

**IMMUNE RIGHTS OF MEMBERS OF THE COUNCIL OF PEOPLE'S
REPRESENTATIVES ACCORDING TO THE PRINCIPLE OF EQUITY
BEFORE THE LAW**

THESIS

BY:

MARISA NURFAIZZAH

NIM 16230005



CONSTITUTIONAL LAW DEPARTMENT

SHARIA FACULTY

STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM

MALANG

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STATEMENT OF THE AUTHENTICITY

In the name of Allah, with consciousness and responsibility towards the development of science, the author declares that the thesis entitled:

**IMMUNE RIGHTS OF MEMBERS OF THE COUNCIL OF PEOPLE'S
REPRESENTATIVES ACCORDING TO THE PRINCIPLE OF EQUITY
BEFORE THE LAW**

Is truly the writer's original work which can be legally justified if this thesis is proven result of duplication or plagiarism from another scientific work, it as precondition of fegree will be stated legally invalid.

Bekasi, 17th September 2021

Writer,

A handwritten signature in blue ink, appearing to read 'Ri...', is written over a rectangular Indonesian postage stamp. The stamp is yellow and features the Garuda Pancasila emblem, the text '3000', 'METERAI TEMPEL', and the alphanumeric code 'JMS2CAJX416792094'.

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NIM 16230005

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IMMUNE RIGHTS OF MEMBERS OF THE COUNCIL OF PEOPLE'S REPRESENTATIVES ACCORDING TO THE PRINCIPLE OF EQUITY BEFORE THE LAW

The supervisor states that this thesis has met the scientific requirements to be
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The official stamp of the Faculty of Shariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang, is a circular seal. It contains the text 'KEMENTERIAN AGAMA' at the top, 'UNIVERSITAS ISLAM NEGERI MAULANA MALIK IBRAHIM MALANG' in the center, and 'FAKULTAS SYARIAH' and 'REPUBLIK INDONESIA' at the bottom.

MOTTO

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا
بِالْعَدْلِ ۚ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ ۗ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا

"Indeed, Allah commands you to convey the message to those who are entitled to receive it, and (orders you) when you set a law between people so that you judge with justice. Verily, Allah has taught you the best. Verily, Allah is All-Hearing, All-Seeing."

[Qs. An-Nisa (3): 58]

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Assalamualaikum Wr. Wb.

Alhamdulillahilalamin, all praise and gratitude the author would like to say for the blessings and graces that have been given by the Lord of the worlds, Allah SWT. Because of His blessing, the writer was able to finish this thesis. Don't forget to also Shalawat and greetings, may Allah shower the Great Prophet Muhammad SAW, who has brought us from the jahiliyah era to the true and straight era, namely Islam. May the reader always be bestowed by His grace and bounty. Amen.

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Hopefully what the author can both during the lecture period and so far can be useful for readers, especially personal writers. Here the writer as an ordinary human being will not be lost from forgetfulness and sin, realizing that this thesis is very far from perfection. So the author really hopes criticism and suggestions from all parties so that it can be more useful in the future. Amen.

Bekasi, 17th september 2021

Writer,

Marisa Nurfaizzah

NIM 16230005

TRANSLITERATION GUIDANCE

A. General

Transliteration is the transfer of Arabic script into Indonesian (Latin) writing, not Arabic translation into Indonesian. Included in this category are Arabic names from Arab nations, while Arabic names from non-Arabic nations are written as the spelling of the national language, or as written in the reference book. Authors of book titles in footnotes and bibliography, still use this transliteration.

B. Consonant

ا = not written	ض = dl
ب = b	ط = th
ت = t	ظ = dh
ث = ts	ع = ‘ (semicolon)
ج = j	غ = gh
ح = h	ف = f
خ = kh	ق = q
د = d	ك = k
ذ = dz	ل = l
ر = r	م = m
ز = z	ن = n
س = s	و = w

ش = sy	ء = h
ص = sh	ي = y

Hamzah (◌) which is often symbolized by the alif, if it is located at the beginning of the word then the transliteration follows the vowel, it is not symbolized by a comma above (,) , reversed with a comma (,) to replace the symbol "◌"

C. Vokal, long pronounce, and Diphthong

Loyalp writing in Arabic in the form of vowel fathah is written with "a", kasrah with "i", dlommah with "u", while each long reading is written in the following way:

Vowel (a) length = â for example آلto be qâla

Vowel (i) length = for example لbecome qîla

Vowel (u) length = for example □ become dna

Kespecially for reading ya“ nisbat, then it should not be replaced with “î”, but still written with “iy” in order to describe ya“ nisbat at the end. Likewise for the sounds of diphthongs, wawu and ya“ after fathah are written with "aw" and "ay". Consider the following example:

Diphthongs (aw) = □ for example لbecome qawlun

Diphthong (v.) = □ for example □ become khayrun

D. Ta'marbûthah (◌)

ta' marbûthah is transliterated with “t” if it is in the middle of the sentence, but if the ta' marbutah is at the end of the sentence, then it is transliterated using “h” for example الرسالة للمدرسة becomes al-risalat li al-mudarrisah, or if it is in the middle of a sentence consisting of the composition of mudlaf and mudlaf ilayh, then it is transliterated using "t" which is connected to the next sentence, for example الله بين في rahmatillah.

E. Auxiliary verb and lafadh al-jalalah

Kata clothing in the form of "al" (ال) written in lowercase, unless it is located at the beginning of the sentence, while the "al" in lafadh jalalah which is in the middle of the sentence that is leaning on (idhafah) is omitted.

Consider the following examples:

1. Al-Imam al-Bukhariy said
2. Al-Bukhariy in the muqaddimah of his book explains
3. Masya'Allah kânâ wa mâlam yasya lam yakun.
4. Billâh 'azza wa jalla.

ABSTRACT

Marisa Nurfaizzah. NIM 16230005, 2020. The Immunity Rights of Members of the People's Legislative Assembly according to the principle of equality before the law. Essay. Constitutional law. Sharia Faculty. Maulana Malik Ibrahim State Islamic University Malang. Advisor Teguh Setiabudi, MH

Keywords: Limitations, DPR's immunity rights, The principle of equality before the law, Ahlul Halli Wal 'Aqdi.

The DPR is a state institution that holds the power to form laws. This right to immunity is regulated in Article 20A of the 1945 Constitution and Article 80 of Law Number 17 of 2014 concerning MD3. The existence of this right to immunity is often debated because of its nature which is considered 'beyond the law' for members of the DPR. Meanwhile, in one of the principles, namely the principle of equality before the law, it is stated that all are equal before the law. This is also stated in Article 27 paragraph (1) of the 1945 Constitution "all citizens have the same position in the law and government with no exceptions". This shows that there is a gap in understanding in society.

From the above background, the formulation of the problem found by the author is how the limitations on the Immunity Rights of DPR members are based on the principle of equality before the law and how the existence of the immunity rights of DPR Members is based on Ahlul Halli Wal 'Aqdi.

This study uses normative legal research, using a statutory approach with primary legal material in the form of legislation referring to law number 2 of 2018 concerning amendments to the two laws number 17 of 2014 concerning The People's Consultative Assembly, the People's Representative Council, the Regional Representatives Council, and the Regional People's Representative Council (UU MD3). And secondary legal materials in the form of books related to the House of Representatives, research journals, books on the theory of equality before the law.

The results of the study indicate that the right of immunity is indeed needed by members of the DPR to guarantee their right to express opinions as long as they are within the scope of obligations and assignments of members of the DPR. It is said to violate the principle of Equality before The Law if the DPR member violates the code of ethics and rules that have been determined. Members of the DPR will still be subject to sanctions and penalties if they violate the code of ethics and regulations, and if the DPR members themselves commit special crimes. Likewise, the immunity rights of members of the DPR, if in Islam the DPR itself is called ahlul halli wal 'aqdi, is regulated in the Koran. In the Qur'an, it is explained that all people are free to think, express opinions, speak or even act in deciding a case, all of which are also characteristics of the right of immunity.

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CHAPTER I

INTRODUCTION

A. BACKGROUND OF RESEARCH

In a constitutional state that adheres to the principles of popular sovereignty or a democratic legal state, the presence of a legislature/representative institution (parliament) is a necessity. Viewed from a historical perspective, the existence of legislative institutions or people's representative institutions can be traced to ancient Greece. The Athenians who became members (Ekklesia) had the opportunity to influence policy formation, even though a small number of them dominated the assembly. The Council accompanies the 'Badan Limaratus' (Vouli ton Pentakosion) as this executive body, tasked with considering the decisions of the executive body and issuing them in the form of debate among members¹

Indonesia is a country that adheres to a presidential system of government. The characteristics of a presidential system of government are that Parliament has legislative power and as a representative institution. The members of parliament are directly elected by the people. Meanwhile, the political system adopted by the State of Indonesia is a democratic political system. So in this case it can also be called a democratic state. Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) states that "the State of Indonesia is a state of law", while the 1945 Constitution of the Republic of

¹ Paimin Napitulu, The role and responsibilities of the DPR: Studies in the DKI Jakarta DPRD (Bandung: Alumni, 2005),32

Indonesia Article 1 paragraph (2) states "sovereignty is in the hands of people and implemented according to the Constitution". The two articles show that Indonesia is a state of law and democracy.²

This is clearly stated in Article 1 paragraph 2 of the 1945 Constitution that "Sovereignty is in the hands of the people and is carried out according to the Constitution. The essence of democracy itself is that power in the state is in the hands of the people.³Democracy can also be used to refer to ideas or views of life that uphold equal rights and obligations for the State (democratic understanding). Indonesia in the power of the State is not held by one power holder, but the power is shared and exercised by three power holders. Namely the executive or government which is held by the president, legislative power or forming regulations or laws held by the People's Representative Council (hereinafter referred to as DPR) and judicial or judicial power.

The three powers in exercising their power or authority cannot be separated or absolutely separate between the holders of these powers. Rather, they are interconnected with each other, such as the DPR in exercising its power to form laws. In the draft law, the DPR and the President are discussed by the DPR and the President for mutual approval.⁴One of the tangible forms of a democratic state is the existence of an institution that represents the voice of the people in carrying out government functions. In Indonesia, the representative body for the people's voice

² Muntoham, democracy and the rule of law, legal journal volume 16, Number 3 (2016), 379

³ Winarno, The New Paradigm of Citizenship Education (Jakarta: Bumi Aksara, 2016), 94-95

⁴ 1945 Constitution of the Republic of Indonesia Article 20 paragraph (2)

is known as the People's Representative Council (DPR). The DPR is a people's representative institution that is domiciled as a state institution.

The House of Representatives (DPR) has a very important position in accordance with the democratic principles that we adhere to. The DPR has the functions and rights that determine the administration of the State.⁵ The functions and powers of the DPR In carrying out its institutional duties, it is 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 Representatives Council and the Regional People's Representative Council (hereinafter referred to as Law No. -Law Number 2 of 2018 concerning the second amendment to Law number 17 of 2018 concerning MD3).

The Director of the Jakarta Legal Aid Institute, Feby Yonesta, said that the review of the MD3 Law taken by the Coalition to question the existence of Article 245. Consisting of three paragraphs, the article regulates the procedure for examining members of the DPR who are involved in legal matters, which must obtain written approval from the Honorary Council of the Council (MKD). Regarding Article 245, Feby and his Coalition colleagues questioned why members of the DPR are treated differently in terms of criminal proceedings compared to the general public. According to Feby, although Article 245 contains exceptions for

⁵Gaffar, Janedri M. (2012). Constitutional Democracy; Indonesian State Administration Practices After the Amendment of the 1945 Constitution. Jakarta: Constitution Press. Thing. 60

several types of crimes, a member of the DPR should still be treated the same as an ordinary citizen who is involved in legal problems.⁶

The Secretary of KHN, Prof. Mardjono Reksodiputro, believes that the polemic related to Article 245 of the MD3 Law actually lies in the procedure for examining members of the DPR which requires written approval from the MKD. Procedures like this, said Prof. Mardjono, are usually known within the scope of the profession. For example, the profession of a doctor, advocate or notary. According to the Andalas University Constitutional Law expert, Ferry Amsari, the revision of Law No. 17 of 2014 Article 73 or the MD3 Law which allows for forced summons to everyone by the DPR using police instruments is considered repressive. Ferry also considered that the article was closely related to the Special Committee for Inquiry Rights of the KPK, which so far has not succeeded in summoning the KPK to hold a hearing.

In addition, according to Ferry, the article will be very easy to break in a judicial review at the Constitutional Court (MK) with its authoritarian nature and against democracy. Moreover, according to Ferry, the article is not in accordance with the Constitutional Court Decision 76/PUU-XII/2014. According to him, in that decision, the investigation of members of the DPR must have the permission of the president, but without considering the MKD's decision. Ferry does not agree if the article is said to maintain the immunity of the DPR. Because, according to him, the immunity of DPR members only applies when carrying out their duties and then

⁶ <https://www.Hukumonline.com/berita/baca/lt54073131d16d0/khn--hak-imunitas-dpr-harus-limited/> accessed on December 28, 2020

being criminalized. In a working meeting between the DPR and the government regarding the revision of the MD3 Law this morning (8/2/2018) they agreed on a revision of article 73 regarding the duties and authorities of the DPR and article 245 regarding investigations in the MD3 Law.

For article 73, it was agreed that there would be a change in the phrases of state officials, legal entities and the public to become everyone according to the government's proposal. Thus, this article changes its sound to "The DPR in carrying out its powers and duties may summon everyone in writing to attend DPR meetings". This article also emphasizes that the DPR can forcibly summon anyone using the police of the Republic of Indonesia.

Then, in Article 245 it was agreed that there would be an additional 'president' to investigate members of the DPR, no longer only with the written approval of the Council's Honorary Court (MKD), in accordance with the government's proposal. Thus, this article reads "summons and requests for information for the investigation of members of the DPR suspected of committing a crime must obtain written approval from the president and the Honorary Court of the Council." The government also proposes to add exceptions to this article for members of the DPR who are caught red-handed, committing crimes punishable by death and/or life imprisonment, crimes against the state based on sufficient evidence, and special crimes. The KPK has twice refused to call for a hearing with

the Special Committee for Inquiry Rights of the KPK. The last one happened in October 2017.⁷

In 2018 the Constitutional Court received an application that disputed the case for the review of Law Number 2 of 2018 concerning the second amendment to Law Number 17 of 2014 concerning MD3. The petitioners disputed Article 122 Letter l of the 2018 MD3 Law which was considered to have the potential to harm the constitutional rights of the petitioners to obtain freedom of expression orally and in writing, where Article 122 letter l of the 2018 MD3 Law stated

“...to take legal steps and/or other steps against individuals, groups of people, or legal entities that undermines the honor of the DPR and members of the DPR;”

This then received a decision from the Constitutional Court, namely Decision Number 16/PUU-XVI/2018 which briefly stated:

"Article 122 letter l of Law Number 2 of 2018 concerning the second amendment to law number 17 of 2014 concerning MD3 (State Gazette of the Republic of Indonesia of 2018 Number 29, Supplement to the State Gazette of the Republic of Indonesia 6187) is contrary to the Constitution of the Republic of Indonesia Indonesia in 1945 and has no binding legal force"

Members of the DPR in addition to their functions, powers and duties, also have rights, namely institutional rights and the right to become members. The institutional rights owned by the DPR include Interpellation, questionnaires, and expressing opinions, besides that as a member of the DPR, they are given several

⁷ <https://www.google.co.id/amp/s/amp.tirto.id/pakar-law-tata-negara-saroti-revisi-uu-md3-jualan-pecallan-paksa-cEuQ> accessed on December 28, 2020

rights, one of which is the right to immunity.⁸as regulated in letter f, it is said that members of the DPR have the right of immunity. Immunity Right is the individual right of DPR members. The existence of this privilege is expected to be a special legal protection for members of the DPR. The provisions stipulated in the MD3 Law do not only limit the rights of members of the DPR, but also include the rights of members of the People's Consultative Assembly, members of the Regional Representatives Council, members of the Provincial People's Representative Council, and the Regency/City Regional People's Representative Council.

In particular, the right of immunity for members can be broken down into two parts, namely the right not to be prosecuted in court, and the right not to be changed from time to time. Both of these matters relate to the duties and positions of a member in the meeting or outside the DPR meeting.⁹

In addition, the principle of equality before the law (equality before the law) is the main pillar of the building of a legal state (rechstaat) which prioritizes the law above all else (supreme of the law). Recognition of each individual before the law is the same, there is no difference between one another regardless of race, ethnicity, ethnicity, culture or degree. In the amendments to the 1945 Constitution, the Equality before the law theory is included in Article 27 Paragraph (1) of the 1945

⁸ AA Sagung's wife Agung Andryani Komang Pradnyana Sudibya, *Juridical Analysis of DPR's Immunity Rights Viewed from the perspective of the principle of the rule of law*, Udayana university law journal, (2017), 3

⁹ Arief Supriyadi, "Deconstruction of the Immunity Rights of DPR Members in the Perspective of Equality Before the Law", (2019), 29

Constitution which states that "all citizens have the same position in law and government with no exceptions".¹⁰

The principle of equality before the law can be used as a standard for affirming marginal groups or minority groups. But on the other hand, because of the imbalance in resources (power, capital and information) this principle is often dominated by the authorities and investors as a shield to protect their assets and power.¹¹ So seeing how important this principle is, a country should place this principle in a high position, one of which is in the legal order in Indonesia. The principle of equality before the law is clearly stated in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia: "everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law".

The practice of administering government in Indonesia places the DPR as a branch of state power in the legislative field, giving birth to its rights and functions in carrying out its institutional duties. One of the rights attached to the DPR is the right to immunity as stated in Article 20A paragraph (3) of the second amendment to the 1945 Constitution of the Republic of Indonesia: People have the right to ask questions, submit suggestions and opinions as well as the right to immunity.

The immunity rights of DPR members are regulated in detail in Law number 2 of 2018 concerning the second amendment to Law number 17 of 2014 concerning

¹⁰ Yasir Arafat, *the 1945 Constitution of the Republic of Indonesia and its amendments*, (Jakarta: Permata Press), 26

¹¹ Julita Melissa Walukow, "the embodiment of the principle of equality before the law for prisoners in prisons in Indonesia", (*Article lex et societatis*, 1, 2013), 8

MD3 Article 224 which consists of (4) points which briefly state that the DPR cannot be prosecuted before the court because of statements made by the DPR, both orally and in writing, which will be discussed further in the next chapter. From the explanation of the right of immunity above, there is a lot of uncertainty regarding the limits and regulations regarding the Immunity Right which is growing in public opinion, which creates legal ambiguity. So the author wants to describe and discuss the Limits of the Immunity Rights of DPR Members with the benchmark of the Principle of Equality before the Law.

In addition, in the history of Islam, the establishment of the *Ahl Halli Wa al-'Aqdi* institution (or equivalent to the DPR in Indonesia) was first carried out during the reign of the Umayyads in Spain, which consisted of state officials and some community leaders.¹² Then the urgency of forming this people's representative became important to meet the needs in society at that time. The paradigm of thought of fiqh scholars formulating the term *Ahl al-Halli Wa al 'Aqd* is based on a system of selecting four caliphs. First in the history of the government of Muslims after the Prophet SAW. The selection of the caliph was carried out by friendly figures who represented two groups, namely the Ansar and the Muhajiriin. They were later fought by fiqh scholars who claimed to be *Ahl al-Halli Wa al-'Aqd* who acted as representatives of the people.¹³ So even in writing this time, the author wants to bring the material on the Immunity Rights of the DPR in terms of *Fiqh siyasah*.

¹² Muhammad Iqbal, *Fiqh Siyasah Contextualization of Islamic Political Doctrine*, (Jakarta: Gaya Media Pratama, 2007), 142

¹³ J. Sayuti Pulungan, *Fiqh Siyasah Doctrine, History and Thought*, (Jakarta: PT Raja Grafindo), 69

B. FORMULATION OF PROBLEMS

From the description above, the authors found the formulation of the problem, namely:

1. What is the Limitation of the Immunity Rights of DPR Members based on the Principle of Equality before the Law?
2. What is the Immunity Rights of DPR Members based on Ahlul Halli Wal 'Aqdi?

C. GOALS OF RESEARCH

In carrying out the formulation of this research, the authors have the following objectives:

1. To get a law degree.
2. To analyze the immunity rights of the DPR based on the principle of equality before the law.
3. To analyze the existence of the Immunity Rights of DPR members based on Ahlul Halli Wal 'Aqdi.

D. BENEFITS OF RESEARCH

In legal research, it is hoped that there will be benefits and uses. This is to provide value and usability from the end of legal writing both now and in the future.

In connection with these benefits, the author hopes that what can be achieved from writing this law are:¹⁴

¹⁴ Ronny Hanitijo Soemitro, *Legal and Jurimetric Research Methodology*, (Jakarta: Ghalia Indonesia, 1988), page 14

1. Theoretical benefits

- a. It is hoped that this research can provide insight and thoughts for the development of legal science, especially in law and state administration
- b. The results of the research are expected to be used as a reference and reference for scientific works in research and similar legal writing in the future.

2. Practical benefits

- a. It is expected to be able to provide additional information and for future readers who will conduct research related to the material in question.
- b. Provide answers to the researched problem
- c. As a means to develop reasoning and dynamic thinking patterns for writers as a form of knowledge gained during studies at the Faculty of Sharia and Law, State Islamic University of Maulana Malik Ibrahim Malang.

E. RESEARCH METHODS

According to Peter Mahmud, "Legal research is a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal issues faced".¹⁵ Soerjono Soekanto further explained that "Legal research is a scientific activity,

¹⁵ Peter Mahmud Marzuki, *Legal Research*, (Jakarta: Kencana Prenada Media Group, 2011), 35

which is based on certain methods, systematics and thoughts, which aims to study one or several certain legal phenomena, by analyzing them".¹⁶

1. Research type

The type of research in this legal research is normative or doctrinal legal research. According to Terry Hutchinson as quoted by Peter Mahmud Marzuki, defines that doctrinal legal research is as follows:

“Doctrinal research: research which provides a systematic exposition of the rules governing a particular legal category, analyzes the relationship between rules, explains areas of difficulty and, perhaps, predicts future development.”

(Doctrinal research is research that provides a systematic explanation of the rules governing a particular category of law, analyzes the relationship between regulations, explains areas of difficulty and perhaps predicts future development.)¹⁷. The type of research that the author uses in writing the thesis is normative law.

2. Research approach

The approach used in a normative legal research will allow a researcher to utilize the findings of legal science and other sciences for the purposes of analysis and expansion without changing the character of legal science as a normative science.¹⁸ In this study, the

¹⁶ Soerjono Soekanto, Introduction to Legal Research, (Jakarta: UI Press, 2012), 42

¹⁷ Peter Mahmud Marzuki, Legal Research, (Jakarta: Kencana Prenada Media Group, 2011), 32

¹⁸ Jhony Ibrahim, Theory and Methodology of Normative Legal Research, (Malang: Bayumedia Publishing, 2007), page 299

approach used is a statutory approach (statute approach), and a conceptual approach (conceptual approach).

a. Legislative approach (Statue Spproach)

It is the approach used to review and analyze all laws and regulations relating to the legal issue at hand. As previously explained, the legislation identified is law number 2 of 2018 concerning the second amendment to Law number 17 of 2014 concerning People's Consultative Assembly, People's Representative Council, Regional Representative Council, and Regional People's Representative Council (UU MD3)

b. Conceptual Approach

It is an approach that departs from the views of the doctrines that developed in the science of law. By studying these views and doctrines, researchers will find ideas or ideas that can at least provide new explanations¹⁹ in this study using the concept of the Islamic State Ahlul Halli Wal 'Aqdi in the people's representatives.

3. Sources of legal materials

In normative research, the data that can be used are secondary data, namely data obtained from information that has been written in the form of documents. This term is often referred to

¹⁹ Sorjono Soekanto, Short Normative Legal Research (Jakarta: Rajawali Press, 2006) p 252

as legal material. Legal materials are divided into 3 types, namely primary legal materials, secondary legal materials, and tertiary legal materials.²⁰

a. Primary legal materials

Primary legal materials are legal materials that include the provisions of applicable laws and regulations and have binding legal force. Consists of legal rules that are regulated based on a hierarchy of laws and regulations starting from the 1945 Constitution of the Republic of Indonesia which also includes material laws such as Pancasila, the Law on MD3, then presidential regulations, as well as books that are in accordance with the research issue. .

b. Secondary legal material

The secondary legal materials used in this research are books related to the DPR, research journals, books on the theory of equality before the law. And of course the number of types of primary and secondary legal materials may change during the research process.

c. Tertiary legal materials

²⁰ Faculty of Sharia State Islamic University Maulana Malik Ibrahim Malang, Guidelines for Writing Scientific Papers 2015, pp 21-22

Tertiary legal materials that will be used in this study are in the form of legal dictionaries, encyclopedias, and materials that provide meaningful instructions or explanations for primary legal materials and secondary legal materials.

4. Methods of collecting legal materials

The data collection method is a systematic and standard procedure to obtain the required data²¹ The collection of research materials through library research is the data used by the author is library data that has relevance to the problems discussed, presented, systematized, then analyzed to interpret the applicable law.

5. Methods of processing legal materials

The legal material processing method used in this study was carried out in several stages, namely:

a. Edit (edit)

Editing is the process of re-examining records, files, information collected by data seekers.²²In the process of editing the data obtained by the author from the excavation process, both primary, secondary and tertiary legal materials. The author makes edits by selecting and sorting the required data. In terms of citing statutory regulations, not all articles and

²¹ Moh Nazir, *Legal Research Methods*, third printing, (Jakarta: Ghalia Indonesia, 1998), p. 211.

²² Amiruddin dan H. Zainal Asikin, *Introduction to Legal Research methods*, (Jakarta: Rajawali Pers, 2006) p. 45

paragraphs in the regulations relating to the author's theme are included in the theoretical study and discussion, only focusing on important points. The editing process aims to find out whether the legal materials are appropriate in accordance with the subject of research, making it easier for researchers to process and review these materials.²³

b. Data check (Verifying)

The process of examining the data that the author did in this study is a step that the author took after the data grouping process was completed, this verification aims to ensure the validity of whether all the legal materials are in accordance with the theoretical variables used in the study.²⁴

c. Data Analysis (Analyzing Data)

The data analysis process that the author did in this study was the step the author took after the data examination process was completed. The author analyzes the raw data that has been obtained through several stages and according to the author the process is feasible to analyze so that it can get research results. In normative juridical research, the steps that need to be taken to analyze it have 2 specific characteristics that must be met

²³Petter Mahmud Marzuki, *Legal Research Revised Edition*, (Surabaya: Prenadamedia Group, 2005), Pg. 136

²⁴Nana Sudjana and Ahwal Kusuma, *Research Proposal in higher education*, (Bandung: Sinar Baru Argasindo, 2002) Pg. 84

from the law itself, namely: a). does not use statistics because it is a pure legal study. B). His pragmatic theory of truth is used practically in social life.²⁵

d. Tagging (*concluding*)

After doing all the steps above and the data obtained has been arranged systematically, the next step is to find conclusions from the data that has been obtained. In drawing a conclusion, the characteristics of the message are found objectively and systematically.²⁶

F. PREVIOUS RESEARCH

Previous research is not a new research at all. This is because previous studies have been carried out. However, among the studies that have been carried out in accordance with the knowledge of the researcher, there is a tendency that is different from the research to be carried out. What is meant by these trends are as follows:

1. Research conducted by Supriyadi A Arief in 2019, entitled "Deconstruction of the Immunity Rights of DPR Members in the Perspective of Equality Before The Law". The normative juridical research method uses a statutory approach that refers to the Constitutional Court Decision Letter number 16/PUU-XVI/2018. From this research, the focus of the subject under study is based on

²⁵Petter Mahmud Marzuki, Legal Research Revised Edition, p. 136

²⁶Johny Ibrahim, Theories and methodologies of normative legal research, third edition, 2007, p.

the Constitutional Court's decision letter. And the difference in the discussion is that the author discusses more about Equality before the law in general and also according to an Islamic perspective, namely *fiqh siyasah*.

2. Research conducted by AA Sagung Istri Agung andryani in 2018, entitled "Juridical Analysis of DPR's Immunity Rights from the Perspective of the Rule of Law Principles". With the normative juridical method, which discusses the basis which is the juridical basis for the DPR's immunity rights, in the context of its position, namely as a State official. The difference in research is that the author discusses the juridical basis, as well as how the aspects that are in it.
3. Research conducted by Muhammad muniri in 2017 with the title "Implementation of the immunity rights of members of the DPR-RI based on Law no. 17 of 2014" with a normative juridical research method and using a statutory approach. The results obtained are The granting of immunity rights for members of the DPR-RI is needed in order to carry out their functions and duties as representatives of the people. Then the difference is the author discusses the mechanism for the immunity rights of DPR members and the principle of equality before the law as a limitation.
4. Research conducted by Anugrah Andaran Putra, Hasyim Asy'ari and Untung Sri Hardjanto in 2016 entitled "Implementation of Immunity

Rights owned by members of the House of Representatives of the Republic of Indonesia and the Urgency of the Privilegium Forum". His research uses normative juridical research methods with the result that the Privilege Forum is a special institution that gives public officials the right to be examined, tried and decided in the event of a criminal or civil case without having to go through a legal process from a general court or a first-level court. The difference is that the author focuses on the comparison on the principle of equality before the law, not on the urgency of the forum privilegium.

5. Research conducted by Jorawati Simarmara from the regional office of the ministry of law and human rights Riau Jl. General Sudirman No. 233 Pekanbaru, Indonesia entitled "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). The background is that there has been no special study related to the immunity rights of members of the Regional People's Legislative Council, even though the similarity in positions between the DPR and DPRD seems to be *mutatis mutandis* with the special privileges attached to the two institutions, including the right to immunity. OTDA dated December 14, 2016, the results are in the implementation of the DPRD's immunity rights, The letter from the Ministry of Home Affairs

number 331/9914/OTDA dated December 14, 2016 cannot be applied generally to any criminal acts suspected of being committed by members of the DPRD. In other words, the letter from the Ministry of Home Affairs is only casuistic in nature. Therefore, the letter from the Ministry of Home Affairs cannot be used as a legal basis for summoning members of the DPRD in Indonesia for all criminal cases. The difference is that the author does not make the letter from the Ministry of Home Affairs number 331/9914/OTDA dated December 14, 2016 as the subject of research reference.

6. Research conducted by Akhmad Aulawi with the title "Perspective on the implementation of the immunity rights of members of Parliament and its implementation in several countries" in 2014. In this study, researchers compared the implementation of immunity rights in various parliaments, namely Canada and Australia. The difference is that the author focuses on the implementation of the DPR's immunity rights in Indonesia.
7. Research conducted by Andryansyah in 2019 entitled "Islamic law review on the immunity rights of the DPR-RI (study of law no. 2 of 2018 concerning amendments to Law No. 17 of 2014 concerning MR, DPR, DPD, DPRD)" . By using normative juridical research methods and library research types, it is concluded that Islamic law does not regulate the immunity rights of members of the DPR RI or in Islam it is called *ahlul kalli wal 'aqdi*, but is regulated directly by

the Koran. The difference is that the author uses the benchmark of Siyasah fiqh and also the principle of equality before the law as a comparison.

Table 1.0

PREVIOUS RESEARCH

No.	Title, researcher, year	Legal issues	difference	Novelty
1.	Deconstruction of the Immunity Rights of DPR Members in the Perspective of Equality Before The Law, Supriyadi A Arief, 2019	The position of the immunity rights of DPR members in the perspective of equality before the law and the implications of the decision of the constitutional court number 16/PUU-XVI/2018 regarding the authority of the Constitutional Court	-Using the legal material of the Constitutional Court Decision Letter number 16/PUU-XVI/2018 -More focus on Court Honor Council	- discuss more about Equality before the law in general and also from an Islamic perspective
2.	Juridical Analysis of DPR's immunity rights from the	The basis for the juridical basis of the DPR's immunity rights in the context of its	-Discuss the juridical basis, as well as in the view of State Officials.	-discuss the juridical basis, and how the aspects that are in it

	<p>perspective of the principle of the rule of law, AA Sagung Wife Agung Andryani Komang Pradnyana Sudibya, 2018</p>	<p>position as a state official And the right of immunity for state officials when its validity is tested before the principle of the rule of law, namely equality before the law</p>		
3.	<p>The application of the immunity rights of members of the DPR-RI based on Law no. 17 year 2014, Muhammad Muniri, 2017</p>	<p>Reviewing the implementation of the DPR RI's immunity rights in carrying out its functions and powers</p>	<p>-examine more specifically related to the implementation of the immunity rights of members of the DPR-RI granted by the 1945 Constitution and Law no. 17 of 2014. Where, the granting of immunity rights</p>	<p>- discussing the mechanism or procedure for the immunity rights of DPR members if they are limited by the principle of equality before the law</p>

			for members of the DPR-RI is needed in order to carry out their functions and duties as people's representatives.	
4.	“The implementation of the Immunity Rights owned by members of the House of Representatives of the Republic of Indonesia and the Urgency of the Prelegiatum Forum,	The breadth of authority possessed by members of the DPR and the existence of immunity rights for members of the DPR have caused discourse to create a special institution to take action against public officials if there are criminal or civil legal cases (forum privilegium)	- In Anugrah Andara Putra's research, Hasyim Asy'ari, Untung Sri Hardjanto, discussed the urgency of the Prelegiatum Forum in Indonesia.	- using the same object (the immunity rights of DPR members), but discussing the mechanism for equality before the law as well as views from an Islamic perspective.

	Anugrah Andara Putra, Hasyim Asy'ari, Untung Sri Hardjanto, 2016			
5.	“interpreting the Immunity Rights of Members of the Regional House of Representative s (analysis of the Letter of the Ministry of Home Affairs Number 331/9914/Otda dated December 14, 2016), Jorawati	What are the limits of criminal acts that are beyond the law and those that are not above the law in the perspective of the DPRD's immunity rights?	- Jorawati Simarmata's research relies on the immunity rights of DPRD members (especially in Lampung) related to the letter from the Ministry of Home Affairs number 331/9914/OTD A dated	-subjects used are different. In addition to using the Ministry of Home Affairs letter number 331/9914/OTD A dated December 14, 2016, the results obtained are also different.

	Simarmata, 2018		December 14, 2016.	
6.	"Perspective on the implementation of the immunity rights of members of Parliament and its implementation in several countries, Akhmad Aulawi, 2014"	related to the Immunity rights of members of the DPR RI. In its existence, this right is sometimes controversial in the community, because the implementation of this right is considered by some people as the basis for avoiding the imposition of legal sanctions by members of parliament in carrying out their duties and authorities as representatives of the people.	-discuss the comparison and differences of Immunity Rights in several countries -His writings discusses Immunity rights about parliament (wider scope)	-More focus on one country, namely Indonesia and also a more detailed explanation.
7.	review of Islamic Law on the immunity	There are articles that have become controversial and have	-Using a review of Islamic law (focusing on the	-using a review of Islamic law, but not only

rights of the DPR-RI (study of law no. 2 of 2018 regarding amendments to Law No. 17 of 2014 concerning MR, DPR, DPD, DPRD), Andryansyah, 2019	been in the spotlight of Indonesian citizens, namely, Article 245 and Article 225 of Law No. 2 of 2018 concerning Amendments to Law No. 17 of 2014 concerning the MPR, DPR, DPD, and DPRD.	object of “Islamic law”)	focusing on Islamic law, but also focusing on equality before the law within its limits.
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Table 1.0: previous research

G. STRUCTURE OF DISCUSSION

Use the systematic writing of a thesis proposal as follows in order to facilitate completing research, systematize the discussion, so that this thesis Researchers is more easily understood. The following systematic writing is used:

CHAPTER I INTRODUCTION

CHAPTER I includes background, formulation of problem, goals of research, benefits of research, research methods, previous research, and structure of discussion. In this chapter the researcher explains the reasons of the problems to be studied, as well as the aims and benefits of conducting this research. Meanwhile,

previous research includes research information has been done by previous researchers, in the form of theses and scientific journals.

In this chapter the researcher describes the related types of research, research approaches, sources of legal materials, methods of collecting legal materials, methods of processing legal materials, and methods of analysis of legal materials.

CHAPTER II LITERATURE REVIEW

This chapter contains three theories related to the title taken by the researcher. Theoretical studies used by researchers in this study are, Prophetic Law, Constitutional Testing Theory, and Legal Certainty Theory.

CHAPTER III RESEARCH RESULTS AND DISCUSSION

This chapter is the core of research because it contains results of research has been done by authors. This chapter the researcher will describe the legal material that has been obtained. The researcher will then analyze the legal material that has been obtained using a predetermined method so that it can answer the entire problem statement.

CHAPTER IV CLOSING

This chapter is the last chapter that includes conclusions and suggestions. The conclusions contain brief answers to the formulation of the problem at hand. Suggestions presented in this chapter are recommendations to parties who have more authority in relation to research title. Suggestions are submitted to make improvements for the benefit of the community and to be useful for further research.

CHAPTER II

LITERATURE REVIEW

A. DPR MEMBERS' IMMUNITY RIGHTS

1. Definition of the House of Representatives

The concept of a democratic state in the literature is known as a form or mechanism for how the government system in a government is run or organized as an effort to realize people's sovereignty (citizen's power) over the state to be run by the government. Therefore, people's institutions are very decisive in terms of the realization of people's sovereignty. In other words, the existence of a people's representative institution as a representation of the people who has the authority to exercise legislative power, is expected to realize the real sovereignty of the people.²⁷

Legislative power is the power delegated to form legislation or the field of law. So in general, this legislative power is delegated to a body consisting of people's representatives called the DPR whose duty is to oversee the actions of the government and consider the will of the people as well as possible.²⁸

²⁷ Aminuddin Ilmar, *Governance Law* (Jakarta: Kencana, 2014), p. 63.

²⁸ R. Erman Muchidin, *Indonesian State Administration* (Jakarta: Yudhistira, 1986), p. 52.

In a modern representation system, there are four models of representation, including:²⁹

- a. Trustees, representatives see themselves as guardians (custodians) of constituents who have absolute independence and are not related to the interests they represent.
- b. People's representatives, representatives are instruments to convey the aspirations of the constituents because of conditions that do not allow the process of direct articulation of interests.
- c. Party representatives, the representatives here are more of a party instrument. Thus, even though they act on behalf of their constituents' interests, they are actually more responsible to the party and serve the party's aspirations.
- d. Representatives of the government, representatives are extensions of the interests of the ruling government. Even though they formally refer to themselves as representatives of the people who vote through elections, in practice they do not have independence vis-a-vis the rulers.

To regulate the lives of the people in a country, it is necessary to draw up laws and other regulations. In Indonesia, laws are made by the

²⁹ Muhammad AS Hikam, *Citizenship Politics is the Foundation of Re-democratization in Indonesia* (Jakarta: Erlangga, 1999), p. 23-25.

President with the approval of the DPR. Therefore, the DPR is referred to as a legislative body, namely the institution that makes or drafts laws. In accordance with Law Number 2 of 2018 concerning amendments to Law Number 17 of 2014 concerning the MPR, DPR, DPD, and DPRD, Article 1 paragraph (2) of the DPR is a people's representative institution that is domiciled as a state institution. The House of Representatives (DPR) is a state institution in the constitutional system of the Republic of Indonesia which is an institution that represents the people and holds the power to form laws.³⁰

In essence, the people have a share in governing. This is an essential characteristic of government based on democracy, in short, government of the people, by the people and for the people. It is the people who determine the style and way the government is organized and it is the people who determine the goals to be achieved by the state and its government.³¹ However, the large number of people felt it was impossible to hold power and govern efficiently. So, this is reduced to the concept of people's representatives, namely the DPR, as a state institution that accommodates the aspirations and thoughts of the people and is also a juridical bridge between the people and the executive government in the spatial structure of state institutions. The presence of people's representative institutions is a manifestation of

³⁰ A. Ubaedillah and Abdul Rozak, *Pancasila, Democracy, Human Rights, and Civil Society* (Jakarta: Kencana, 2014), p. 107.

³¹ Jimly Asshiddiqie, *Introduction to Constitutional Law* (Jakarta: Grafindo Persada, 2010), p. 414.

democracy.³²The DPR consists of political parties participating in the general election which are elected through general elections. The DPR is a people's representative institution that is domiciled as a state institution.

In terms of membership in accordance with Law Number 2 of 2018 concerning amendments to Law Number 17 of 2014 concerning the MPR, DPR, DPD, and DPRD Articles 76 and 77 it is explained that:

Article 76:

- (1) There are 560 (five hundred and sixty) members of the DPR.*
- (2) Membership of the DPR is inaugurated by a presidential decree.*
- (3) Members of the DPR are domiciled in the capital city of the Republic of Indonesia*
- (4) The term of office for members of the DPR is 5 (five) years and ends when a new member of the DPR takes the oath/pledge.*
- (5) Every member, except the leadership of the MPR and the leadership of the DPR, must be a member of one of the commissions.*
- (6) Each member as referred to in paragraph (1) can only serve concurrently as a member of one of the other permanent equipment, except as a member of the Deliberative Body.*

Article 77:

- (1) Members of the DPR before taking office take an oath/promise jointly guided by the Chief Justice of the Supreme Court in a plenary meeting of the DPR.*
- (2) Members of the DPR who are unable to take the oath/promise together as referred to in paragraph (1) take*

³² Charles Simabura, Indonesian Parliament: Historical Trajectory and Its System (Jakarta: Grafindo Persada, 2011), p. 23.

the oath/promise guided by the Chief Justice of the Supreme Court.

- (3) *Further provisions regarding the procedure for taking the oath/promise as referred to in paragraphs (1) and (2) shall be regulated in a DPR regulation concerning the rules of conduct.*

Membership of the DPR cannot be held concurrently with the positions of the President, vice president, ministers, attorney general, chairman and supreme judges, chairman and members of the Supreme Audit Agency, as well as other positions that cannot be held concurrently as regulated in laws and regulations.³³

Likewise, the membership of the DPR may not be concurrent with the membership positions of the DPRD I and II. A civil servant who becomes a member of the DPR is temporarily released from his organic position while he is a member of the DPR without losing his status as a civil servant. Provisions regarding temporary release from organic positions for members of the Armed Forces in the DPR as referred to in concurrent positions, are submitted to the minister of defense and security, the commander of the Armed Forces.³⁴

2. History of the House of Representatives

In the historical trajectory of democracy in Indonesia, specifically regarding the role of the DPR, both before the arrival of the colonialists and for more than 300 years under colonial rule until the proclamation

³³ BN Marbun, DPR-RI "Growth and How it Works" (Jakarta: Gramedia, 1992), p. 174.

³⁴BN Marbun, DPR-RI "Growth and How it Works", p. 175

of Indonesian independence on 17 August 1945, it is very vague and has not become an inseparable part of the lives of the people and authorities. The real life of the DPR, although it cannot be separated from the turmoil and doubts about its existence, has only been experienced since the beginning of independence (1945) until now.³⁵

a. Volksraad (1918 to 1982)

During the Dutch colonial period, it was known that there were representative institutions whose formation was not through general elections, but based on the appointment or appointment of the Queen of the Netherlands. The people's representative institution, known as the Volksraad or the People's Council, is not a people's representative institution like the Parliament. However, it may be said that the Volksraad was the forerunner of the representative institution of the people of the Republic of Indonesia known today, namely the People's Representative Council (DPR). The Volksraad, which was inaugurated on May 18, 1918, initially served only as an advisory body, but had the right to intervene in budgetary matters.³⁶

³⁵ BN Marbun, DPR-RI "Growth and How it Works", p.67

³⁶ Max Boboy, DPR-RI "In the Perspective of History and State Administration" (Jakarta: Pustaka Sinar Harapan, 1994), p. 44.

The composition or composition of the first Volksraad in 1918 consisted of 39 people including the chairman, with the following considerations:³⁷

- (1) Of the 39 members of the Volksraad, the original Indonesians through the “voting guardian” of the “Provincial Council” amounted to 15 members (10 elected by the “voting trustee” and 15 people appointed by the governor general).
- (2) The largest number, or 23 people, members of the Volksraad representing the European group and the Foreign Eastern group, through elections and appointments by the governor-general (9) people were elected and 14 people were appointed).
- (3) The person who serves as chairman of the Volksraad is not chosen by and from the members of the Volksraad themselves, but is appointed by the Crown of the Netherlands.

In carrying out its duties, the Volksraad prioritizes giving advice to the governor-general rather than "voicing" the will of the people.

³⁷BN Marbun, DPR-RI “Growth and How it Works”, p.71

Since 1927, the Volksraad has increased to 61 people, including the chairman, and the portion of the number of elected members has increased to 38 people who were appointed by the governor-general of 23 people, with the following composition or considerations:³⁸

- (1) 30 native Indonesians, of which 20 were elected and 10 were appointed governor-general.
- (2) 25 members of the Netherlands, 15 members are elected and 10 members are appointed.
- (3) 5 non-Dutch foreign members, 3 elected and 2 appointed.

Since 1931 in addition to adding members and the composition of the Volksraad's membership, the Dutch colonial government has also changed the system for electing members of the Volksraad who are elected through a unanimous election body, split into three electoral bodies according to the population group to be elected and a system of division is held in 12 electoral districts for the election of members. original Indonesian citizen (kaula). But those who have the right to vote are still the members of the "District Council" and "Haminte" and the Regional Council".

³⁸ BN Marbun, DPR-RI "Growth and How it Works", p.72

The Volksraad disbanded simultaneously with the surrender of the Dutch East Indies government to the Japanese army in 1942. Of course, the institutions at the regional level had the same fate as the Volksraad, namely disbanded or dissolved by the Japanese.³⁹

b. Chuoo Sang In (1942 to 1945)

During the Japanese colonial period, there was also a representative institution formed by the Japanese military government for the central level called Chuoo Sang-In, and the regional level was called Sang-Kai. This institution was established with the task of serving as an advisory board to the Japanese military government, but in practice it is not much different as a theater troupe.

At the beginning of the presence of the Japanese military government in Indonesia in 1942, they had promised to give independence in the future. To carry out the Japanese promise, on April 29, 1945 the Japanese military government formed a body called Dokuritsu Zyunbi Tyosakai or the Investigating Agency for Preparation for Independence (BPUPKI). The task of BPUPKI is to draft a constitution and investigate all important matters relating to political, economic,

³⁹ Max Boboy, DPR-RI in the perspective of history and state administration, p. 45

governmental issues, the establishment of an independent Indonesia.

c. Old Order Period

At this time the state institutions mandated by the 1945 Constitution had not been established. Thus, in accordance with Article 4 of the Transitional Rules in the 1945 Constitution, the Central Indonesian National Committee (KNIP) was formed on August 29, 1945. This committee is the forerunner of the legislative body in Indonesia. KNIP is an auxiliary body to the President whose formation is based on the decision of the Preparatory Committee for Indonesian Independence (PPKI). At this time the Indonesian people are still faced with the problem of recognizing independence from other countries.⁴⁰

On October 17, 1945 KNIP formed the Central National Committee Working Body (BPKNP). This Working Body is responsible to KNIP. Thus it can be said that the BPKNP as a legislative body or the House of Representatives. This can be seen from their duties, namely together with the President to form laws and participate in establishing the Outlines of State Policy. In addition, BPKNP also has the right to submit

⁴⁰ Miriam Budiardjo, *Fundamentals of Political Science* (Jakarta: PT Ikramandiri Abadi, 2008), p 331.

proposals, the right of interpellation, the right of inquiry, and the right to ask questions.⁴¹

On December 27, 1949 there was a change in the form of the Unitary State of the Republic of Indonesia into a federal state which was a temporary compromise from the results of the Round Table Conference (KMB) negotiations. This affects the change in the RIS legislative body which is divided into 2 rooms, namely the Senate and the DPR. According to the RIS Constitution the number of members of the DPRRIS consists of 146 people representing the state/region, while the RIS Senate consists of 32 members.⁴²

On July 5, 1959 the President issued a decree, one of which stated that the 1945 Constitution was reinstated to replace the Constitution. Regarding the DPR, the President issued a Pen. Press No. 1 of 1959 which essentially stated that the DPR as a result of the 1955 general election would continue to carry out its duties according to the 1945 Constitution. This stipulation was preceded by a letter from the President dated July 13, 1959 addressed to the Chairman of the DPR. The letter was discussed in the plenary meeting of the DPR on July 22, 1959. The DPR only worked until June 24, 1960 because of a dispute

⁴¹ Max Boboy, DPR-RI in the perspective of history and state administration h. 48.

⁴² BN Marbun, DPR-RI "Growth and How it Works", p 81.

between the government and the DPR regarding the determination of the 1960 state budget.⁴³

On June 24, 1960, the Presidential Decree No. 4 of 1960 which regulates the composition of the Gotong Royong DPR (DPR-GR). The DPR-GR is different from the previous DPR, because it works in an arrangement where the DPR is highlighted in its role as a government assistant, which is reflected in the term Gotong Royong. This change in function is regulated in the DPR-GR regulations as outlined in Presidential Regulation no. 14 of 1960. On June 25, 1960, 283 members of the DPR-GR were sworn in, complete with the leadership of the DPR-GR.⁴⁴

d. New Order Period

On 19 November 1966 the DPR-GR numbered 242 people. Then, 108 people were added. Since the New Order's DPR-GR, the DPR's rules and regulations have been regulated and decided by the DPR itself.⁴⁵ The overall results achieved by the DPR-GR 1966-1971 have paved the way for the restoration of internal security, as well as the implementation of the 1945 Constitution, along with basic decisions regarding the

⁴³ Muchtar Pakpahan, *DPR RI During the New Order* (Jakarta: Sinar Harapan Library, 1994), p 63.

⁴⁴ Muchtar Pakpahan, *DPR RI During the New Order*, p. 66.

⁴⁵ Max Boboy, *DPR-RI in the perspective of history and state administration* h. 59.

implementation of general elections, as well as giving the DPR a fairly proportional and respectable role.⁴⁶

On July 13, 1971, the second general election was held since 1945 to elect representatives of the people who would sit in the MPR and DPR. Membership of the 1971 DPR was 460 people. The results achieved by the DPR-RI from 1971 to 1977 succeeded in forming 43 laws.⁴⁷ The third general election was held on May 2, 1977, the number of DPR elected was 360 people from the election results, and 100 people were appointed from 75 ABRI and 25 from non-ABRI. The total number of members of the DPR is still 460 people. During its tenure, the DPR from 1977 to 1982 produced 55 laws, resulted in 1 interpellation but was rejected by the plenary session of the DPR, proposed 6 rights to ask questions, discussed the right of inquiry once, nominates BPK members 3 times, and nominates Supreme Court justices twice.⁴⁸

The DPR for the 1982-1987 period was the result of the general election on May 4, 1982. The total number of members of the DPR in this period remained at 460 people. 360 people were elected, 100 people were appointed (75 people from the

⁴⁶ BN Marbun, DPR-RI "Growth and How it Works", p. 152.

⁴⁷ Muchtar Pakpahan, DPR RI During the New Order, p. 85

⁴⁸ Muchtar Pakpahan, DPR RI During the New Order, p. 92

ABRI Working Group, 25 people from the non-ABRI Working Group), and 4 people as a result of the East Timor general election. Until the end of its duties, the DPR for the 1982-1987 period had completed 45 laws from various fields.⁴⁹The general election of 23 April 1987 resulted in a DPR for the period 1987-1992. The 1987 election was the fourth since returning to the 1945 Constitution. The number of members of the DPR for this period was 500 people, consisting of 400 people through general elections and 100 people based on appointment. Just like the 1971, 1977, 1982 elections, the composition of the DPR leadership results from the 1987 elections reflects all the factions in the DPR.⁵⁰

e. Reformation

After the end of Suharto's term of office on May 21, 1998, and then replaced by Vice President Bachruddin Jusuf Habibie, at that time the community continued to press for immediate elections which finally on June 7, 1999 or 13 months of Habibie's reign, the election for members of the DPR was held. The DPR for the 1999-2004 period was the first DPR elected during the reform period. Prior to this election, the law on the composition and position of the MPR, DPR, and

⁴⁹ BN Marbun, DPR-RI "Growth and How it Works", p. 158-159.

⁵⁰ BN Marbun, DPR-RI "Growth and How it Works", p. 161.

DPRD was amended, with the aim of changing the general election system to a more democratic direction that would produce new members of the DPR.

During its working period, the DPR in this period for the first time took place in the process of dismissing the head of state by the DPR. During this period, there were also changes in state institutions, namely the birth of the People's Representative Council (DPD), the birth of a direct presidential election system elected by the people, and the birth of the Supreme Court.

3. Immunity Rights in the House of Representatives

Every position that is assigned to a person must not be free from rights. The presence of law in society, among other things, is to integrate and coordinate interests that can collide with each other by law being integrated in such a way that these collisions can be minimized. Organizing these interests is done by limiting and protecting these interests. Indeed, in a traffic of interests, protection of the interests of certain interests can only be done by limiting the interests of the other party.⁵¹

The right to immunity in the Big Indonesian Dictionary (KBBI) has 2 parts:

⁵¹Satjipto Rahardjo, *Legal Studies*, (Semarang: PT. Citra Adytia Bhakti, 2014), p. 53-56

- a. The right of members of the people's representative institutions and ministers to discuss or state in writing all matters within the institution without being prosecuted in court
- b. The right of heads of state, members of diplomatic representatives not to be subject to criminal law, civil law, and administrative law of the country through which they work or the country in which they work; Exterritorial rights⁵²

If described more broadly, rights and obligations are very closely related. Judging from the KBBI, obligation has 3 meanings (raw)

1. (something) that is required; something to be done; must: research assignments are already ~ for every undergraduate candidate
2. profession; duty: i will carry out my ~my duty carefully
3. (legally seen) duties according to law; everything that is a human task (building humanity)⁵³

According to Fitzgerald in Satjipto Rahardjo, there is a very close relationship between rights and obligations. One reflects the existence of the other. The characteristics attached to legal rights are as follows;

⁵² <https://kbbi.kemendikbud.go.id/entri/hak%20imunitas> accessed on 05 February 2019

⁵³ <https://kbbi.kemendikbud.go.id/entri/kecepatan> accessed on September 14, 2020

1. The right is attached to someone who is called the owner or subject of the right. He is also referred to as the person who has the title of the object that is the object of the right.
2. The right is directed to another person, namely the holder of the obligation. There is a correlation between rights and obligations.
3. This right that exists in a person obliges the other party to do (Commission) or not to do (Omission) an act. This can be called the content of rights.
4. Commission or Omission concerns something that can be called an object of rights.
5. Every right according to the law has a title, which is a certain event which is the reason for the attachment of the right to the owner.⁵⁴

Then the definition of rights is finally used in the sense of immunity from the legal power of others. Like power, it is the ability to change legal relations. This immunity is liberation from the existence of a legal relationship so that it can be changed by others. Immunity has the same position in relation to power, as between freedom and rights in a narrow

⁵⁴Satjipto Rahardjo, *Legal Studies*, (Semarang: PT. Citra Adytia Bhakti, 2014), p. 53-56

sense: immunity is liberation from the power of others, while independence is liberation from the rights of others.

Munir Fuady explained that in general the definition of a protected legislative function based on the concept of immunity rights includes the following:

1. Freedom to speak and debate in sessions or meetings in parliament.
2. Free voting in parliament.
3. Provision of factional, commission or personal reports of members of parliament.
4. Participation in hearings, meetings, assemblies, in parliament or in official field reviews by parliament or members of parliament.
5. Freedom not to be arrested or detained.
6. Freedom not to be accused of committing a crime of humiliation or blasphemy.⁵⁵

Munir Fuady explained that in general the definition of a protected legislative function based on the concept of the right to immunity includes the following:

⁵⁵Munir Fuady, *Modern Theory of the State of Law*, (Jakarta: PT. Refika Aditama, 2009), p. 165

1. Make the position of the legislature more independent.
2. Making the legislature more courageous in giving their opinion, without having to be overshadowed by lawsuits or legal accusations that will befall them.
3. Making the legislature more able to concentrate on their duties without having to waste time, energy, thoughts and costs for proceedings in court.⁵⁶

The right of immunity to the President or the executive is given with the main rationale being that the President has broad and often controversial powers, so that he is very vulnerable to civil lawsuits or criminal charges. And if this right of immunity is not granted, the President will be very busy serving civil or criminal cases in court directed at him, including by his political opponents. Apart from that, the granting of immunity rights to the executive is also related to the existence of a legal institution in the form of impeachment against the executive (President) when the executive has committed a wrongful act or a serious crime. This means that the punishment in the form of impeachment is considered severe enough for him as the President of a country.⁵⁷

⁵⁶Munir Fuady, *Modern Theory of the State of Law*, (Jakarta: PT. Refika Aditama, 2009), p. 165

⁵⁷Munir Fuady, *Modern Theory of the State of Law*, p. 165

The right of absolute (absolute) immunity is a statement made in parliamentary sessions or meetings, court sessions conducted by high public officials carrying out their duties. Meanwhile, what is included in the right to qualifying immunity are press releases regarding the contents of parliamentary meetings or court sessions, or reports from authorized officials regarding these parliamentary meetings or court sessions.⁵⁸

4. The immunity rights of DPR members in written law

The legislature 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.⁵⁹ The immunity rights of DPR members are constitutionally regulated in Article 20A paragraph (3) of the 1945 Constitution:

"In addition to the rights regulated in other Articles of this Constitution, every member of the House of Representatives has the right to ask questions, submit proposals and opinions as well as the right to immunity"⁶⁰

The word Immunity Rights can also be seen later in the MD3 Law, which is regulated in Article 80 of Law No. 17 of 2014 concerning the MPR, DPR, DPD, and DPRD. Members of the DPR have the right to:

- a. *submitting a draft law,*
- b. *asking question,*
- c. *submit an opinion,*

⁵⁸Munir Fuady, Modern Theory of the State of Law, p. 264

⁵⁹Jimly Asshiddiqie, Introduction to Constitutional Law, (Jakarta: Raja Grafindo Persada, 2013), p. 299

⁶⁰Article 20A paragraph (3) of the 1945 Constitution

- d. *pick and choose,*
- e. *self-defense,*
- f. *immunity,*
- g. *protocol,*
- h. *financial and administrative,*
- i. *supervision,*
- j. *propose and fight for electoral district development programs,*
- k. *socialize the law.*⁶¹

In a stricter setting regarding the immunity rights of DPR members, it is contained in Law No. 2 of 2018 concerning Amendments to Law No. 17 of 2014 concerning the MPR, DPR, DPD, and DPRD Article 224:

- (1) *Members of the DPR cannot be prosecuted before the court because of the statements, questions, and/or opinions that they put forward either orally or in writing at DPR meetings or outside DPR meetings related to the functions and powers and duties of the DPR.*
- (2) *Members of the DPR cannot be prosecuted before the court because of their attitudes, actions, activities in DPR meetings or outside DPR meetings solely because of the constitutional rights and authorities of DPR and/or DPR members.*
- (3) *Members of the DPR cannot be replaced from time to time because of the statements, questions, and/or opinions expressed both in DPR meetings and outside DPR meetings related to the functions and powers 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 upon in a closed meeting to be kept confidential or other*

⁶¹ Law Number 2 of 2018 concerning Amendments to Law No. 17 of 2014 concerning MD3 (State Gazette of the Republic of Indonesia of 2018 Number 29, Supplement to the State Gazette of the Republic of Indonesia Number 6187)

*matters declared as state secrets according to the provisions of the laws and regulations.*⁶²

The immunity rights of DPR Members are then explained again in Law No. 2 of 2018 concerning Amendments to Law No. 17 of 2014 concerning the MPR, DPR, DPD, and DPRD Article 245 which reads:

- (1) *Summons and requests for information to members of the DPR in connection with the occurrence of criminal acts that are not related to the implementation of the duties as referred to in Article 224 must obtain written approval from the President after receiving consideration from the Honorary Court of the Council.*
- (2) *The written approval as referred to in paragraph (1) is not valid if the DPR members:*
 - a. *caught in the act of committing a crime;*
 - b. *is suspected of committing a crime punishable by death or life imprisonment or a crime against humanity and state security based on sufficient preliminary evidence; or*
 - c. *Suspected of committing a special crime.*

B. THE PRINCIPLE OF EQUITY BEFORE THE LAW

1. Understanding the principle of equality before the law

In the Amendment to the 1945 Constitution, the theory of equality before the law is included in Article 27 paragraph (1) of the 1945 Constitution which states that: All citizens have the same position in law

⁶² Law No. 2 of 2018 concerning Amendments to Law No. 17 of 2014 concerning MD3 (State Gazette of the Republic of Indonesia of 2014 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 5568)

and government and are obliged to uphold the law and government without exception.⁶³

The definition of equality is explained by the oxford English dictionary as follows:

1. A state of having the same honor, degree, or privilege with another person
2. A state in which there is equality in power, ability, intelligence, or superiority.
3. Honest, impartial, fair, balanced or balanced.

The definition of equality in the context of equality before the law in government is more appropriate in the sense of being honest, impartial, fair, balanced, or balanced. Because it is an essential right of every citizen under a democratic state constitution.

The principle of equality before the law is the main pillar of the state of law (rechstaat) which adheres to the supreme system of law or the law above all else. Referring to the importance of normalizing and implementing this principle, the regulation regarding this principle should be placed in the highest position because the position and role carried out is also very important. So in the regulations of the State of

⁶³ Yasir Arafat, 1945 Constitution of the Republic of Indonesia and its amendments, (Jakarta: Permata Press), 26.

Indonesia, the principle of equality before the law occupies a high position, where this principle is regulated in the 1945 Constitution.

Equality comes from English. Literally means equality. According to the international encyclopedia of the social sciences, if it is said that humans are the same, even though the reality of humans is not the same in many characteristics. These characteristics are based on differences in sex, color, character/character and so on, also based on different human intuitions such as differences in citizenship, religion, social level and so on. Humans will not be the same when viewed from the difference in age, energy, intelligence, position, power and so on. David L. Sill, who edited the encyclopedia, wrote the following:⁶⁴

“That men are equal means that men share some qualities; these must be specified. Men are evidently equal in many characteristics. There are natural differences (sex, color, character traits, natural endowment, etc) and institutional variations (citizenship, religion, social rank, etc.) other properties are common amounts (age, strength, intelligence, power, etc.)”

2. Kinds of equations

Equality can be divided into four types.

- a. *Natural equality* (natural equation)
- b. *Civil Equality* (civil rights equality)
- c. *Political equality* (political equation)

⁶⁴ David L. Sills, editor, international encyclopedia of social sciences, volume V, (new York: the free press), 102

d. *Economic equality* (economic equation)

Natural equality is an innate similarity that is owned by humans. Humans have ratios, so natural equality means that humans are the same because they have reason/ratio that distinguishes humans from animals. Civil equality is the same civil rights for all members of society. Recognition of this equality means that every citizen treats the same in enjoying rights and protection. For example, equality before the law.

Political equality is an equal right for all citizens to participate in the affairs of the State. For example, giving the right to vote in general elections. This political equality is the basis of democracy (political equality is the basis of democracy). Economic equality is equal rights in improving the economic standard of life. This equation is focused on the equality of opportunity and not the profit sharing equation. Because a lot of at least the results depend on the efforts of everyone in using the opportunities used to improve the economic standard.⁶⁵

Some theories of equality before the law

The principle of equality before the law is regulated in Article 27 paragraph (1) of the 1945 Constitution which is described:

"All citizens have the same position in law and government and are obliged to uphold the law and government with no exceptions".

⁶⁵Ramly hubarat, equality before the law in Indonesia, (Jakarta: Ghalia Indonesia, 1985), p. 36

The existence of the principle of equality before the law was further emphasized in the International Covenant on Civil and Political Rights (ICCPR) 1966. Article 16 of the 1966 ICCPR states that: "Everyone has the right to recognize everywhere as a person before the law". Article 17 paragraph (2) states that: "Everyone has the right to the protection of the law against such interference or attacks". Similarly, Article 26 states, among others: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law".⁶⁶

Essentially, humans are the same, but according to their characteristics, humans are different. In the United States Declaration of Independence, it is stated that all men are created equal. Humans are created equal, created by the Creator, namely God. Humans are not the same physically. Human dignity is the same. Citizens have the same dignity, but are physically different.

According to Hafiz Habibur Rahman, human inequality stems from two factors, namely:

- a. nature
- b. Nurture

Newborns are naturally not the same in body shape, strength, and size. That's called inequality originating in nature. If two brothers have

⁶⁶Arief Supriyadi, "Deconstruction of the Immunity Rights of DPR Members in the Perspective of Equality Before the Law", (journal volume 1 issue 1 jalrev 1(1), 2019) h. 28

the same father, it does not mean that their intellect and physical strength are the same. It's name is not the same based on nature. The question arises: what is the basis of the ideal concept of the equation? There are two grounds for this question, namely on the one hand the historical basis and on the other the ethical basis (one historical and the other ethical). Historically the ideal of equality is a legacy of the inequality of ancient societies. It emerged as a protest against all inequalities in status, position, and privilege.

The theory of equality before the law according to western democracy

Democracy It comes from two Greek words: "demos" meaning people, and "cracy" meaning government, sovereignty or power. So the meaning of democracy is government, sovereignty, or people's power. And the purpose of democratic life is to realize the freedom of equality and brotherhood, for all and between all, because that is the main points of happiness in life, especially in life in society and in the state. A democratic state means a state that has people's sovereignty and people's power. But there are so many dictatorial rulers who take refuge behind democracy and take refuge in the interests of the people. One of the implications of democracy that almost inevitably results from this system is that: government by the people is also likely to lead to government for the people.

The principle of equality before the law is the main pillar of the building of a legal state (rechtstaat) which prioritizes the law above all things (supreme of law). Recognition of the position of each individual before the law is placed in the same position regardless of social status (social stratum). This principle implies that:⁶⁷first, everyone (without exception means that no one has privileges or privileges when dealing with the law. Second, equal status means affirming everyone's status before the law.⁶⁸

So deeply embedded is the idea of government for the people in modern thought, that even today dictators claim to rule for the benefit of their people, a way of justifying a depotism system that was rarely encountered in the past. The definition of democracy given by soviet union spokesmen usually follows this line, if the policy of a government is in the interests of their fiercest enemies, then that government is a democratic government. But this definition is useless. This definition completely eliminates the distinction between benevolent depotism and democracy, whereas in the absence of political freedom and free choice which are essential characteristics of democracy,

Even though the dictators are buzzing about democracy and the interests of the people, what can be taken from these words according to

⁶⁷Wantu, Fence M. Criminal Procedure Law in Theory and Practice. (Yogyakarta: Reviva Scholar, 2011) h. 19.

⁶⁸Arief Supriyadi, "Deconstruction of the Immunity Rights of DPR Members in the Perspective of Equality Before the Law", (journal volume 1 issue 1 jalrev 1(1), 2019) h. 28

the majority is their essence, namely wisdom for the people or democracy for the interests of the people.⁶⁹

C. AHLUL HALLI WAL 'AQDI

Etymologically Ahl al-Halli Wa al-'Aqdi means people who can decide and bind. The Siyasah Fiqh experts provide the understanding of Ahl al Halli Wa al-'Aqdi as a person who has the authority to decide and determine something on behalf of the people (citizens).⁷⁰In other words, Ahl al-Halli Wa al-'Aqdi is a representative institution that accommodates and channels people's aspirations. They are a group of people from among the Muslims who are considered the best in their religion, morals, brilliance of ideas and arrangements, they consist of scholars, caliphs and guides of the people.

Abu A'la al-Maududi mentions Ahl al-Halli Wa al-'Aqdi as an intermediary institution and giving fatwas, also mentions it as a legislative body.⁷¹Al-Mawardi mentions Ahl al-Halli Wa al-'Aqdi with Ahl al-Ikhtiyar,⁷²because they are the ones who have the right to choose the caliph. Meanwhile, Ibn Taimiyah mentions Ahl al-Halli Wa al-'Aqdi with Ahl al-Syawkah. Shaykh Abdurrahman as-Sa'di calls Ahl al-Halli Wa al-'Aqdi with Ahl al-Shura.

Appointment of Ahl al-Halli Wa al-'Aqdi is clearly not mentioned in the Qur'an and al-Hadith, but the Prophet SAW once gave an example of democratic elections.

⁶⁹Ramly hubarat, equality before the law in Indonesia, (Jakarta: Ghalia Indonesia, 1985), 39-40

⁷⁰Muhammad Iqbal, Fiqh Siyasah-Contextualization of Islamic Political Doctrine, p. 137

⁷¹Abu A'la al-Maududi, Law and Constitution of the Islamic Political System, p. 245.

⁷²Imam Al-Mawardi, al-Ahkam al-Sultaniyah, p. 7.

The incident occurred when the prophet asked the tribes of Aus and Khazrad to determine the figures who represented them. Then an election took place which finally selected three representatives from the Aus tribe and nine from the Khazraj tribe. From the events of the first election, it will determine how the election of Ahl al-Halli wa al-'Aqdi will be determined. Members of Ahl al-Halli Wa al-'Aqdi are scholars, experts and figures who are considered qualified. Not all people meet the criteria as members of Ahl al-Halli wa al-'Aqdi.

In Islamic government, the mechanism for filling Ahl Halli members is *Wa al-'Aqdi*. This is done in several ways, namely:

1. General elections are held regularly. In this election, members of the public who have met the requirements, elect members of Ahl al-Halli Wa al-'Aqdi according to their choice.
2. Selection of members of Ahl al-Halli Wa al-'Aqdi through selection in the community. In this case, society judges people who are respected, have the ability and have great concern for the interests of the people. They were then chosen to be members of Ahl al-Halli wa al-'Aqdi.
3. Election of members of Ahl al-Halli Wa al-'Aqdi through direct appointment of the Caliph.⁷³

Members of Ahl al-Halli Wa al-'Aqdi are scholars, experts and figures who are considered qualified. Not all people meet the criteria as members of Ahl al-Halli

⁷³ Muhammad Iqbal, *Fiqh Siyasah-Contextualization of Islamic Political Doctrine*, 143.

wa al-'Aqdi. Al-Mawardi formulated the legal requirements that Ahl al-Halli Wa al-'Aqdi must possess, namely:

1. Fair on all terms.
2. Knowledge that makes him able to know who has the right to become Caliph in accordance with legal criteria.
3. Having insight and wise attitude that makes him able to choose who is the most appropriate and most effective to be the Caliph, as well as the most expert in managing all interests for the benefit of the people.⁷⁴

The position and function of ahlul halli wal 'aqdi

Ahl al-Halli Wa al-'Aqdi has an important position in the Islamic government. Between the caliph (the equivalent of the President in Indonesia) and Ahl al-Halli Wa al 'Aqdi work together in carrying out good governance for the benefit of the people. The position of Ahl al-Halli Wa al-'Aqdi in the government is as a representative of the people, one of whose duties is to elect the Caliph and guard the Caliph towards the benefit of the people.⁷⁵ So the position of Ahl al-Halli Wa al-'Aqdi in government is an institution that has its own duties and authorities without intervention from the Caliph.

In an Islamic government, the duties and authorities of Ahl al-Halli Wa al-'Aqdi are no less dominant than the House of Representatives, among the tasks of Ahl al-Halli Wa al 'Aqdi is to nominate and elect the head of state (Khalifah). The

⁷⁴ Imam Al-Mawardi, *Al-Ahkam al-Sulthaniyyah*, 3.

⁷⁵ Suyuthi Pulungan, *Fiqh Siyasah Doctrine, History and Thought*, 67.

members of Ahl al Halli Wa al-'Aqdi have the authority to elect and inaugurate the head of state. Assist the head of state in regulating various state affairs and solving various problems of the people in general. The general problems referred to here are declaring war, entering into agreements, making laws and explain how the Shari'a law is applied'. This is in accordance with the cues contained in the word of Allah SWT in Surah As-Shura verse (38):

وَالَّذِينَ اسْتَجَابُوا لِرَبِّهِمْ وَأَقَامُوا الصَّلَاةَ وَأَمْرُهُمْ شُورَىٰ بَيْنَهُمْ وَمِمَّا رَزَقْنَاهُمْ يُنفِقُونَ

"And (for) those who accept (obey) the call of their Lord and establish prayer, while their affairs are (decided) by deliberation between them; and they spend part of the sustenance we give them."⁷⁶

While the authority of Ahl al-Halli Wa al-'Aqdi is:

1. Provide input and advice to the Caliph and the place of consultation of the Imam in determining his policies. For example, issues of government, education, economy, health, religion, industry and trade. In this case his opinion is binding (mandatory to be implemented by the Caliph). The basis of this opinion is the words of Allah SWT in Surah Ali Imran verse (159) and Al-Shura verse (38).
2. Regarding issues of thought that require research and analysis as well as military and foreign policy issues. The opinion of Ahl al-Halli Wa al-'Aqdi to the Caliph in this matter is not binding.

⁷⁶ AL quran 42:38

3. Enforcing the rules that are clearly defined in the Shari'a and formulating a binding law for all people on matters that are not explicitly regulated by the Qur'an and Hadith.
4. Decide on one interpretation of the Shari'a regulations which have multiple interpretations, so as not to confuse the people.
5. Formulating the law of a problem that is not regulated in the Shari'a, as long as it does not conflict with the spirit and spirit of the Shari'a.
6. *Ahl al-Halli Wa al-'Aqdi* has the authority to elect and pledge allegiance to the Caliph whose job it is to hold the Caliph and other dignitaries accountable. In this regard, Islam has obligated its people to command good and bad deeds, as the word of Allah SWT in Surah Ali Imran verse (104). "And let there be among you a group of people who call to righteousness, enjoin what is right and forbid what is evil; they are the lucky ones."
7. *Ahl Halli Wa al-'Aqdi* has the authority to control the Caliph, over all actions that occur in real terms in the state. The opinion of *Ahl al-Halli Wa al-'Aqdi* is binding if the majority of *Ahl al-Halli Wa al-'Aqdi* members wish to bind, and vice versa. If *Ahl al-Halli Wa al-'Aqdi* differs from the Caliph regarding actions that have actually been carried out, based on sharia law' then this matter must be submitted to the Mazalim Court.⁷⁷

⁷⁷ The task of the Mazalim Court is to resolve the unfair treatment carried out by the government against the people. This institution has a wider problem than the Qadi.

8. *Ahl al-Halli Wa al-'Aqdi* authorized to limit the candidates who will become Caliph. In this case, their votes are binding, so that other candidates other than those approved by *Ahl al-Halli Wa al-'Aqdi* cannot be accepted.
9. Authority to direct people's lives to those who are *maslahah*.⁷⁸

⁷⁸ A. Jazuli, *Fiqh Siyasaah: Implementation of the Benefit of the People in Sharia Signs*, 76.

CHAPTER III

RESEARCH RESULTS AND DISCUSSION

A. LIMITATIONS OF THE IMMUNE RIGHTS OF MEMBERS OF DPR BASED ON THE PRINCIPLE OF EQUITY BEFORE THE LAW

In law, there are 2 (two) types of immunity rights, namely: Immunity rights which are absolute, namely rights that remain in effect absolutely in the sense that they cannot be canceled by anyone. While the second is the right to qualifying Immunity which is relative, in the sense that the right of immunity can still be waived when the use of the right is "deliberately" insulting or degrading the good name and dignity of others.

The right of immunity in Indonesia is the right of members of the people's representative institutions and ministers to discuss or state in writing everything within the institution without being prosecuted in court. In addition, the right of immunity can also be interpreted as the right of the head of state, members of diplomatic representatives not to be subject to criminal law, civil law, and administrative law of the country through which they work or are external. The constitutional right of immunity has been regulated in Article 20A paragraph (3) of the 1945 Constitution:

"In addition to the rights regulated in other articles of this Constitution, every member of the House of Representatives has the right to ask questions, submit proposals and opinions as well as the right to immunity"

Then it is mentioned again in Law No. 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 Article 80:

Members of the DPR have the right to:

- a. Submitting a draft law*
- b. Asking question*
- c. Submit suggestions and opinions*
- d. Pick and choose*
- e. Self-defense*
- f. Immunity*
- g. Protocol*
- h. Finance and administrative*
- i. Supervision*
- j. Propose and fight for electoral district development programs; and*
- k. Conducting socialization of the law.*

This is then explained in the next article, which can be seen in Law No. 2 of 2018 concerning amendments to Law No. 17 of 2014 concerning the People's Consultative Assembly, People's Representative Council, Regional Representative Council, and Regional People's Representative Council Article 224 paragraph (1), states that:

- (1) Members of the DPR cannot be prosecuted before the court because of the statements, questions, and/or opinions that they put forward either orally or in writing at DPR meetings or outside DPR meetings related to the functions and powers and duties of the DPR.*

Then followed by the next paragraph, paragraph (2), namely that members of the DPR cannot be prosecuted before a court because of their attitudes, actions, activities, in DPR meetings or outside DPR meetings solely because of the constitutional rights and authorities of DPR and/or DPR members. . Paragraph (3)

also further explains that members of the DPR cannot be replaced from time to time because of the statements, questions, and/or opinions they put forward both in DPR meetings and outside DPR meetings related to the functions and powers and duties of the DPR. Followed by the last paragraph, paragraph (4), namely the provisions referred to in paragraph (1) does not apply in the event that the member concerned announces material that has been agreed upon in a closed meeting to be kept confidential or other matters declared as State secrets according to the provisions of the legislation.

If in Law No. 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 Article 224 explains that the DPR cannot be prosecuted if it is carrying out the scope of rights and powers or duties of the DPR, then further in Law No. 2 of 2018 concerning Amendments to Law No. 17 of 2014 concerning the MPR, DPR, DPD, and DPRD Article 245 explains that:

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

(2) The written approval as referred to in paragraph (1) is not valid if the DPR members:

- a. caught in the act of committing a crime*
- b. is suspected of committing a crime punishable by death or life imprisonment or a crime against humanity and state security based on sufficient preliminary evidence; or*
- c. Suspected of committing a special crime.*

Based on the explanation above, it can be concluded that in order to carry out the duties and authorities of the members of parliament, which in this case is the

DPR, it is necessary to be equipped with an instrument or device that guarantees the implementation of its duties and authorities, so that it can run well and smoothly in accordance with the interests of the community. And in this case, the instrument is the right of immunity, which can guarantee parliamentarians to freely speak and express their opinion in carrying out their duties and authorities.

In the exercise of their immunity rights, members of the DPR as described above, in Law number 2 of 2018 concerning amendments to Law number 17 of 2014 concerning the People's Consultative Assembly, People's Representative Council, Regional Representative Council, and Regional People's Representative Council Article 224 paragraph (2) explains that this right of immunity applies as long as it is carried out while carrying out its duties and authorities as a member of the DPR, although there are several parliaments that limit this right to freedom of speech only in the parliament or committee room.

Then vice versa. The exercise of the right of immunity may not apply if members of the DPR do so outside their duties and authorities. Which means that a member of the DPR can be prosecuted before the law for his actions or actions outside his duties and authorities.

Then in the division of the equation, among others:

1. Natural Equations

The principle of equality before the law is one of the most important principles in law. This principle can be a benchmark for how the law can be fair to the whole community. According to this principle, every citizen gets equal protection and justice before the law. This principle is

widespread in various countries, including Indonesia. This principle creates an equality in law for every individual or human without any exceptions or privileges. The principle of equality before the law can be used as a standard and protection for marginal groups or minority groups.⁷⁹The principle of equality before the law is the main pillar of the state of law (rechstaat) which adheres to the supreme system of law or the law above all else. Referring to the importance of normalizing and implementing this principle, the regulation regarding this principle should be placed in the highest position because the position and role carried out is also very important. So in the regulations of the State of Indonesia, the principle of equality before the law occupies a high position, where this principle is regulated in the 1945 Constitution.

This is regulated in Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that "all citizens have the same position in law and government and are obliged to uphold the law and government without exception". This provision is the lowest basis for every citizen who has the same rights and position before the law and the government. Then in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that "everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law". Then furthermore, Article

⁷⁹Julita Melissa Walukow, "the embodiment of the principle of Equality Before The Law for prisoners in prisons in Indonesia," *lex et Societatis* 1, no. 1 (2013), 164

4 paragraph (1) of the Law of the Republic of Indonesia Number 48 of 2009 concerning judicial power states that "the court judges according to the law without discriminating against people".

The existence of the principle of equality before the law was further emphasized in the International Covenant on Civil and Political Rights (ICCPR) 1966. Article 16 of the 1966 ICCPR states that: "Everyone has the right to recognize everywhere as a person before the law". Article 17 paragraph (2) states that: "Everyone has the right to the protection of the law against such interference or attacks". Similarly, Article 26 states, among others: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law".⁸⁰

The meaning of the paragraph above broadly states that all people are equal before the law, when it comes to something like criminal or between living things. The above statement emphasizes the principle of equality before the law which means that it indicates that there is equality before the law for everyone. Therefore, there should be no discriminatory behavior against any of the parties seeking justice before the law in a judicial process in court. Also, there should be no element

⁸⁰Arief Supriyadi, "Deconstruction of the Immunity Rights of DPR Members in the Perspective of Equality Before the Law", (journal volume 1 issue 1 jalrev 1(1), 2019) h. 28

of subjectivity, such as looking at social status, skin color, race, ethnicity, language, religion, belief and others.⁸¹

So the rights and nature of the members of the DPR are the same. Even if they have the right of immunity, this right does not affect the fact that they are human beings whose position will be equal in the end before the law. The right of immunity only protects some of the risks from members of the DPR if in carrying out their duties they have risky obstacles in expressing their opinions.

2. Civil rights equality

Equality of civil rights is equality that hits all members of society equally. Recognition of this equality means that every citizen treats the same in enjoying rights and protection. The existence of the principle of equality before the law means that there is equality before the law for everyone. Therefore, there should be no discriminatory behavior against any of the parties seeking justice before the law in a judicial process in court. Also, there should be no element of subjectivity, such as looking at social status, skin color, race, ethnicity, language, religion, belief and others.⁸²

⁸¹ Rofingi, "the principle of equality before the sea in the perspective of Islamic law and the Indonesian constitution (study on the implementation of criminal law in Indonesia)" (IAIN Purwokerto, 2019), 60

⁸² Rofingi, "the principle of equality before the law in the perspective of Islamic law and the Indonesian constitution (study on the implementation of criminal law in Indonesia)" (IAIN Purwokerto, 2019), 60

One of the most important and frequently violated covenants is civil and political rights. Rights that provide guarantees as well as protection for political attitudes as well as in the way of organization. This right even provides protection so that every person is kept away from the target of torture. The emergence of civil and political rights is partly based on the desire to avoid the power of the dictator. A power that closes the climate of democracy. The kind of power that is reluctant to share and is accountable to the public.

These civil rights have to do with human rights. However, this legal guarantee for Human Rights is fully contained in Law number 39 of 1999. What is summarized in civil and political rights is contained in all articles in the Human Rights Law. All articles in their entirety provide protection for freedom of association as well as protection against arbitrary actions. Judging from the content of the article, this Law on Human Rights is far more advanced and progressive, but the clash that confronts the most is the attitude and policy of the government. The government's efforts to maximize revenue and establish a network of cooperation with the private sector have suppressed many people's interests. Actions such as relocation and eviction are now part of the frequent lawsuits.⁸³

⁸³ Eko Prasetyo, Civil Rights and Politics, Culture or Policy, was presented for a refresher event for the pangreh praja officers/police officers on March 3, 2004.

Ethically, humans are also equal before God. If we add, then constitutionally for a country that protects human rights, then humans are the same. Rahman emphasized the notion of "equality" as the provision of adequate opportunities for all.⁸⁴ Here, equality means a living equipment that has sufficient opportunities to meet needs such as education, housing, justice and so on. It means that people are not frustrated. Rahman said: "equality, in short, means such an organization of opportunity that no man's personality suffers frustration. So, the provision of adequate opportunity is one of the basic conditions of equality". Equality means the existence of equal opportunities to have human rights as a necessity of life such as the right to be treated equally before the government or the right to free opinion. The basis of the principle of equality is the opportunity itself.

In terms of the immunity rights of members of the DPR, they do not apply in civil matters, because the immunity rights of members of the DPR are focused on how they can be protected in expressing their opinions. Even in article 224 paragraph (1) of Law number 17 of 2014 concerning MD3 it is stated that the enactment of the immunity rights of members of the DPR only relates to the functions and powers and duties of the DPR. If the violation or mistake committed by a member of the DPR involves the civil rights of another person as described

⁸⁴ Hafiz habibur Rahman political science and government, (Dacca-pakistan: ideal publication), 117

above, the immunity rights of the member of the DPR can no longer apply.

3. Political Equality

Political equality is an equal right for all citizens to participate in the affairs of the State. For example, giving the right to vote in general elections. This equality is the basis of democracy. In principle, every democratic country contains guarantees of human rights including civil and political rights of every person or resident in the state constitution. However, everything really depends on the political will of the authorities to provide space for the existence of these civil and political rights.

Political rights are related to participation in general elections, both as elected and those who choose to participate in government. Political rights related to the decision-making process that are manifested in the form of participation by giving the right to vote at the time of the election.⁸⁵In addition, political rights are also regulated in Law No. 39/1999 on human rights, which are part of the right to personal freedom. Political rights are part of the right to personal freedom, which is a right where a person uses his political rights freely as stated in Article 23 of Law Number 39 of 1999 concerning Human Rights.

⁸⁵ Fuad Fachruddin, 2006. Religion and Democracy Education: Experiences of Muhammadiyah and Nadhlatul Ulama. Alfabeta Library, 35-36

The political rights of citizens are part of the rights possessed by citizens where this right exists in countries that adhere to democracy. Countries that adhere to democracy generally accommodate the political rights of their citizens in an election, either directly or indirectly.⁸⁶

This right means that this political right is a personal right, which concerns the individuality of each individual. This political right is included in Human Rights, where the regulations are clearly stated in the Constitution and the Act. So if a member of the DPR has a problem with political rights in an individual or himself, the right to immunity is no longer able to protect the member of the DPR because the scope of immunity rights is not related to human rights. If they violate it, then the members of the DPR will certainly still be subject to the applicable law.

4. Economic Equation

Economic equality is equal rights in improving the economic standard of life. This equation is focused on the equality of opportunity and not the profit sharing equation. Because a lot or less results depend on the efforts of everyone in using the opportunities used in improving the economic standard.⁸⁷

⁸⁶ ⁴ <http://ditjenpp.kemenkumham.go.id/htn-dan-puu/2941-hak-politik-warga-negaraan-perbandingan-konstitut.html> accessed on 26 June 2021 at 17.00 WIB

⁸⁷Ramly hubarat, equality before the law in Indonesia, p. 36

Economic equality is also included in the realm of human rights. It was mentioned above, that equality in this economy does not mean that all salaries, or all the results of work are evenly distributed. However, every individual has the same opportunity to prosper his economy. There is no difference, everyone has the opportunity to improve their economy. The general declaration of the United Nations (UN) on human rights, in article 23 paragraph (1) stipulates "everyone has the right to work, the right to freely choose a job, has the right to just and good labor conditions and to protection against unemployment.

In the International Covenant on Economic, Social and Cultural 1966, article 6 paragraph (1) stipulates: "States parties to this treaty recognize the right to work which includes everyone with the opportunity to earn a living by doing work which he freely chooses or accepts and will take appropriate measures to protect this right".

Except, in Article 38 of Law No. 39 of 1999 stipulates: "every citizen according to his talents, skills and abilities, has the right to decent work (paragraph 1). In addition, it is determined that "everyone has the right to freely choose the job he likes and is also entitled to fair employment conditions (paragraph 2). Everyone is good. Men and women who do the same, comparable, equal or similar work are entitled to the same wages and terms of the employment agreement (paragraph 3). Meanwhile, paragraph 4 stipulates that "every person, both male and female, in carrying out work commensurate with his human dignity is

entitled to fair wages in accordance with his achievements and can ensure the continuity of family life.⁸⁸

Member of the National Human Rights Commission (Komnas HAM) Roichatul Aswidah said Article 245 of Law No. 17 of 2014 concerning members of the People's Consultative Assembly, the People's Representative Council, the Regional Representatives Council, and the Regional People's Representative Council which contains parliamentary immunity to participate in the legal process in criminal domain that can be seen as a limitation of equality before the law, as well as the right to access to courts. This was conveyed by him when giving information as an expert in court cases number 76 and 83/PUU-XII/2014. He explained that the immunity contained in Article 245 of the MD3 Law does not meet the principle of proportionality and is also not needed to achieve legitimate goals. The reason is that the right to immunity delays the legal process that must be carried out so that it affects and violates the victim's right to justice.

Furthermore, he explained that parliamentary immunity was indeed allowed. However, as a basis for limiting rights, they must also undergo a proportionality test and the principle of necessity. Things that must be observed are that historically parliamentary immunity was born with a strong reason, namely fortifying parliament from the tyranny of the ruler. In this century, parliamentarians in democratic countries are seen as having no fear of the power of kings. "So, the

⁸⁸I Made Subawa, HUMAN RIGHTS IN THE FIELD OF SOCIAL ECONOMY AND CULTURE ACCORDING TO CHANGES TO THE 1945 Constitution, Journal of Kertha Patrika Vol. 33 No. 1, January 3-4

immunity and privileges that are given later are seen as fortifying the strong against the weak rather than the other way around," he said.⁸⁹

However, according to Arteria Dahlan, one of the DPR-RI Members conveyed in the follow-up session of the judicial review of Law Number 17 of 2017 concerning the MPR, DPR, DPRD, and DPD (UU MD3) on Wednesday, April 11, 2021 that the immunity rights of members of the DPR RI aims to protect and support the smooth running of duties and authorities as the people. Arti said the main purpose of the right of parliamentary immunity is to protect MPs from undue pressure. According to him, the right of immunity allows parliamentarians to freely speak and express their opinions about certain political situations without fear of reprisals based on certain motives, or motives.

According to him, the right to immunity will enable members of the DPR RI to carry out their duties and authorities effectively to voice the interests of the people, the interests of the nation, and the interests of the state. However, its implementation must remain within the chord of the provisions of the applicable laws and regulations so that there is no abuse of power.⁹⁰

So it can be concluded from the broad explanation above, that members of the DPR are protected by law in carrying out their duties because they have the right of immunity. This privilege is seen as an effort to maintain the honor of the council and not to protect members of the DPR from legal problems. In Law No. 17 of 2014

⁸⁹ <https://www.mkri.id/index.php?page=web.Berita&id=10334> accessed on 23 June 2021 at 14:55 WIB

⁹⁰ <https://www.mkri.id/index.php?page=web.Berita&id=14422> accessed on 23 June 2021 at 16.40 WIB

concerning MD3 it is stipulated that members of the DPR cannot be subject to legal sanctions while carrying out their duties. However, the immunity right has no effect if DPR members are involved in special crimes such as corruption, terrorism, and drug cases.

Thus, the implementation of the immunity rights possessed by members of the DPR has limitations so that not all actions of members of the DPR are free from the rule of law. The limitations that are part of the implementation of the right to immunity are statements, questions, opinions, attitudes, actions and activities carried out in DPR meetings related to their functions, powers and duties as members of the DPR.

Members of the DPR also when they do not carry out their obligations as stipulated in the laws and regulations of the DPR, they are subject to sanctions based on the decision of the Honorary Court of the Council. And if a member of the DPR is proven to have violated the provisions of the applicable code of ethics and code of conduct, based on a court decision that has legal force, it will still be subject to a sanction of dismissal as a member.

So clearly, legal protection to members of the legislature in carrying out their functions and duties and authorities on the immunity rights attached to them is not merely absolute immunity from the law. In the right of immunity itself, it also explicitly mentions the limitations of the right of immunity. as in law number 22 of 2003 concerning the composition and position of the MPR, DPR, DPD and DPRD, it provides limitations that the right of immunity cannot be used outside the DPR

meeting with the government or other DPR meetings. That means, the right of immunity only applies in meetings. The law also provides confirmation in a different clause (article 103 paragraph (1)) as long as it does not conflict with the rules of conduct and code of ethics of each institution.

The limitations of the right of immunity according to Law No. 27 of 2009 include:

- a. Comply with rules and regulations and code of ethics.*
- b. Regarding questions, statements, and/or opinions submitted by members of the legislature, both verbally and in writing submitted in the meeting room and/or outside the meeting;*
- c. As long as it relates to the functions and duties and authorities of the DPR.*

If these limits are violated, then the immunity rights of members of the legislature can be revoked, and prosecutions are carried out in court.

The types of sanctions include:⁹¹First, light sanctions with verbal warnings or written warnings. Second, moderate sanctions include the transfer of membership in the DPR's apparatus or dismissal from the position of the DPR leadership or the leadership of the DPR's apparatus. Third, severe sanctions with a temporary suspension of at least 3 (three) months or permanent dismissal as a member.

Based on the article, that the immunity rights of DPR members are in accordance with the principle of equality before the law. As explained in the literature review, that this principle implies that first, everyone (without exception means no one) has

⁹¹DPR RI Regulation No. 1 of 2014 concerning Rules of Conduct Article 289-290.

privileges or privileges when dealing with the law. Second, equal status means affirming the status of everyone before the law.⁹²

Everyone (meaning no one) has the privilege or Privilege when dealing with the law. Members of the DPR have several rights, one of which is the right to immunity.in Law No. 2 of 2018 concerning Amendments to Law No. 17 of 2014 concerning the MPR, DPR, DPD, and DPRD Article 224:

- (5) *Members of the DPR cannot be prosecuted before the court because of the statements, questions, and/or opinions that they put forward either orally or in writing at DPR meetings or outside DPR meetings related to the functions and powers and duties of the DPR.*
- (6) *Members of the DPR cannot be prosecuted before the court because of their attitudes, actions, activities in DPR meetings or outside DPR meetings solely because of the constitutional rights and authorities of DPR and/or DPR members.*
- (7) *Members of the DPR cannot be replaced from time to time because of the statements, questions, and/or opinions expressed both in DPR meetings and outside DPR meetings related to the functions and powers and duties of the DPR.*
- (8) *The provisions as referred to in paragraph (1) do not apply in the event that the member concerned announces material that has been agreed upon in a closed meeting to be kept confidential or other matters declared as state secrets according to the provisions of the laws and regulations.*⁹³

However, DPR members have limitations as the author explained above, which does not apply when it comes to other rights concerning individuals. This is evidenced by the explanation of the limitation of immunity rights, only stopping at 'only valid when carrying out their duties', and '*does not apply in the event that the*

⁹²Arief Supriyadi, "Deconstruction of the Immunity Rights of DPR Members in the Perspective of Equality Before the Law", (journal volume 1 issue 1 jalrev 1(1), 2019) h. 28

⁹³ Law No. 2 of 2018 concerning Amendments to Law No. 17 of 2014 concerning MD3 (State Gazette of the Republic of Indonesia of 2014 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 5568)

member concerned announces material that has been agreed upon in a closed meeting to be kept confidential or other matters declared as state secret according to the provisions of the laws and regulations'. And also this right of immunity does not apply when a member of the DPR violates his individual rights as an individual by relinquishing his status as a member of his council, which among other things special crimes such as corruption, terrorism, and drug cases. A Member of the DPR will still be sanctioned if it violates their rights as individuals.

Therefore, the DPR as an Indonesian citizen is also in the same position as the others, does not have any privileges regarding individual issues as Indonesian citizens.

Second, members of the DPR have the same position, namely the position as citizens. However, in addition, members of the DPR also have a special position as People's Representatives. To realize security in carrying out their duties as representatives of the people, immunity rights are given. then in terms of position and privilege, members of the DPR are not distinguished by criminal status, in this case, special crimes such as corruption, terrorism, and drug cases.

B. IMMUNITY RIGHTS FOR MEMBERS OF THE DPR BASED ON AHLUL HALLI WAL 'AQDI

1. Provide input and advice to the Caliph and the place of consultation

Providing input and advice to the caliph and consulting is one of the powers of Ahlul Halli Wal 'Aqdi. They provide input and advice to the caliph, as well as a place of consultation for the imam, in determining

his policies. For example, issues of government, education, economy, health, religion, industry and trade. In this case, his opinion is binding or must be carried out by the caliph. This is stated in the word of Allah, namely Surah Ali Imran verse 159:

فَبِمَا رَحْمَةٍ مِّنَ اللَّهِ لِنْتَ لَهُمْ ۚ وَلَوْ كُنْتَ فَظًّا غَلِيظَ الْقَلْبِ لَانفَضُّوا مِنْ حَوْلِكَ فَاعْفُ عَنْهُمْ وَاسْتَغْفِرْ لَهُمْ وَشَاوِرْهُمْ فِي الْأَمْرِ فَإِذَا عَزَمْتَ فَتَوَكَّلْ عَلَى اللَّهِ إِنَّ اللَّهَ يُحِبُّ الْمُتَوَكِّلِينَ

"So by the grace of Allah you (Muhammad) were gentle with them. If you were hard-hearted and harsh-hearted, they would have distanced themselves from those around you. Therefore forgive them and ask forgiveness for them, and consult with them in this matter. Then, when you have made up your mind, then put your trust in Allah. Indeed, Allah loves those who put their trust in him." (Qs. Ali Imran; 159)⁹⁴

And Surah Al-Shura verse 38:

وَالَّذِينَ اسْتَجَابُوا لِرَبِّهِمْ وَأَقَامُوا الصَّلَاةَ وَأَمْرُهُمْ شُورَى بَيْنَهُمْ وَمِمَّا رَزَقْنَاهُمْ يُنفِقُونَ

"And (for) those who accept (obey) the call of their Lord and establish prayer, while their affairs are (decided) by deliberation between them; and they spend part of the sustenance We have given them." (Qs. Ash-Sura': 38)⁹⁵

This is almost the same as members of the DPR who have the authority to draft regulations to be implemented. However, the DPR has the authority to partially approve the regulations that are made, as explained in Law number 17 of 2014 concerning MD3 article 71, in point b that the DPR gives approval or gives approval to the government in lieu of the money law proposed by the president to become

⁹⁴ Memorized Quran and its translation, first edition, 2015, Jakarta: publisher almahira, 68

⁹⁵ Memorized Quran and its translation, print I, 487

Constitution. Here the point is that there is still interference between the two parties in designing a regulation.

2. Regarding issues of thought that require research and analysis as well as military and foreign policy issues

Regarding issues of thought that require research and analysis as well as military and foreign policy issues, the opinion of ahlul Halli Wal 'Aqdi to the caliph in this matter is not binding. In this case, the caliph or a leader has absolute authority in deciding military issues and foreign policy. There was intervention from Ahlul Halli Wal 'Aqdi, but the caliph was not obliged to follow the advice he gave. In contrast to domestic legal or regulatory issues.

Unlike Ahlul Halli Wal 'Aqdi, in Law number 37 of 1999 concerning foreign policy article 6 paragraph (1) it is explained that,

*"The authority to organize foreign relations and the implementation of the foreign policy of the government of the republic of Indonesia is in the hands of the president. Meanwhile, in the case of declaring war, making peace and making agreements with other countries, the approval of the House of Representatives is required."*⁹⁶

It means that there is no interference from the DPR in foreign policy affairs. But when it comes to war or making peace involving 2 countries, the president needs to get the approval of the DPR.

Then in paragraph (2) continued,

⁹⁶ Law Number 37 of 1999 concerning Foreign Relations Supplement to the State Gazette of the Republic of Indonesia Number 3882

"The President may delegate the authority to implement foreign relations and implement foreign policy as referred to in paragraph (1) to the minister"

This shows that the function of the formation of a minister is to replace if one day the president is unable to carry out his duties for some reason. So, when these Ahlul Halli Wal 'Aqdi are everything besides the caliph, then this DPR has less authority than Ahlul Halli Wal 'aqdi.

3. Enforce the rules that are clearly determined in the Shari'a and formulate a law

Enforce the rules that are clearly determined in the Shari'a and formulate a binding law for all people on matters that are not explicitly regulated by the Qur'an and hadith. Because basically the legal basis used is the Qur'an and Hadith, the guidelines for life and regulations in an Islamic State are the Qur'an and the Hadith. Then only, if some problems that arise in society are gray or not even contained in the Qur'an or hadith, then the ahlul halli wal 'aqdi is tasked with formulating a regulation together with the caliph.

Similar to Ahlul Halli Wal 'Aqdi, the DPR has the authority to form a regulation, which is needed as needed. In relation to the duties of the DPR, the authority of the DPR is summarized into several points, one of which is related to the legislative function, the DPR has the duty and authority to formulate the National Legislation Program or Prolegnas.

This is the stage where DPR members draft what regulations are needed for current conditions.

So the difference in understanding between the DPR and the *ahlul halli wal 'Aqdi* is if the DPR in Indonesia is actually the people's representative, which replaces the people in making regulations or deciding a regulation, and this *Ahlul Halli Wal 'Aqdi* is an institution or council that does not only represent the people in forming a regulation, but also represent the people in choosing a leader to later be sworn in in front of the people. But even when the DPR succeeds in making regulations, the regulations also apply to them. It is their duty to carry out and comply with it.

4. Deciding on one interpretation of the Shari'a regulations

Ahlul halli wal 'Aqdi has the authority to decide on one interpretation of the Shari'a regulations which have multiple interpretations, so as not to confuse the people. In carrying out the authority to make laws or laws, the *Ahlu al-Halli Wal 'Aqdi* institution must have limits that must not conflict with what has been determined by Allah and His Messenger. In other words, all forms of legislation that are enacted must reflect the spirit or soul of the provisions of the Qur'an and Hadith. In this context, Al-Maududi has provided guidelines, more or less, as follows.

- a. If the Ahlu al-Halli Wal 'Aqdi institution in establishing regulations/laws for a case, while there are clear provisions from the Qur'an and al-Hadith regarding the case, then this institution only enforces those provisions in regulations or laws.
- b. If there are several interpretations of the clear provisions of the Qur'an and al-Hadith on the case being discussed, this institution selects/sets out one of the several interpretations available, after which formulates it into a regulation or law.
- c. If there is no provision from the Qur'an and Hadith regarding the matter being discussed, but it is in the books of fiqh/views of the scholars of the school of thought, then this institution must take one of the existing views, then formulate it into regulations or laws. law.
- d. If there are no provisions from the sources mentioned above, then this institution is freed to be able to find its own provisions on the condition that it does not conflict with the spirit/values/spirit of Islam/shari'ah.⁹⁷

5. Formulating the law of a problem that is not regulated in the Shari'a

Ahlul halli wal 'Aqdi has the authority to formulate the law of a matter that is not regulated in the Shari'a, as long as it does not conflict

⁹⁷ Muhammad Iqbal and Amien Husein Nasution, *Islamic Political Thought* (Jakarta: Prenada Media Group, 2010), 184-18

with the spirit and spirit of the Shari'a. As explained in the previous point, if there is no provision from the Qur'an and Hadith on the matter being discussed, but it is in the books of fiqh / views of the scholars of the school of thought, so ahlul halli wal 'aqdi must take one of the existing views, then formulate it into regulations or Constitution. In this case, it is known as ijtihad and deliberation.

Like ahlul Halli Wal 'Aqdi, the DPR also formulates a problem that is considered important in the community, then discusses it in a DPR meeting. After that, the DPR is like in its task, namely to draft a law, which will also involve the approval of all members of the DPR and the president. In point 5, it is actually still related to the previous point (point 4) because it was previously stated that the DPR is in its authority to design the National Legislation program (prolegnas) which involves all urgent matters rather than the required regulations.

as well as Ahlul Halli Wal 'Aqdi, if there is no provision from the Qur'an and Hadith regarding the case being discussed, but it is in the books of fiqh / views of the scholars of the school of thought, then this institution must take one of the existing views, then formulate it into regulations or laws . If it still doesn't exist, then Ahlul Halli Wal 'Aqdi is free to determine the law but provided it does not violate the Shari'a and the main legal guidelines (Al-Quran and hadith) that approach it.

6. Choose and pledge allegiance to the caliph

Ahlul halli Wal 'Aqdi has the authority to elect and pledge allegiance to the caliph whose task is to hold the caliph and other dignitaries accountable. In connection with this problem, Islam has obligated its people to command good and bad deeds, as the word of Allah SWT in Surah Ali Imran verse 104 which means "let there be among you a group of people who call on virtue, instruct the ma'ruf and prevent from doing evil. the evil ones, they are the lucky ones."

They are responsible for choosing the head of state from among the people who are eligible for the position by fulfilling the conditions that have been determined. They are obliged to choose people who are most worthy of sharing knowledge, have noble character, have leadership skills, are trusted by the people and influential in society and are heard by the government and its directives. They are charged with the mandate and must be fully responsible for the people to elect the head of the state in accordance with the tastes of the people. This shows how big the role of *Ahlul Halli Wal 'Aqdi* in an Islamic State is so that the scholars call it *Aulia Ulil Amri*, namely people who become leaders to protect Muslims and their country. It is also a reference for solving any problems that arise.⁹⁸

⁹⁸ Jubair Situmorang, *Political Administration in Islam Siyasah Duturiyah*, 257

Unlike the DPR, they are not authorized to determine who deserves to be a leader. The DPR is only authorized to draft a regulation that will later be enforced in its country, as stated in Law number 17 of 2014 concerning MD3 article 71 point a, that this DPR shall form a law which is discussed with the president for mutual approval. This proves that in the constitutional order in Indonesia, all institutions play a role in forming a regulation. As for the presidential election, the DPR has no authority in it, but a general election will be held which is participated by all citizens in the State of Indonesia, namely the general election.

7. Controlling the caliph over all actions that occur in real terms in the State

Ahl Halli Wa al-'Aqdi has the authority to control the Caliph, over all actions that occur in real terms in the state. The opinion of Ahl al-Halli Wa al-'Aqdi is binding if the majority of Ahl al-Halli Wa al-'Aqdi members wish to bind, and vice versa. If Ahl al-Halli Wa al-'Aqdi differs from the Caliph regarding actions that have actually been carried out, based on sharia law' then this matter must be submitted to the Mazalim Court.⁹⁹

Related to the duties of the DPR above, the authority of the DPR is summarized into several points. In relation to the legislative function, the DPR has the following duties and powers:

⁹⁹ The task of the Mazalim Court is to resolve the unfair treatment carried out by the government against the people. This institution has a wider problem than the Qadi.

- a. preparing the National Legislation program (prolegnas)
- b. drafting and discussing the Draft Law (RUU)
- c. accept the bill proposed by the DPD (related to regional autonomy; central and regional relations; formation, expansion and merger of regions; management of natural resources and other natural resources; and balance of central and regional finances)
- d. discuss the bill proposed by the president or the DPD
- e. establish laws together with the President
- f. approve or disapprove of government regulations in lieu of law (proposed by the President) to be enacted into law

Whereas In relation to the budget function, the DPR has the following duties and authorities:

- a. Approval of the Bill on the State Budget (proposed by the President)
- b. Paying attention to the DPD's consideration of the Bill on the State Budget and the Bill related to taxes, education and religion
- c. Following up on the results of the audit on the management and accountability of state finances submitted by the BPK

- d. Giving approval to the transfer of state assets as well as to agreements that have a broad impact on people's lives related to the financial burden of the State

With regard to the supervisory function, the DPR has the following duties and authorities:

- a. Supervise the implementation of laws, APBN and government policies
- b. Discussing and following up on the results of supervision submitted by the DPD (related to the implementation of the law on regional autonomy, formation, expansion and merger of regions, management of natural resources and other natural resources, implementation of the state budget, taxes, education and religion)¹⁰⁰

Meanwhile, Ahlul Halli Wal 'Aqdi, their task is not only to consult in general state matters, to issue laws relating to the benefit and not to conflict with one of the standard Shari'a basics and to carry out a constitutional role in electing the country's highest leader. . But their duties also include carrying out a supervisory role over the legislative authority as a supervisory authority exercised by the people against the

¹⁰⁰ <https://www.dpr.go.id/about/task-authority> accessed on June 24, 2021 at 13.00 WIB

government and authorities to prevent them from violating a right from God.¹⁰¹

8. Limiting the candidates who will become caliph

The rights of the *Ahlul Halli Wal 'Aqdi*, namely the people who have the power to choose their leader, while the *Ahlul Halli Wal 'Aqdi* represent them, there are certainly fewer in number than the people themselves. But, have the capability to assume the responsibility of choosing a leader. As explained by al-Mawardi “when the *Ahlul Halli Wal 'Aqdi* gather to vote, they examine the condition of the people who have the right to be leaders who have met the criteria, then they propose the best and most perfect person to take the oath. Then later, invites the people to obey him and not hold back from his arbiters.¹⁰² Rasulullah SAW said, Imam Baihaqi narrated from harmalah, he said, "I heard Ash-Shafi'i say: "Whoever wins in seizing the caliphate (power) with the sword, then is called the caliph, and people agree (on his leadership) then that person is the caliph (who must be obeyed).¹⁰³

Al-Mawardi also explained in outline, there are 10 duties and obligations of the head of state, namely:

a. Keeping religion

¹⁰¹ Farid Abdul Khaliq, *Islamic Political Jurisprudence*, 80

¹⁰² Al- Mawardi, *Al-Ahkaamus-sulthaaniyyah wal-wilayatud-diiniyyah*, (Translated by Abdul Hayyieal-Kattani, Kamaludin Nurdin, *Constitutional Law and Leadership in Islamic Measures*, (Jakarta: Gema Insani Press, 2000), 39

¹⁰³ Idris Ahmad, *Fiqh According to the Syafi'i School*, (Jakarta: Wijaya, 1996), 96

- b. Implementing the law among its people and resolving cases that occur so that no one persecutes and is persecuted
- c. Maintaining domestic security so that people can carry out their activities and travel safely
- d. Uphold the hudud
- e. Form a formidable army to fortify the country from enemy attacks
- f. Doing jihad against people who reject the teachings of Islam after being invited
- g. Collecting fa'i property and zakat from those who are obliged to pay it
- h. Distribute it to those who deserve it
- i. Delivering trust
- j. Pay attention to everything that can improve the government's politics towards society and its maintenance of religion.¹⁰⁴

So, according to al-Mawardi, ahlul Halli Wal 'Aqdi not only represent the community in making regulations, but also have the right to choose community leaders or caliphs, if the people agree.

¹⁰⁴ Al-Mawardi, Al-Ahkam Al-Sulthaniyah, (Beirut: Dar al-Fikr, t.tp.), 16

9. Authority to direct people's lives to those who are *maslahah*.

According to Al-Mawardi, the task of *Ahlul Halli wal 'Aqdi* is limited to two things, namely:

- a. Inviting to goodness, including all general matters, including establishing regulations or laws for the people made through a process of deliberation.
- b. Take action against unjust rulers, i.e. rulers who deviate from the rules that have been set.

In addition to the two things above, the *Ahlul Halli Wal 'Aqdi* institution also has the authority to dismiss the caliph if it is deemed to have violated the interests of the people and that is also done by deliberation.¹⁰⁵

If you look at it in detail, the differences in the functions of duties and authorities between the DPR and *Ahlul Halli wal 'Aqdi* are different. This member of the House of Representatives has duties and authority only on the functions of the scope of legislation, budget, and supervision. Legislation here is drafting laws or regulations in place of the people. Then followed by the budget, which is authorized to take part in giving approval to the Draft Law submitted by the head of state

¹⁰⁵ Muhammad Iqbal and Amien Husein Nasution, *Islamic Political Thought*, (Jakarta: PrenadaMedia Group, 2010), p. 184-185.

(president) and paying attention to the DPD's considerations on the bill, and also giving approval to the transfer of state assets.

While related to the supervisory function, the DPR has the authority to supervise the implementation of the Act, or to follow up on the results of the supervision submitted by the DPD. The DPR is limited in its authority, and there are still councils that have the same authority as the DPR.

However, *Ahlul Halli Wal 'Aqdi*, as explained above, who will also be connected with the next discussion, which is in charge of electing or enthroning the caliph also dismisses him. *Ahlul halli wal 'Aqdi* consists of Ulama, tribal leaders and community leaders who say they are legislative bodies.¹⁰⁶

DPR in Islam is known as *Ahlul Halli wal 'Aqdi* which means people who decide or bind. *Ahlul Halli Wal Aqdi* and the caliph work together in organizing a good government for the peace and benefit of the people. The position of *Ahlul Halli Wal Aqdi* in the government is as a representative of the people, one of whose duties is to elect a caliph and guard the caliph towards the benefit of the people.

If the Qur'an and Sunnah are the two sources of legislation, Islam does not mention that *Ahlul Halli Wal 'Aqdi* is the embodiment of the People's Representative Council or whatever. But that designation is only made in our fiqh, in the field of religious politics and the adoption of substantial laws and

¹⁰⁶ J. Suyuthi Pulungan, *Fiqh Siyasah*, (Jakarta: Rajagrafindo, 1997), 79

comprehensive foundations. And originally, the title of the Qur'an related to Ahlul Halli Wal 'Aqdi is Ulil Amri.

The Ahlul Halli Wal 'Aqdi Institution also has the authority to fire leaders if they are deemed to have violated the interests of the people, or violate existing regulations and that is also done through deliberation. The task of Ahlul Halli Wal Aqdi is to consult in general matters concerning the state, issue laws relating to the benefit and do not conflict with the basics of the Shari'a and carry out a constitutional role in electing the highest leader of the state. In addition, Ahlul Halli Wal Aqdi has the task of carrying out a supervisory role over legislative authority as a supervisory authority carried out by the people against the government and authorities to prevent them from violating a right of God's rights.

Al-Mawardi mentions that Ahlul Halli Wal 'Aqdi with ahl-Ikhtiyar must have three conditions, including:

1. Justice that fulfills all its requirements.
2. Have knowledge of the person who is entitled to become a priest and the requirements.

Having intelligence and wisdom that causes him to be able to choose the imam who is the most beneficial and knows the most about policies that bring benefit to the people.

Ahl Halli Wal'Aqdi have an important position. Ahl Halli Wal'Aqdi cooperates with the government and the caliphate in moving the country. Ahl Halli Wal'Aqdi even has the task of choosing and guarding the caliph towards the benefit. The

position of Ahl Halli Wal'Aqdi is arguably an institution that has its own duties and authorities without interference from the caliph.¹⁰⁷

The main sources of Islamic law are the Qur'an and the Sunnah. Starting from the time of the Prophet Muhammad, when a legal issue arose, both related to Allah and society, Allah sent down verses of the Qur'an to explain it. In an Islamic government, the duties and authorities of ahlul halli wal 'aqdi are almost the same as those of the House of Representatives, such as nominating and electing the head of state (caliph). Members have the right to regulate various government affairs and solve community problems. The issue referred to here is entering into agreements, making laws and others that contain the common benefit.

Ahlul Halli Wal-'Aqdi does not regulate the immune system such as immunity rights or the like. In the Islamic concept, it is true that the rights and obligations of the institution are regulated based on deliberation. However, when it is correlated with the right of immunity, everything returns to the main guidelines of Islamic law, namely the Al-Quran and Sunnah. Because the source of law used in the state during the Ahlul Halli Wal-'Aqdi era was the Koran, the basis used in determining the rights of members was indirectly using the Qaul of Allah SWT.

In the word of Allah SWT explains about rights and justice that, which is stated in the Qur'an sura An-Nisa' verse 135;

¹⁰⁷ Suyuthi Pulungan, *Fiqh Siyasah Doctrine, History and Thought*, 67.

وَالْأَقْرَبِينَ ۚ إِنْ يَكُنْ غَنِيًّا ۖ يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَىٰ أَنفُسِكُمْ أَوِ الْوَالِدِينَ
أَوْ قَبِيلِكُمْ ۚ إِنَّ اللَّهَ أَعْلَمُ بِمَا تَعْمَلُونَ ۚ وَإِنْ تَلُوتُوا أَوْ تَعْرَضُوا فَأِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا

"O you who believe, be true enforcers of justice, be witnesses for Allah, even if it is against yourself or your parents and your relatives. If he (the defendant) is rich or poor, then Allah knows best what is good for him. So do not follow your lust because you want to deviate from the truth. And if you twist (words) or refuse to be witnesses, then verily Allah is All-Knowing of all that you do." (Qs. An-Nisa: 135)¹⁰⁸

And also explained in the Qur'an letter An-Nisa 'verse 58, namely;

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ ۚ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ ۗ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا

"Indeed, Allah commands you to convey the message to those who are entitled to receive it, and (orders you) when you set a law between people so that you judge with justice. Verily, Allah has taught you the best. Verily, Allah is All-Hearing, All-Seeing." (Surah An-Nisa: 58)¹⁰⁹

In the hadith also the Prophet sallallaahu 'alaihi wa sallam called on Muslims to be fair. He said:

إِذَا حَكَمْتُمْ فَاعْدِلُوا، وَإِذَا قَتَلْتُمْ فَأَحْسِنُوا، فَإِنَّ اللَّهَ مُحْسِنٌ يُحِبُّ الْمُحْسِنِينَ

"When you decide the law, do it fairly. And when you kill, do it with ihsan, for Allah is almighty and loves those who do ihsan." (HR Ath-Thabrani)

It is also explained in the state, in Islam with reference to the Qur'an and hadith it is stated even though it is explicitly stated that the most important basic

¹⁰⁸ Memorized Quran and its translation, first edition, 2015, Jakarta: almahira publisher, 92

¹⁰⁹ Memorizing Quran and its translation, mold I, 87

principles of society and state are justice, deliberation, 'amal ma'ruf Nahi Munkar, peace, equality. and security.

1. Justice

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ وَلَا يَجْرِمَنَّكُمْ شَنَاَنُ قَوْمٍ عَلَىٰ أَلَّا تَعْدِلُوا ۗ اعْدِلُوا هُوَ أَقْرَبُ
لِلتَّقْوَىٰ ۗ وَاتَّقُوا اللَّهَ ۗ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ

"O you who believe, be those who always uphold (the truth) for the sake of Allah, as witnesses with justice. And don't let your hatred of a people encourage you to act unjustly. Be fair, because fair is closer to piety. And fear Allah, verily Allah is Knowing of what you do." (Surah Al-Maidah: 8)¹¹⁰

2. discussion

وَالَّذِينَ اسْتَجَابُوا لِرَبِّهِمْ وَأَقَامُوا الصَّلَاةَ وَأَمْرُهُمْ شُورَىٰ بَيْنَهُمْ وَمِمَّا رَزَقْنَاهُمْ يُنفِقُونَ

"And (for) those who accept (obey) the call of their Lord and establish prayer, while their affairs are (decided) by deliberation between them; and they spend part of the sustenance We have given them." (Qs. Ash-Sura': 38)¹¹¹

3. Nahi Munkar's ma'ruf charity

كُنْتُمْ خَيْرَ أُمَّةٍ أُخْرِجَتْ لِلنَّاسِ تَأْمُرُونَ بِالْمَعْرُوفِ وَتَنْهَوْنَ عَنِ الْمُنْكَرِ وَتُؤْمِنُونَ بِاللَّهِ ۗ وَلَوْ آمَنَ أَهْلُ الْكِتَابِ
لَكَانَ خَيْرًا لَهُمْ ۗ مِنْهُمْ الْمُؤْمِنُونَ وَأَكْثَرُهُمُ الْفَاسِقُونَ

"You (Muslims) are the best people born for humans, (because you) command (do) what is right, and forbid what is evil, and believe in Allah. If the People of the Book had believed, it would have been better for them, some of them who believe, but most of them are ungodly." (Qs. Ali Imron: 110)¹¹²

4. Peace

إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ فَأَصْلِحُوا بَيْنَ أَخَوَيْكُمْ ۗ وَاتَّقُوا اللَّهَ لَعَلَّكُمْ تُرْحَمُونَ

¹¹⁰ Memorized Quran and its translation, print I, 108

¹¹¹ Memorized Quran and its translation, print I, 487

¹¹² Memorized Quran and its translation, print I, 64

"The believers are actually brothers. Therefore reconcile (improve relations) between your two brothers and fear Allah, so that you may receive mercy." (Surah Al-Hujurat: 10)¹¹³

5. Equality

مَنْ عَمِلَ صَالِحًا مِّنْ ذَكَرٍ أَوْ أُنْثَىٰ وَهُوَ مُؤْمِنٌ فَلَنُحْيِيَنَّهٗ حَيَاةً طَيِّبَةً وَلَنَجْزِيَنَّهُمْ أَجْرَهُمْ بِأَحْسَنِ مَا كَانُوا يَعْمَلُونَ

"Whoever does righteous deeds, both men and women, while believing, We will indeed give him a good life and indeed We will reward them with a better reward than what they did." (Qs. An-Nahl: 97)¹¹⁴

مَنْ عَمِلَ سَيِّئَةً فَلَا يُجْزَىٰ إِلَّا مِثْلَهَا وَمَنْ عَمِلَ صَالِحًا مِّنْ ذَكَرٍ أَوْ أُنْثَىٰ وَهُوَ مُؤْمِنٌ فَأُولَٰئِكَ يَدْخُلُونَ الْجَنَّةَ

يُرْزَقُونَ فِيهَا بِغَيْرِ حِسَابٍ

"Whoever does an evil deed, he will not be recompensed except in proportion to the evil. And whoever does righteous deeds, both male and female, while he is in a state of faith, they will enter Paradise, they will be provided with sustenance in it without reckoning." (qs. Al-Mumin: 40)¹¹⁵

6. Security

وَإِذْ قَالَ إِبْرَاهِيمُ رَبِّ اجْعَلْ هَذَا بَلَدًا آمِنًا وَارْزُقْ أَهْلَهُ مِنَ الثَّمَرَاتِ مَنْ آمَنَ مِنْهُمْ بِاللَّهِ وَالْيَوْمِ الْآخِرِ قَالَ وَمَنْ

كَفَرَ فَأَمَتَّعَهُ قَلِيلًا ثُمَّ أَضْطَرُّهُ إِلَىٰ عَذَابِ النَّارِ وَبِئْسَ الْمَصِيرُ

"And (remember), when Ibrahim prayed: "My Lord, make this land a safe and peaceful land, and provide sustenance from fruits to its inhabitants who believe in Allah and the Last Day. Allah says: "And to those who Even the disbeliever I give temporary pleasure, then I force him to undergo the torment of hell and that is the worst place to return." (Surat al-Baqarah: 126)¹¹⁶

From the explanation above, it is clear that Ahlul Halli Wal 'Aqdi does not explain his right to immunity as is the case with members of the DPR. However, if

¹¹³ Memorized Quran and its translation, print I, 516

¹¹⁴ Memorized Quran and its translation, print I, 278

¹¹⁵ Memorized Quran and its translation, print I, 471

¹¹⁶ Memorized Quran and its translation, print I, 19

viewed carefully, Islamic countries have the main source of law, namely the Al-Quran and Hadith which indirectly discuss rights and justice, express opinions, speak and justice. This is the same as the rights of members of the DPR. Freedom of expression is also a right of all people when in a deliberation forum. In addition, when the Prophet died, the companions even gathered for deliberation regarding future state issues. This deliberation was carried out by means of deliberation by the Ansar and Muhajirin. There was no pressure or even coercion in expressing opinions at that time which proved that representatives of the ummah were free to express their opinions.

Ahlul Halli Wal 'Aqdi must consult in deciding a case. If they agree on something, then they must do it according to the agreement. This is called a collective agreement/result of deliberation. But if there are differences of opinion and disagreements, then they must return to the Qur'an and hadith, their main source of law, to determine something that explains what must be done. What is in accordance with the problem can be seen that it is in accordance with the problem at hand. If it is felt that consensus has been reached, then the situation will be mutually agreed upon. Meanwhile, if it is not appropriate, it must be abandoned. Conducting deliberations in a normative manner is obligatory in the Qur'an and what the Prophet Muhammad and Khulafa ar-Rasyidin have exemplified.

Likewise, *Ahlul Halli Wal 'Aqdi*, if they violate the provisions of the Shari'a and guidelines used at that time, will be replaced by a new member. Just like a Member of Parliament. If indeed they do something outside the limits of the right to immunity, then that right may no longer apply. However, when that person has

served as Ahlul Halli Wal 'Aqdi, there will certainly be special rights to protect its members.

CHAPTER IV

CLOSING

A. CONCLUSION

From the discussion that has been described above, it can be concluded that:

1. The right of immunity for members of the DPR is something that is really needed by members of the DPR. The immunity rights of DPR members are guaranteed by the 1945 Constitution as well as the MD3 Law. This is not said to be against the principle of Equality Before the Law if the DPR member does not violate the code of ethics and regulations. Because the limitation of the immunity rights of members of the DPR itself when viewed from the perspective of the principle of Equality before the law is as long as the members of the DPR do not violate the code of ethics and rules of conduct for members of the DPR. Members of the DPR will still be subject to sanctions and penalties if they violate the code of ethics and regulations, and if the DPR members themselves commit special crimes.
2. The House of Representatives itself if in Islam is called *ahlul halli wal 'aqdi*, and its immunity rights are not clearly regulated, but are regulated in the Qur'an indirectly. In the Qur'an, it is explained that we are free to think, express opinions, speak or even act in deciding a case, all of which are also characteristics of the right of immunity. Because basically Islamic countries use the Koran and hadith as the main source of law, the same as Indonesia which uses the law as a legal basis.

B. SUGGESTION

Based on the studies that have been carried out, as the end of this research, the researchers provide suggestions:

1. Ideally, this regulation regarding the immunity rights of DPR members can be studied further through various glasses or other perspectives. Because the immunity rights of members of the DPR can be seen with the naked eye, the meaning produced is very broad. In this study, researchers suggest that the definition and limitations of the right to immunity are further clarified.
2. It is better for the requirements section of the nomination of DPR members to apply the conditions as *Ahlul Halli Wal 'Aqd*. The requirements as *Ahlul Halli Wal 'Aqd* are very positive for representatives of the people such as being honest, fair, and having extensive knowledge that will lead the country to be even better.

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