crucial role in managing the mechanisms of government. *Trias Politica* derives from the Greek language, meaning “threefold politics.” According to Montesquieu’s perspective, *Trias Politica* refers to three distinct types of state powers that must not be concentrated in a single entity but must remain separated (Mangkepriyanto,2020).

The strength of *Trias Politica* in safeguarding the integrity of the state includes the following: the implementation of a state system must adhere to established procedures; each branch—executive, legislative, and judicial—must perform its role according to applicable procedures; each institution of *Trias Politica* operates in accordance with legal provisions; every state institution exercises its authority responsibly to manage the country; and interdependence exists among the branches, serving the needs of society and responding to public aspirations, ensuring communication among the executive, legislative, and judicial branches remains effective.

In practice, the separation of powers creates strong interrelations among these three branches in the functioning of governance. Therefore, a system of checks and balances is necessary to prevent abuse of power. The concept of checks and balances, implemented in the United States, was explained by Ferguson and McHenry (Huda,2016): “*Separation of power is implemented by an elaborate system of checks and balances. To mention only a few: Congress is checked by the requirement that laws must receive the approval of both houses, by the president’s veto, and by the power of judicial review of the courts.*”The principle of checks and balances represents a mechanism of mutual supervision intended to prevent, avoid, and address the potential abuse of authority by state officials in office or by related state institutions.

Before the amendment of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), the People’s Consultative Assembly (Majelis Permusyawaratan Rakyat / MPR) was the highest state institution and the holder of the people’s sovereignty mandate. Legally, this was regulated in Article 1 paragraph (2) of UUD NRI 1945 (before the amendment), which stated that the MPR had the authority to establish the Constitution and the *Broad Guidelines of State Policy (GBHN)*, and also held the authority to appoint and dismiss the President and Vice President (Siringoringo, 2018).

The authority of the MPR has undergone a long historical journey since Indonesia’s independence. Prior to the amendments, the MPR wielded significant

power. During the Old Order era, the MPR issued Decree No. III/MPRS/1963, declaring President Soekarno as President for Life, although the decree was later annulled. Likewise, MPR Decree No. V/MPR/1998 conferred special powers upon the President, creating unlimited authority and resulting in the abuse of power.

After instances of abuse of authority occurred, amendments to UUD NRI 1945 were made, and the powers of the MPR were revised to include: amending and determining UUD NRI 1945; inaugurating the President and Vice President; dismissing the President and Vice President in accordance with constitutional provisions; electing a Vice President if the position becomes vacant, in which case the MPR must convene within sixty days to elect a candidate proposed by the President; and electing both a President and Vice President if both offices become vacant, in which case the MPR must convene within thirty days to elect two candidate pairs nominated by political parties. One of the most significant powers of the MPR is its authority to amend and determine UUD NRI 1945—the fundamental law of the state and the source of all legal norms governing the life of the nation. Given the magnitude of this authority, the existence of external oversight is essential.

The MPR consists of the House of Representatives (DPR) and the Regional Representative Council (DPD). The DPR has an Honorary Council consisting of 17 members appointed in the plenary session, as regulated in Articles 119 and 120 of Law No. 17 of 2014 concerning the MPR, DPR, DPD, and Regional House of Representatives (DPRD). Likewise, the DPD also has an honorary body composed of 19 members, as regulated in Articles 97 and 98 of Regulation of the DPD of the Republic of Indonesia No. 1 of 2022 on Rules of Procedure. The MPR itself has an honorary body consisting of 15 members, regulated in Regulation of the MPR of the Republic of Indonesia No. 1 of 2024 on Rules of Procedure, specifically in Articles 56 and 57. These honorary bodies function as internal supervisory mechanisms.

However, considering the considerable authority vested in the MPR, it should not rely solely on internal oversight. An external oversight institution is necessary to prevent abuse of power and to ensure the implementation of checks and balances within Indonesia's constitutional system. A table summarizing information regarding state institutions regulated under UUD NRI 1945 that possess both internal and external supervisory bodies—regulated directly by statutory law is provided below:

Table 1. Supervisory Bodies of State Institutions Regulated Under UUD NRI 1945

No.	State Institution	Internal Supervisory Body	External Supervisory Institution	Legal Basis
1.	People's Consultative Assembly (MPR)	Honorary Council	–	Regulation of the MPR RI No. 1 of 2024 on Rules of Procedure
2.	President & Vice President	–	–	–
3.	Ambassadors & Consuls	–	–	–
4.	Presidential Advisory Council	–	–	–
5.	State Ministries	Inspectorate General	–	Presidential Regulation No. 68 of 2019
6.	Regional Government	Regional Inspectorate	–	Law of the Republic of Indonesia No. 23 of 2014 on Regional Government
7.	House of Representatives (DPR)	House Honorary Council	–	Law No. 17 of 2014 on MD3 (MPR, DPR, DPD, DPRD)
8.	Regional Representative Council (DPD)	Honorary Council	–	Regulation of the DPD RI No. 1 of 2022 on Rules of Procedure
9.	General Election Commission (KPU)	Internal Supervisory Unit	Election Organizer Ethics Council (DKPP)	KPU Regulation No. 8 of 2023 on Government Internal Control System in KPU, Provincial KPU, and Regency/City KPU; Law No. 7 of 2017 on General Elections
10.	Central Bank (Bank Indonesia)	Board of Governors	Financial services supervisory body established by law	Law No. 23 of 2004 on Bank Indonesia

11.	Supreme Court (MA)	Supreme Court Supervisory Body (BAWAS MA)	Judicial Commission	Supreme Court Regulation No. 8 of 2016 on supervision and guidance of direct superiors within the Supreme Court and subordinate judicial bodies; 1945 Constitution of the Republic of Indonesia
12.	Constitutional Court (MK)	Constitutional Court Honorary Council (MKMK)	–	Law No. 7 of 2020 on the Constitutional Court
13.	Audit Board of the Republic of Indonesia (BPK)	Honorary Council of the Code of Ethics (MKKE BPK)	–	Law No. 15 of 2006 on the Audit Board of Indonesia
14.	Judicial Commission (KY)	Honorary Council	–	Law No. 18 of 2011 on the Judicial Commission
15.	Indonesian National Armed Forces (TNI)	Internal Supervisory Team	–	Minister of Defense Regulation No. 19 of 2020 on Internal Supervision within the Ministry of Defense and the Indonesian National Armed Forces
16.	Indonesian National Police (POLRI)	Police Professional Code of Ethics (KEPP)	–	Chief of Police Regulation No. 14 of 2011 on the Professional Code of Ethics of the Indonesian National Police

State institutions regulated in the 1945 Constitution of the Republic of Indonesia are only a few state institutions that have external supervisory institutions, the MPR as a state institution that has the authority to determine and amend the 1945 Constitution of the Republic of Indonesia is a very large authority in running the wheels of government, and is 1 (one) state institution consisting of 2 (two) state institutions,

namely the DPR and DPD, so it should be supervised externally, especially on legal products issued by the MPR, there is an MPR decree, namely MPR decree Number XI / MPR / 1998 concerning State Administrators who are clean and free from Corruption, Collusion, and Nepotism, this decree invited public polemics at that time where it contained the sentence "Efforts to eradicate corruption, collusion, and nepotism must be carried out firmly against anyone, both state officials, former state officials, their families and cronies as well as private parties / conglomerates including former President Soeharto while still paying attention to the principle of presumption of innocence and human rights" with the existence of this polemic that Tap The MPR is for the benefit of President Soeharto, although this is a past decision which is evidence that a conflict of interest in the MPR has occurred, based on the background description above, the author wants to research the thesis entitled "URGENCY OF AN EXTERNAL SUPERVISORY INSTITUTION ON LEGAL PRODUCTS OF THE PEOPLE'S CONSULTATIVE ASSEMBLY (MPR)".

## B. RESEARCH METHODS

This research is a normative legal research that aims to identify and find relevant legal norms, principles, and doctrines to address legal issues through a conceptual and legislative approach. The conceptual approach is used by referring to legal theory and principles, while the legislative approach examines written legal instruments such as the 1945 Constitution of the Republic of Indonesia and various laws related to the MPR, DPR, DPD, and DPRD (No. 22 of 2003, No. 17 of 2014, No. 42 of 2014, and No. 13 of 2019). Legal material sources consist of primary materials (statutory regulations), secondary (books, journals, scientific works), and tertiary (dictionaries, internet). The collection of legal materials is carried out through a literature study with systematic steps starting from searching, collecting, recording, to analyzing legal materials. Analysis is carried out qualitatively to interpret data, identify gaps, contradictions, and ambiguities in legal norms in order to answer research problems.

## C. RESULTS AND DISCUSSIONS

The significant findings derived from this study show that the implementation of accelerated inheritance-sharing practices in Muslim communities has a significant positive impact. The word of the Prophet (peace and blessings be upon him) in the Qur'an is the name of the prophet Muhammad saw (Sriani, 2018). With a growing awareness of the importance of sharing inheritance fairly and promptly, Muslim

communities can minimize the potential for conflict and conflict within families related to the sharing of inherited property. In addition, these practices can also strengthen social ties within the family and the Muslim community as a whole. However, despite that, the findings also show that there are still obstacles and challenges to overcome in implementing this practice widely. Therefore, collaborative efforts from all sides are needed to address these problems so that the acceleration of the division of inheritance can become a sustainable norm within the Muslim community.

#### The Position of the People's Consultative Assembly (MPR) in the Administration of the State in Indonesia

The People's Consultative Assembly (Majelis Permusyawaratan Rakyat/MPR) is a state institution explicitly regulated in the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). The MPR serves as an assisting institution in the administration of the state, particularly responsible for matters relating to the Constitution and the inauguration and dismissal of the President and Vice President.

In Hans Kelsen's perspective regarding *the concept of the state organ*, as written in his book *General Theory of Law and State*, he states: "Whoever fulfills a function determined by the legal order is an organ." In other words, anyone who performs a function determined by a legal system is considered an organ, and such functions may either create norms (*norm creating*) or implement them (*norm applying*) (Hudan, 2020).

State institutions, which may also be referred to as governmental bodies, are established through various legal foundations. Some are formed and granted authority directly by the Constitution (UUD), others are formed and granted authority through statutes (laws), while some are established by presidential decree. Institutions established under the Constitution are categorized as constitutional organs, those established through statutory law are known as statutory organs, and institutions formed through presidential decrees hold a lower hierarchical status, both in terms of institutional structure and legal treatment toward officials within these bodies. In general, every state institution carries out the following tasks and authorities (Sihombing, 2018):

1. Providing support in the execution of governmental functions;
2. Maintaining stability in legal, political, human rights, and cultural aspects;
3. Creating a safe, harmonious, and conducive social environment for national and state life;



4. Acting as a communication bridge between the state and society;
5. Serving as a source of inspiration as well as a channel for public aspirations;
6. Making efforts to eradicate corruption and nepotism.

The explanation above reflects the ideal of how state institutions should function. If every institution performs its duties and authorities properly, democracy, security, and prosperity will be achieved. However, in reality, there are still state institutions whose implementation of duties and policy formulation is not aligned with their mandated authority.

The state institution conceptualized by Soepomo was originally named the Consultative Body (Badan Permusyawaratan), which was later renamed the People's Consultative Assembly (MPR). This institution was designed to represent the will of the entire Indonesian people, consisting of regional representatives, people's representatives, and group representatives. This concept was affirmed during the session of the Preparatory Committee for Indonesian Independence (PPKI), coinciding with the ratification of the 1945 Constitution before any amendments were made. However, the full formation of the MPR could not be realized during the Old Order era due to political and national instability at the time (Latif and Chairiansyah, 2023).

The founding fathers anticipated this situation through the formulation of Article IV of the Transitional Rules of the 1945 Constitution (before amendment), which stated that until the formation of the MPR, the DPR, and the Supreme Advisory Council in accordance with the Constitution, all powers were to be exercised by the President with assistance from a body named the Central Indonesian National Committee (KNIP). After the issuance of Vice Presidential Decree No. X, a fundamental change occurred in KNIP's function — it was granted legislative powers and participated in establishing the *Broad Guidelines of State Policy (GBHN)*. Thus, in the initial phase of the 1945 Constitution (pre-amendment), KNIP became the embryo of the MPR as part of Indonesia's constitutional history.

The preamble of the 1945 Constitution affirms that Indonesia is a sovereign state based on people's sovereignty, guided by deliberation and representation. To implement this principle, consultative and representative institutions serve as extensions of the people to fight for aspirations and realize democracy, justice, and welfare. In the constitutional system, state institutions carry out deliberation and representation based on authority regulated by the Constitution, ensuring the implementation of a democracy that serves the people.

Initially, the MPR was the highest state institution, but after the reformation era, its position became equal to other state institutions. This marks a significant structural shift in Indonesia's constitutional system.

State institutions such as the MPR play an important role in achieving national goals. The MPR holds strategic authority in determining the direction of the fundamental regulatory framework of the nation, significantly influencing the legal products it issues.

The reform era (1999–present) brought significant constitutional changes, marking a historical shift: the decision that the MPR would no longer serve as the highest state institution, nor as the embodiment of the entire people exercising sovereignty. The amendment to the 1945 Constitution reorganized the positions of state institutions, especially altering the status, function, and authority of the MPR, which was considered inconsistent with democratic principles and people's sovereignty. Without such changes, the constitutional system could not operate optimally (Nafisah et al., 2023).

According to Sukarna, the principles of democracy can be divided into 12 components as follows (Suryanan, et al., 2022):

1. Separation of powers among the executive, legislative, and judiciary, carried out by different institutions;
2. Government administration based on a constitution;
3. Governance based on the supremacy of law;
4. Government decisions based on the majority principle;
5. Decision-making through deliberation and discussion;
6. General elections held openly, involving more than one political party capable of operating transparently and in an organized manner;
7. Freedom of the press guaranteed and protected by law and by the state;
8. Recognition and protection of minority group rights;
9. Human rights protected by law and guaranteed by the state;
10. Judicial power exercised independently, free from interference, and impartial;
11. Effective supervisory mechanisms over governmental administration;
12. Political dynamics that are open and reflect reciprocal interaction between societal political life and government policies;

13. Every policy determined by the government is formulated directly by representative institutions without influence or pressure from any party;
14. Conflict resolution carried out peacefully based on compromise;
15. Individual freedom guaranteed within the limits set by law and social norms;
16. Existence of a constitution that upholds democratic values;
17. The implementation of the principle of consent in governance and policy-making.

When a state institution responsible for administering government and issuing legal products or policies acts inconsistently with the mandate of the Constitution and democratic principles, a review should be conducted. Only after the review can conclusions be drawn on where the errors lie and what should be revised or improved so that democratic principles can function properly.

One significant change that had a positive impact was the amendment concerning popular sovereignty. Initially, popular sovereignty was exercised entirely by the People's Consultative Assembly (MPR), as stated in the 1945 Constitution of the Republic of Indonesia in Article 1 paragraph (2): *"Sovereignty is in the hands of the people, and shall be exercised fully by the People's Consultative Assembly."* This was later amended to: *"Sovereignty is in the hands of the people and shall be exercised according to the Constitution."* This amendment brought a fresh development for Indonesia as a state governed by the rule of law.

The amendment to Article 1 paragraph (2) of the 1945 Constitution provides several implications (Munir, 2005):

1. Sovereignty is no longer exercised entirely by a single institution, the MPR. Conversely, the MPR still exercises people's sovereignty even though its authority has been reduced.
2. The revised formulation restores the doctrine of popular sovereignty in accordance with the Preamble of the 1945 Constitution (fourth paragraph), shifting away from the doctrine of state sovereignty.
3. Popular sovereignty may be exercised directly by the people or delegated to state institutions in accordance with the Constitution.
4. The system shifted from MPR supremacy to constitutional supremacy, making the Constitution the primary reference for exercising state authority.
5. The terms "the highest state institution" and "high state institution" are no

longer recognized.

The amendment to Article 1 paragraph (2) reinstates the concept of sovereignty as stated in the Preamble to the 1945 Constitution, and the removal of hierarchical terms among state institutions serves as concrete evidence that the reform reflects the theory of checks and balances among state institutions.

Before the amendment, the MPR consisted of members of the House of Representatives (DPR), regional representatives, functional representatives, and even members of the armed forces (ABRI), as regulated in MPR Decree No. II/MPR/1983 concerning the Broad Outlines of State Policy. After the amendment, the MPR consists of members of the DPR and the Regional Representatives Council (DPD), as stated in Article 2 paragraph (1) of the 1945 Constitution: *“The People’s Consultative Assembly consists of the House of Representatives and the Regional Representatives Council whose members are elected through general elections, and further provisions shall be regulated by law.”*

Authority refers to the right and power possessed to perform actions or exercise state powers based on legitimate legal regulations—a form of formal power delegated through statutory provisions.

Prior to the reformulation of authority, the MPR—then the highest state institution—held significant powers under Article 3 of the 1945 Constitution: *“The People’s Consultative Assembly establishes the Constitution and the Broad Outlines of State Policy.”* This granted the MPR extensive control over determining state direction, with no oversight mechanism, creating a high risk of abuse of power.

Before the amendment of the 1945 Constitution, the MPR held unlimited power because *“sovereignty is in the hands of the people and exercised fully by the MPR,”* and the MPR was regarded as the embodiment of the entire Indonesian people. It had authority to enact and amend the Constitution, establish the State Policy Guidelines (GBHN), and appoint the President and Vice President. Its powers included (Subanrio, 2021):

1. Adopting decisions that could not be annulled by any other state institution, including the establishment of State Policy Guidelines whose execution was assigned to the President; providing interpretations of MPR decisions.
2. Electing and appointing the President and Vice President.
3. Requesting accountability reports from the President/mandataris regarding the implementation of GBHN and assessing the report.

4. Revoking the mandate and dismissing the President if the President violated the State Policy Guidelines and/or the Constitution.
5. Amending the 1945 Constitution.
6. Establishing the Rules of Procedure of the Assembly.
7. Electing the leadership of the Assembly from among its members.
8. Deciding on members who violated their oath.

The authority to enact and amend the Constitution granted the MPR fundamental and far-reaching power, and the authority to establish State Policy Guidelines enabled the MPR to issue binding decrees without clear limitations. The wording “establishing the broad outlines of state policy” was open to multiple interpretations, leading to ambiguity, legal uncertainty, and the potential for abuse of power.

After the reform era, the authority of the MPR changed significantly in the Third Amendment of the 1945 Constitution. The revised powers include:

1. Amending and enacting the Constitution (Article 3 paragraph (1): “*The People’s Consultative Assembly has the authority to amend and enact the Constitution.*”)
2. Inaugurating the President and Vice President (Article 3 paragraph (2): “*The People’s Consultative Assembly inaugurates the President and/or Vice President.*”)
3. Dismissing the President and Vice President in accordance with the Constitution (Article 3 paragraph (3) and Article 7B).
4. Electing the Vice President in case of a vacancy (Article 8 paragraph (2)).
5. Electing the President and Vice President when both offices become vacant simultaneously (Article 8 paragraph (3)).

Although the MPR’s authority has been limited, it still retains exceptional power—particularly the authority to amend and enact the Constitution, which is the fundamental legal basis of the state.

The 1945 Constitution (UUD NRI 1945) is Indonesia’s supreme legal document and has undergone four amendments. A fifth amendment remains possible at any time because the MPR retains the authority to amend and enact it. Amendments may be necessary to adapt to changing times and societal needs, although certain procedures must be fulfilled before an amendment can take place.

According to Indrianto Seno Adji, the abuse of authority (*détournement de pouvoir*) in administrative law can take three forms:

1. Abuse of authority committed through actions that contradict public interest, and instead benefit individuals, groups, or certain factions.
2. Abuse of authority in which an official carries out an action in the name of public interest, but deviates from the objectives for which the authority was granted by law or regulation.
3. Abuse of authority by using improper procedures to achieve a certain objective, while intentionally bypassing the procedures that should have been used.
4. Abuse of authority occurs when policies that should be intended for public interest are instead used to benefit a particular group, causing harm to society at large. A policy may initially be formulated for public welfare, yet in practice deviates from its original purpose and violates procedures mandated by law. To prevent abuse of power, the Trias Politica system is implemented through the separation of powers into the executive, legislative, and judicial branches with a mechanism of checks and balances, enabling each institution to supervise one another and preserve democratic principles. In Indonesia's constitutional system, the relationship among state institutions is equal and mutually controlling, although differences in constitutional interpretation may still occur. Therefore, inter-institutional oversight—including supervision of the People's Consultative Assembly (MPR), which consists of the DPR and DPD—is crucial to preventing concentration of power and abuse of authority.

Several state institutions regulated under the 1945 Constitution include:

1. People's Consultative Assembly (MPR)
2. President and Vice President
3. Ambassadors and Consuls
4. Advisory Council
5. Ministries of State
6. Regional Governments
7. House of Representatives (DPR)
8. Regional Representatives Council (DPD)

9. General Elections Commission (KPU)
10. Central Bank
11. Supreme Audit Agency (BPK)
12. Supreme Court (MA)
13. Judicial Commission (KY)
14. Constitutional Court (MK)
15. Indonesian National Armed Forces (TNI)
16. Indonesian National Police (Polri)

The authority of the People's Consultative Assembly (MPR) is an attributed authority, which derives directly from the Constitution, not from delegation. After the reformation era, the MPR is no longer the highest state institution but is positioned equally alongside other high state institutions such as the DPR, DPD, KY, MA, and MK. Nevertheless, the MPR continues to possess significant authority, especially in enacting and amending the 1945 Constitution, which is the nation's fundamental constitutional basis. Although equal to other institutions, the MPR still holds extensive power due to its membership consisting of both DPR and DPD, making external oversight necessary to prevent abuse of authority.

Formulation of an External Oversight Institution for Legal Products of the People's Consultative Assembly (MPR)

The concept of a state governed by law (*Rechtsstaat* / rule of law) is often intensely debated because of the inherent sensitivity of humans as political beings (*zoon politicon*) and legal subjects (*zoon recht*). The ideal of a rule of law is to avoid personal or group ambitions that could harm the representation of the majority's voice in governance. A state based on law operates according to legal principles, democracy, legality, equality before the law, and upholds human rights. The foundational principles of a rule of law include: a constitution or basic legal framework, implementation of state policies in accordance with legal principles (*fundamentele rechtsbeginselen* or principles of law), equality before the law, and respect for human rights (Qamar, et al 2018).

Indonesia is a state based on law, where sovereignty is in the hands of the people and exercised according to the Constitution. State institutions exist as instruments to administer the government under the rule of law, one of which is the MPR, established as the constitutional embodiment of the people's sovereignty.

However, the MPR's authority changed significantly after the constitutional amendments.

Before the amendments, the MPR had the authority to determine the State Policy Guidelines (GBHN)—a broad and vague formulation that resulted in unlimited power and made the institution vulnerable to abuse. Various MPR decrees before the amendments were considered forms of abuse of authority, including:

1. MPRS Decree No. III/MPRS/1963 on appointing Soekarno as President for life, which effectively perpetuated an unlimited concentration of power, although later revoked due to massive public protest.
2. MPRS Decree No. XI/MPRS/1966 on General Elections, requiring elections to be held by July 5th, 1968. This mandate was not carried out, as elections were only held in 1971, making the decree merely symbolic and prompting issuance of a new decree.
3. MPRS Decree No. I/MPRS/1960 on the Political Manifesto as State Policy, which created conflict between the manifesto and the 1945 Constitution, generating legal and political uncertainty and strengthening political dominance during the Old Order.
4. MPR Decree No. V/MPR/1998 on granting special authority to the President to ensure national development, expanding presidential power excessively and weakening the position of the MPR as the highest state institution.
5. MPRS Decree No. XXV/MPRS/1966 on the dissolution of the Indonesian Communist Party (PKI), banning its activities nationwide. Despite the context of the G30S/PKI incident, the decree was criticized for lack of due process, human rights violations, and political reinforcement of the ruling regime.
6. MPR Decree No. III/MPR/1983 on the State Policy Guidelines, which allowed the armed forces (ABRI) to hold seats in the MPR, giving them dual authority—both security and political power—and thus inhibiting democracy and human rights.
7. MPR Decree No. XI/MPR/1998 on Clean Governance Free from Corruption, Collusion, and Nepotism (KKN), which explicitly mentioned former President Soeharto. Although intended to support eradication of corruption, proposals for revocation of this decree were seen as attempts to eliminate accountability.



Table 2. MPR Decrees

No.	Decree (TAP)	Year	Content	Conflict/Issue
1	MPRS Decree No. III/MPRS	1963	Appointment of President Soekarno as President for life	Perpetuated unlimited and uncontrolled power, enabling abuse of authority during Soekarno's administration.
2	MPRS Decree No. XI/MPRS	1966	Concerning General Elections	General elections were not implemented, making the decree merely symbolic; elections took place only in 1971, requiring a new decree to be issued.
3	MPRS Decree No. I/MPRS	1960	Concerning the Political Manifesto as the State Policy Guidelines	Caused legal and political uncertainty by establishing a political ideology as the foundation of the State, thereby strengthening political domination during the Old Order administration.
4	MPR Decree No. V/MPR	1998	Granting special duties and powers to the President/MPR Mandataris to ensure national development	The decree allowed the President to hold extensive authority in both economic and political sectors, leading to uncontrolled presidential power and weakening the position of the MPR as the highest state institution.
5	MPRS Decree No. XXV/MPRS	1966	Concerning the Dissolution of the Indonesian Communist Party (PKI)	Considered to lack transparency and due process, violated basic rights of individuals affiliated with PKI, and was seen as a political step to strengthen the ruling regime during the Old Order.
6	MPR Decree No. III/MPR	1966	Concerning the State Policy Guidelines	Allowed the Armed Forces (ABRI) to become members of the MPR, giving them dual authority in security and politics, thereby hindering

7	MPR Decree 1998 No. XI/MPR	Concerning Clean Governance from Corruption, Collusion, and Nepotism (KKN)	democratic processes and human rights. The specific mention of former President Soeharto was seen by some as a strong commitment to eradicate KKN, but also raised issues regarding the presumption of innocence and human rights.
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Abuse of authority before the amendment has often been carried out by the MPR, seeing from the track record of the decrees issued so that changes in authority have certain limitations, which have been regulated in the 1945 Constitution of the Republic of Indonesia, even though there has been an amendment to its authority, there is one very basic authority, where the MPR can change and stipulate the 1945 Constitution of the Republic of Indonesia.

There was a decree that had become a polemic at that time, namely the MPR decree, namely MPR decree Number XI / MPR / 1998 concerning State Administrators who are clean and free from Corruption, Collusion, and Nepotism, this decree invited public polemic at that time where it contained the sentence "Efforts to eradicate corruption, collusion, and nepotism must be carried out firmly against anyone, both state officials, former state officials, their families, and cronies as well as private parties / conglomerates including former President Soeharto while still paying attention to the principle of presumption of innocence and human rights" with this polemic arose The MPR Decree, which was intended for President Soeharto's benefit, despite its being a previous decree, is evidence of a conflict of interest within the MPR. Despite the amendments, MPR members still committed the following violations:

1. Bambang Soesatyo violated the code of ethics by addressing the issue of amending the 1945 Constitution of the Republic of Indonesia. During a meeting in Senayang, Jakarta, on June 5, 2024, he stated, "We would like to emphasize that all political parties agree to amending the existing 1945 Constitution, including restructuring our political and democratic systems. We in the MPR are ready to make amendments and make changes because we already have the SOPs, we are ready to roll out the red carpet, including the transitional regulations." This statement was met with a written warning warning not to

repeat the error and to exercise caution.

2. Musa Zainudin, a member of the People's Consultative Assembly (MPR), was found guilty of corruption and bribery in the infrastructure project budget of the Ministry of Public Works and Public Housing (PUPR), according to a ruling by the Central Jakarta Corruption Court, and was sentenced to 9 years in prison.
3. Yudi Widian, a member of the MPR, was found guilty of accepting a bribe of IDR 4 billion from PT Cahaya Mas Perkasa for a road and bridge construction project in the National Road Implementation Agency (BPJN), according to a ruling by the Central Jakarta Corruption Court, and was sentenced to 9 years in prison.
4. Irman Gusman, a member of the MPR, was found guilty of bribery in relation to the arrangement of sugar import quotas from Bulog to a company owned by Xaveriandy, according to a ruling by the Central Jakarta Corruption Court, and was sentenced to 4 years and 6 months in prison.
5. Mohammad Nazaruddin, a member of the MPR, was legally proven guilty of money laundering and bribery in the Athlete's Village, according to a ruling by the Central Jakarta Corruption Court, and was sentenced to 6 years in prison.

Abuse of authority can occur due to the lack of specific controls or oversight stipulated in the law, making it very easy to abuse authority. Currently, the MPR only has an internal supervisory body, as stipulated in Regulation of the People's Consultative Assembly of the Republic of Indonesia Number 1 of 2024 concerning the Rules of Procedure of the People's Consultative Assembly of the Republic of Indonesia, while there is no external supervisory body.

Table 3. Abuse of Authority by MPR Members Post-Amendment

No.	Name	Position	Case	Verdict
1.	Bambang Soesatyo	Chairman of the MPR	Violation of the code of ethics	Written mild reprimand, with a warning not to repeat the misconduct and to be more cautious in conduct

2.	Musa Zainudin	Member of the MPR	Corruption involving bribery in infrastructure project budgeting at the Ministry of Public Works and Public Housing (PUPR)	9 years imprisonment
3.	Yudi Widiananda	Member of the MPR	Received a bribe of IDR 4 billion from PT Cahaya Mas Perkasa related to a BPJN project	9 years imprisonment
4.	Irman Gusman	Member of the MPR	Convicted of receiving a bribe to manipulate sugar import quota from BULOG for a company owned by Xaveriandy	4 years and 6 months imprisonment
5.	Mohammad Nazaruddin	Member of the MPR	Money laundering and bribery in the Wisma Athlete project	6 years imprisonment

Some violations committed by the MPR are ethical violations, such as the one involving the Speaker of the MPR, Bambang Soesatyo, who was declared to have violated the code of ethics by the Honorary Council of the DPR RI. According to Benny K. Harman, the ruling was misplaced because Bambang is the Speaker of the MPR, not the Speaker of the DPR RI, so the decision should not have been made by the DPR's Honorary Council. Nevertheless, the decision had already been read, creating legal ambiguity since the Speaker of the MPR made the statement, but the DPR's Honorary Council issued the sanction. In fact, the MPR also has its own internal supervisory body, namely the Honorary Council. Among other members of the MPR, there are also corruption cases such as bribery and money laundering committed for personal gain.

Abuse of authority involving ethical violations also occurred in the DPR, such as the case involving Setya Novanto, who negotiated the extension of the contract of PT Freeport by lobbying and demanding 20% shares in the company on behalf of the President and Vice President. He was also involved in the E-KTP corruption case, which caused state financial losses of IDR 1.2 trillion—an enormous amount for a corruption case committed by the Speaker of the DPR during the 2014–2019 term (Rinaldi et.,al 2021). Although the DPR has internal supervision, it still has not effectively prevented ethical violations and corruption.

Not only the DPR, but the DPD also committed abuses of power through ethical violations, such as the case involving DPD member Arya Wedakarna, who was declared to have violated the code of ethics because of a video containing statements such as: *"He admitted he does not like women who wear headscarves and prefers Balinese girls with their hair uncovered because, according to him, Indonesia is not a country in the East."* Due to this statement, Arya was dismissed as a DPD RI member representing Bali for violating Article 48 paragraphs (1) and (2) of the 2021 DPD RI Honorary Council regulation.

A bribery violation was also committed by Irman Gusman, Chairman of the DPD RI for the 2009–2016 period, who was proven to have received IDR 100 million in bribes from a private businessman in exchange for recommending sugar import quotas. He was found guilty and sentenced to 4 years and 6 months in prison and fined IDR 200 million.

The MPR is a state institution consisting of two bodies within it — the DPR and the DPD — and several members from these institutions have committed ethical violations and corruption. With two institutions within a single state body, the potential for abuse of power becomes greater when there is no external oversight.

Supervision of government institutions should be carried out from the moment authority is granted to implement a policy. According to agency theory, the relationship between the government (agent) and the public (principal) creates a potential conflict of interest. Therefore, government officials who are given power to perform certain functions must be supervised to prevent the misuse of authority, whether for personal or group interests.

One state institution used as comparison is the Supreme Court (Mahkamah Agung). It is regulated in Article 24 paragraph (2) of the 1945 Constitution, which

states:

*"Judicial power shall be exercised by a Supreme Court and subsidiary courts within the general judiciary, religious judiciary, military judiciary, administrative judiciary, and by a Constitutional Court."*

Meanwhile, its authority is regulated in Article 24A paragraph (1): *"The Supreme Court has the authority to adjudicate at the cassation level, review regulations below the level of law against the law, and has other authorities granted by law."*

The Supreme Court is an example of a state institution that has both internal and external oversight. Internally, supervision is regulated in Law No. 48 of 2009 on Judicial Power through Article 39 paragraph (3): *"Internal supervision is conducted by the Supreme Court through the Supreme Court Supervisory Body (BAWAS MA)."*

External oversight is regulated in Article 40 paragraph (1) of the same law: *"To maintain and enforce the dignity and conduct of judges, external supervision is carried out by the Judicial Commission."*

The Supreme Court is a state institution regulated directly by the Constitution and equipped with internal and external supervisory bodies. This demonstrates that the MPR, as a state organ established under the Constitution, should also be supervised not only internally but externally.

There have been ethical violations in the Supreme Court involving bribery to secure an acquittal for Donald Tanur, committed by Supreme Court justices Erintuah Damanik, Mangapul, and Heru Harinindyo, who were bribed to influence the ruling in favor of the defendant. This violated principles of honesty, justice, independence, and responsibility. The existence of the Judicial Commission as external oversight must be strengthened to ensure that judges carry out their duties according to ethical principles (Amina, et al., 2025). It cannot be denied that even institutions with external oversight still have loopholes enabling unethical conduct, but this calls for improvements to address the root causes.

The Constitutional Court (MK) is a state institution authorized to adjudicate constitutional matters as regulated in Article 24C of the 1945 Constitution, including judicial review, disputes between state institutions, dissolution of political parties, and disputes over election results. Oversight of the MK is handled internally by the Constitutional Court Honorary Council (MKMK) under Law No. 7

of 2020. However, based on Constitutional Court Decision No. 005/PUU-IV/2006, the Judicial Commission no longer has the authority to supervise the MK. As a result, the MK currently does not have any external oversight. The 2023 ethical violation case involving the Chief Justice of the MK, Anwar Usman, in Decision No. 90/PUU-XXI/2023, serves as strong evidence of the importance of external oversight to prevent conflicts of interest and maintain the integrity and accountability of the constitutional judiciary.

The General Elections Commission (KPU), as a state institution regulated under the 1945 Constitution, has internal and external supervisory bodies. However, abuse of power still occurred, such as the ethical violation committed by KPU Chairman Hasyim Asy'ari in Case No. 35-PKE\_DKPP/II/2023, for engaging in inappropriate public meetings that created the impression of favoritism toward a particular election participant. This negatively impacted the credibility of his role (Riyanti, 2024). Although the KPU has internal and external oversight, abuse of power still occurs, requiring further evaluation to minimize violations.

Budi Mulya, an official of the Central Bank, abused his authority by facilitating short-term funding facilities to Bank Century and accepting an IDR 1 billion loan from the owner of Bank Century, which he later transferred to his wife's account. As a result, he was rotated from his position. The central bank has both internal and external oversight mechanisms, yet the existence of violations indicates the need for further evaluation to prevent abuses of power.

Within the Judicial Commission (KY), abuse of authority was committed by Irawady Joenoes, who was found guilty of accepting bribes involving land procurement for the new KY office building and was sentenced to 6 years in prison and fined IDR 200 million.

Within the National Police (Polri), abuse of authority occurred in the murder case of Brigadier J, committed by the Head of the Professional and Security Division (Propam) of the National Police Headquarters, Inspector General Ferdy Sambo, who shot Brigadier J to death. This case revealed a conspiracy involving high-ranking police officers. Ferdy Sambo was convicted under Article 340 of the Criminal Code regarding premeditated murder and several other articles related to evidence tampering and information manipulation (Putra, et al., 2024).

Within the Indonesian National Armed Forces (TNI), there has been an abuse of authority involving violations of the TNI professional code of ethics in a

narcotics criminal offense committed by Corporal Kusnandar, who consumed and distributed methamphetamine to others. Based on the ruling of the Military Court III-12 Surabaya, Decision Number: 42-K/PM.III-12/AD/IV/2016, Corporal Kusnandar was sentenced to a principal criminal penalty of six (6) years imprisonment, reduced by the amount of time previously spent in detention, along with a fine of IDR 1,000,000,000 (one billion rupiah). In the event the fine is not paid, it shall be replaced by an additional six (6) months of imprisonment. He also received an additional penalty in the form of dishonorable discharge from military service (Prayoga, 2020).

The cases described above prove that many state officials occupying positions within state institutions have abused their authority, whether in the form of ethical violations, corruption, or other criminal acts. Only a few state institutions—such as the General Election Commission (KPU), the Supreme Court (MA), and the Central Bank—possess both internal and external oversight mechanisms. Other state institutions do not yet have external oversight bodies.

Given the extensive authority of the People's Consultative Assembly (MPR), which includes the power to amend and establish the 1945 Constitution of the Republic of Indonesia and appoint or dismiss the President and Vice President in accordance with the Constitution, it is noteworthy that the MPR only has an internal supervisory board and lacks an independent external oversight institution. In order to avoid future conflicts of interest, the MPR should be equipped with an independent external supervisory institution.

One of the fundamental authorities of the MPR is the power to amend and establish the 1945 Constitution. The constitutional procedures required before an amendment to the Constitution may take place are regulated as follows:

1. A proposal to amend provisions of the 1945 Constitution must be submitted by at least one-third (1/3) of the total members of the MPR, as regulated in Article 37 paragraph (1) of the 1945 Constitution:  
“Proposals to amend the provisions of the Constitution may be placed on the agenda of an MPR session if submitted by at least one-third of the total members of the People's Consultative Assembly.”
2. Every proposal must be submitted in writing, clearly stating the section proposed to be amended along with the reasons for the amendment, as stated in Article 37 paragraph (2):



“Every proposal to amend the provisions of the Constitution must be submitted in writing and clearly indicate the sections proposed to be amended along with the reasons.”

3. The MPR session must be attended by at least two-thirds (2/3) of the total members of the MPR, as stated in Article 37 paragraph (3):

“To amend the provisions of the Constitution, the session of the People’s Consultative Assembly shall be attended by at least two-thirds of its total membership.”

4. Decisions to amend provisions of the Constitution shall be made with the approval of at least fifty percent plus one of the total members of the MPR, as stated in Article 37 paragraph (4):

“A decision to amend the provisions of the Constitution shall be made with the approval of at least fifty percent plus one of the total membership of the People’s Consultative Assembly.”

The MPR is a state institution consisting of two constituent bodies: the House of Representatives (DPR) and the Regional Representative Council (DPD). This composition gives the MPR immense authority (super power), which increases the risk of abuse of power.

The *division of power* refers to the formal separation of powers in which each branch is not strictly limited, allowing for overlapping functions. Meanwhile, the *separation of powers* refers to a material separation in which each branch is strictly divided. Montesquieu’s doctrine divides state power into three branches: the legislative (law-making authority), the executive (law implementation), and the judiciary (authority of the courts).

According to classical political theory developed by John Locke (1632–1704), Montesquieu (1689–1755), and *The Federalist Papers* (1777–1778), the best way to ensure a democratic constitution is by dividing power among the executive, legislative, and judiciary, so that each branch can perform checks and balances, preventing one institution from becoming too dominant (Newton et.al., 2021).

The check and balances system ensures that each branch of power supervises and counterbalances the others so no branch becomes supreme. According to Peter L. Strauss, the mechanism of checks and balances is designed to establish constitutional relations that prevent abuse of power among state

institutions. The essence of separation of powers lies in clarifying the functions and positions of each branch, while the emphasis of checks and balances lies in creating harmony and mutual supervision to prevent overlapping authority (Laritmas and Rosidi, 2024).

The theory of checks and balances is relevant to prevent one state institution from gaining excessive authority. This theory should be used as a foundation to justify that the MPR must be supervised not only internally but also externally, ensuring the independence of the external oversight institution so as to prevent abuse of authority.

According to the *principal-agent theory*, oversight is necessary to reduce the risk that public service providers may act in ways that do not align with public interests. Oversight should exist from the moment state administrators are granted authority to execute policies. The relationship between the government and the public inherently contains potential conflicts of interest. Because government authority originates from the people, the exercise of such authority should be subject to oversight to prevent misuse, whether for personal or group interests. Thus, the MPR should have an external supervisory institution in addition to internal oversight, consistent with principal-agent theory. There must be a reform movement requiring that the MPR be subjected to external supervision.

According to Simbolon, types of oversight consist of four (4) forms:

1. Internal control – oversight carried out by the institution itself;
2. External control – oversight performed by an external institution, which may act on behalf of the government/President or on behalf of the State;
3. Preventive oversight – carried out before a policy is implemented to prevent errors in execution, called a *pre-audit*;
4. Repressive oversight – carried out after implementation to ensure that outcomes align with established plans, called a *post-audit*.

The People's Consultative Assembly (MPR) already has an internal oversight mechanism through the Ethics Council (Badan Kehormatan), as regulated in Articles 57 and 60, which is responsible for enforcing the code of ethics, following up on reports of ethical violations, examining members, summoning witnesses, and imposing sanctions. However, this internal oversight is limited to ethical matters and does not cover external oversight of the MPR's

authority. History has recorded potential conflicts of interest within the MPR, as seen in MPR Decree No. XI/MPR/1998 concerning a clean government free from corruption, collusion, and nepotism, which sparked controversy because it was perceived as supporting President Soeharto's political interests at that time. Therefore, the establishment of independent external oversight—such as granting the Constitutional Court (MK) authority to conduct judicial review of MPR legal products, including decisions related to constitutional amendments and the appointment or dismissal of the President and Vice President—is important to ensure accountability and prevent abuse of power.

Law No. 12 of 2011 concerning the Formation of Legislation stipulates the hierarchy of laws and regulations, consisting of:

1. The Constitution of the Republic of Indonesia of 1945;
2. MPR Decrees;
3. Laws/Government Regulations in Lieu of Laws;
4. Government Regulations;
5. Presidential Regulations;
6. Provincial Regulations;
7. Regency/City Regulations.

Under Law No. 12 of 2011, the reinstatement of MPR Decrees into the legislative hierarchy is due to several MPR Decrees remaining valid. MPR Decrees occupy a position below the 1945 Constitution and above laws/government regulations in lieu of laws. Their placement indicates that MPR Decrees serve as legal sources below the Constitution but above statutory laws.

The Constitutional Court (MK) holds authority to conduct judicial review of laws against the 1945 Constitution, while the Supreme Court (MA) reviews regulations below statutory laws.

Jimly Asshiddiqie, former Chief Justice of the Constitutional Court, believes that the Constitutional Court should have the authority to review MPR Decrees based on MPR Decree No. I/MPR/2003. With this decree, remaining MPR Decrees are equated with statutory laws, not with the Constitution. The decree reduces the legal status of past MPR Decrees to the level of law, not constitutional law. Once the subject matter of such Decrees is regulated by law, the Decrees no longer apply as regulations. Jimly concludes that the remaining MPR Decrees still applicable

today should be treated as equivalent to statutory laws, not the Constitution (Pratiwi, 2020).

Professor Jimly Asshiddiqie also argues that placing MPR Decrees above laws is incorrect; they should be positioned at the same level and subject to judicial review by the Constitutional Court if they contradict the Constitution. Consistent with the theory of legal certainty by Dr. Andi Hamzah, legal certainty must ensure fair treatment for society and serve as a tool to achieve justice and public interests. Therefore, there should be a regulation granting the Constitutional Court the authority to review MPR legal products to ensure legal certainty and justice.

External oversight of the MPR is crucial due to its significant powers—including amending and establishing the Constitution, and appointing and dismissing the President—which pose a high potential for abuse. Reformulating the state system to grant independent external oversight authority to the Constitutional Court is necessary to prevent conflicts of interest, limit excessive power, and ensure the accountability of the MPR in carrying out its constitutional functions.

#### D. CONCLUSION

The results of the study show that the Indonesian legal system already has a comprehensive normative framework through Law Number 17 of 2023 concerning Health as a *lex specialis* in resolving medical malpractice cases. The findings of the study show that there is an overlap between the Criminal Code and the Medical Practice Law in the application of the principle of *lex specialis derogat legi generali*, as well as the need to affirm the recommendation mechanism of the Professional Disciplinary Council as a prerequisite before the case is brought to the criminal realm. The novelty of this research lies in the identification of the need for harmonization between general criminal law and health law in enforcing the criminal responsibility of medical personnel in the field of aesthetics, so that there is no excessive criminalization of doctors who act according to professional standards. In conclusion, effective legal protection must be able to strike a balance between the patient's right to justice and the protection of medical personnel from disproportionate demands. Therefore, it is recommended to strengthen certification regulations and supervision of aesthetic practices, increase the independence of the Professional Disciplinary Council, and implement a restorative justice approach so that case resolution is more oriented towards victim recovery, professional development, and improving the quality of safe, ethical, and professional health services.

1. The position of the MPR in the Indonesian state system is equal to that of other state institutions such as the DPR, DPD, KY, MA, MK, and so on. The difference lies in the scope of power/authority held by the MPR as a state institution whose members consist of the DPR and DPD, which in carrying out their authority should be supervised by an external supervisory institution.

Reformulation of External Supervisory Institution on the legal products of the People's Consultative Assembly (MPR) There are several basic reasons: The authority held by the MPR can change and determine the 1945 Constitution of the Republic of Indonesia, can appoint and dismiss the President and Vice President, and there has been a conflict of interest in the MPR Decree Number XI/MPR/1998 concerning State Administrators who are clean and free from Corruption, Collusion, and Nepotism, so the formulation of the MPR State institution is that the Constitutional Court is the right institution to carry out external supervision on the MPR's legal products by conducting a Judicial Review, because the MPR's provisions are certain regarding the provisions to change and determine the 1945 Constitution of the Republic of Indonesia and the position of the MPR's legal products is under the Constitution, the urgency of external supervision on the MPR's legal products is to minimize the occurrence of abuse of authority conflict of interest that can harm the community and as a form of responsibility for the authority held by the MPR.

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