MD3 laws in Indonesia : sword of Damocles over the Jokowi presidency?

Chen, Jonathan; Marzuki, Keoni Indrabayu

2014

https://hdl.handle.net/10356/94098

Nanyang Technological University

MD3 Laws in Indonesia:
Sword of Damocles over the Jokowi Presidency?

By Jonathan Chen and Keoni Indrabayu Marzuki

Synopsis

The amended Law on Legislative Bodies (or MD3 Laws) has received scant attention although it is a scourge for the new Joko Widodo administration.

Commentary

THE RECENTLY amended 2009 Law on the People's Consultative Assembly (MPR), House of Representatives (DPR), Regional Representatives Council (DPD) and the Regional House of Representatives (DPRD) – collectively known as MD3 Laws – began its debut by pouring cold water on President Joko Widodo's Indonesian Democratic Party of Struggle (PDIP).

Under the revised MD3 Laws, PDIP was prevented from assuming Speakership of the DPR – once considered the preserve of the party with the largest number of DPR seats, which the PDIP currently has. Instead it was put to a democratic vote in which Setya Novanto from Golkar emerged victorious. The position of deputy parliamentary speakers subsequently also went to the various party representatives of the Red and White Coalition (*Koalisi Merah Putih*, KMP).

From "rubber stamp" legislature to "superbody"

The Laws also had a hand in the removal of direct local elections (known as *Pilkada*). The hardening of political positions between the majority KMP and the Pro-Jokowi coalition resulted in the scrapping of the 9-year-long *Pilkada* system in favour of indirect elections of governors, mayors and regents via the DPRD which will again likely be dominated by the KMP. The revised MD3 Laws were seen initially as a cover to boost the powers of the legislature amid the political spat between the KMP and Jokowi coalitions.

Under Suharto the DPR merely acted as a "rubber stamp". It neither had the initiative nor impetus to propose or make significant changes to government bills. Since the fall of Suharto's authoritarian New Order, however, the legislature underwent a momentous change. During the reform era greater democratisation saw the DPR extending its influence into the major functions and rights of legislatures – lesser in terms of *representation and legislation* but very much more in *oversight*.

Amongst other things, the DPR now plays a consequential role in executive appointments such as army chiefs and the national police, cite or veto state officials for hearings and even initiate investigative committees directed at the cross-examination of executive wrongdoings. A worrying trend is that the oversight function of the DPR may have gone too far, whereas its *representation* and *legislation* aspects had underperformed.

A case in point is the 2001 impeachment of President Abdurrahman Wahid. Many believed that in the first half of 2001, the energies of the parliament were directed exclusively at the removal of President Wahid. As a result, the *representation* and *legislation* functions of the then DPR were compromised.

Presidents Megawati and Yudhoyono subsequently also adopted a "rainbow cabinet" approach to appease the various DPR stakeholders but this did not prevent some DPR members from exercising their oversight function as they saw fit. Slowly it began to dawn that any president who did not maintain an amicable relationship with the DPR would become a liability not only for his presidency but also for the deepening of reforms.

DPR overstretching its powers?

Many see the MD3 Laws as dealing a heavy blow to the Jokowi presidency even before he officially assumes office. More significant changes are on the way including implicit efforts to leverage parliament in favour of the KMP.

Article 214 of the MD3 Laws states that the prerequisite quorum for MPs to exercise their rights to question the government (*Hak Menyatakan Pendapat*) will be downgraded from the previous three-quarters of the total MPs (around 420 individuals) in the parliament to two-thirds (roughly 373 individuals). Jokowi's coalition currently occupies 37 percent of parliamentary seats while the KMP enjoys close to 63 percent (or two-thirds majority).

In addition, Article 84 of the MD3 Law allows for the election of the various Heads of Commission (*Ketua Komisi*) via a circuitous "packet system" after the DPR and MPR – that is the candidates of Commission Chief and Deputy Chiefs must secure the support of five party factions before they can be selected. Given the proportion of the parties in parliament, the KMP is likely to benefit from such an arrangement. The Heads of Commission play an important role in formulating bills for submission to the DPR.

While it is generally agreed that empowering the legislature is an indispensable step towards greater democratisation at the national level, unsupervised increment of powers for the legislature risks a tipping of the power balance that may ironically pose roadblocks to genuine reforms. An overemphasis of the *oversight* function due to internal politicking will inevitably affect the quality of legislation. According to many experts, there had been a relatively low quantity and quality of laws passed by the DPR. During Yudhoyono's second administration (2009-2014) alone only 126 out of 247 legislative laws were passed.

Immunity from the law?

The track-record in the representativeness of the DPR had been disappointing as well. Indonesians' perceptions of the legislators' primary interests had not been especially positive either. In a survey conducted during the early years of *reformasi* in March 2002, only 4.6 percent of participants felt that members of the DPR had the interests of the Indonesian people in mind.

Notwithstanding, the MD3 Laws is slated to grant DPR members greater degree of immunity from the clutches of law enforcement. According to Article 245, MPs under suspicion of severe criminal offence, including corruption, cannot be apprehended or summoned for questioning without written approval from the House's Honorary Tribunal Court even though a suspected MP is caught red-handed by the law enforcement agency.

The written approval usually takes 30 days to produce thus the relatively long duration required for the letter of approval invariably opens up the possibilities for DPR members to evade the tribunal process.

While Indonesia had abandoned the authoritarianism of Suharto, its alternative has often exhibited elements of a parliamentary government system that suffers from vacillation. The recent reversion to indirect local elections gives political parties an overweening edge in the right to the selection of their members.

Even more disconcerting is the subtle encroachment of legislative power into the executive that may not bode well for the Jokowi administration. This is an inevitable conundrum that the Jokowi administration will unfortunately have to face.

Jonathan Chen and Keoni Indrabayu Marzuki are respectively Associate Research Fellow and Research Associate at the S. Rajaratnam School of International Studies (RSIS), Nanyang Technological University.