

# Constituent Recall Arrangements of the People's Representative Board

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**ABSTRACT:** The principle of popular sovereignty is fundamental in establishing a democratic legal state, primarily reflected in general elections that determine representatives in the People's Representative Council (DPR). However, this principle often loses its significance post-election, as citizens have little control over their elected representatives. This is evident in the DPR's Inter-Time Change (PAW) mechanism, which excludes public participation. This study emphasizes two main points: the urgent need to amend Article 22B of the 1945 Constitution and to develop a new DPR reconstruction model as part of legal reform. Employing normative legal research through statutory, comparative, and case approaches, the study analyzes secondary legal materials. The findings reveal that the nomenclature of Article 22B requires revision to facilitate greater public involvement in the DPR dissolution process. Currently, dissolution relies on political party leaders, leading members to prioritize party interests over public aspirations, which can create conflicts. The article's language should be amended to allow for public dismissal of DPR members through a clearly defined legal mechanism. Additionally, the study suggests that the PAW process in Indonesia could draw inspiration from the Philippines and Venezuela, incorporating public input through a withdrawal proposal and voting mechanism for council members, thus reinforcing popular sovereignty in the legislative process.

**KEYWORDS:** Amendment; Constitution; Constitutional Recall; The People's Representative Council (DPR).



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## I. INTRODUCTION

*Vox Populi Vox Dei*, the voice of the people, is God's voice. More broadly, the adage is defined as democratic independence in a country. Democracy can be interpreted as a government formed from the people, by the people, and for the people.<sup>1</sup> In addition, Jean Jacques Rousseau, in his theory, asserted that democracy is a stage or process in a country to achieve the welfare of its citizens. Rousseau's statement also explained that democracy for a country is a lesson towards developing a perfect state of administration. Therefore, democracy can be achieved from above but is final at every stage of the process.<sup>2</sup>

Indonesia is a country that implements a democratic system in running its state administration. The normative evidence that Indonesia implements a democratic system in carrying out state administration is contained in Article 1 Paragraph 2 of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), which states that "sovereignty is in the hands of the people and is carried out according to the law". According to Jimly Asshiddiqie, there are 3 principles in democracy, namely freedom or equality, open government, and government in government.<sup>3</sup> One of the principles of democracy, namely the sovereignty of the people in government, is implemented by choosing their representatives in government through general elections.<sup>4</sup> The concept of the people is also spillover from the role of the people in supervising and supervising them in carrying out their mandates and responsibilities.

People's representatives, who are members of the People's Representative Council (DPR), have responsibilities as community entities in the

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<sup>1</sup> Ellya Rosana, "Negara Demokrasi dan Hak Asasi Manusia" (2016) 12:1 Jurnal Teropong Aspirasi Politik Islam 38–53.

<sup>2</sup> HM Thalhan, "Teori Demokrasi dalam Wacananaketa Negara" (2009) 16:3 Jurnal Hukum Ius Quia Iustum 413–422.

<sup>3</sup> Jimly Asshiddiqie, *Hukum Tata Negara dan Pilar-Pilar Demokrasi* (Jakarta: Sinar Grafika, 2011).

<sup>4</sup> Agustamsyah, "Konsepsi dan Implementasi Demokrasi Pancasila dalam Sistem Perpolitikan di Indoensia" (2011) 7:1 Jurnal Tapis : Jurnal Teropong Aspirasi Politik Islam 79–91.

government.<sup>5</sup> Two sides that must be chosen by members of the council when carrying out their mandate are political interests or public interests.<sup>6</sup> Currently, few members of the House of Representatives are drifting in political interests and do not carry out the people's mandate as they should.<sup>7</sup> The House of Representatives' tendency to prioritize party interests is evident in several decisions regarding legislative approvals. Abdul Fickar Hadjar, a Criminal Law expert from Trisakti University, states that the House primarily focuses on factional or political party interests, with little regard for public matters or its constituents. This is reflected in the legislative work of the House when passing various laws that do not significantly align with the people's interests.<sup>8</sup> The people feel a sense of pain or regret in response to voting for their representatives after the election. In reaction to the protests, council members reduced fuel subsidies in the community.<sup>9</sup>

Several blurry portraits of the role of DPR members in carrying out their mandate continue to add to the bad record of the people's representatives. In this case, the predominant interests of the political elite are the people's representational seats in parliament, even more than the people's interests.<sup>10</sup> As the highest ownership holder, the people should be

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<sup>5</sup> Ibnu Elmi Achmad Slamet Pelu, "The Comparison Of Recall Right Or An Inter-Time Impeachment Mechanism Between American And Indonesian Law Systems" (2022) 9:1 Jurnal Pembaharuan Hukum 92–102.

<sup>6</sup> Jayus Jayus, Muhammad Bahrul Ulum & Moch Marsa Taufiqurrohman, "Examining Recall of the House Member: How Does It Impact on Eradicating Corruption in Indonesia?" (2020) 7:1 Lentera Hukum 101–116.

<sup>7</sup> Solechan Solechan, "The Role of Oversight of The House of Representatives In Facing Covid-19 Pandemic" (2020) 3:4 Administrative Law and Governance Journal 677–691.

<sup>8</sup> Irvan Amin, "Menyoal DPR yang Hanya Kompak Perjuangkan Kepentingan Partai", 2023, Tirto.Id.

<sup>9</sup> Arianti Widiyanti et al, "The Effect of Increasing Fuel Prices on the Components of Household Consumption Expenditures in PDRB According to Expenditure Case Study of West Kalimantan Province 2015-2022: The Effect of Increasing Fuel Prices on the Components of Household Consumption Expenditures in PDRB According to Expenditure Case Study of West Kalimantan Province 2015-2022" (2022) 2:2 Jurnal Forum Analisis Statistik (FORMASI) 104–117.

<sup>10</sup> Mohammad Yusuf Hasmin, "Kualitas Keterwakilan Rakyat Melalui Dewan Perwakilan Rakyat Menurut Sistem Politik di Indonesia" (2017) 20:2 Al-Ishlah: Jurnal Ilmiah Hukum 1–11.

able to demand the attention of DPR members in the middle of their term of office if they do not carry out their duties by the will of the people. However, this has evolved into an inconsistent democratic system, where in practice, the council members are elected by the people, but, their dismissal did not involve the people.

Currently, Indonesia does not utilize recall or the direct recall of members of the DPR by the people.<sup>11</sup> However, procedurally, the withdrawal of a member of parliament in Indonesia is interpreted as the dismissal of a member of parliament through Inter-Time Termination (PAW).<sup>12</sup> PAW in the dismissal of council members in parliament is based on Article 22B of the 1945 Constitution of the Republic of Indonesia, which states that " Members of the House of Representatives can be dismissed from their positions, the conditions and procedures for which are regulated in law." In addition, the procedure for dismissing the mechanism is further detailed in the Law on the People's Consultative Assembly, the People's Representative Council, the Regional Representatives Council, and the Regional People's Representative Council (Law No. 17/2014 on the People's Consultative Assembly, the House of Representatives, the House of Regional Representatives, and the Regional House of Representatives. UU MD3) and Law Number 2 of 2011 concerning Political Parties (Political Parties Act). A person can be dismissed as a member of the DPR based on Article 239 Paragraph 1 of the MD3 Law due to death; resign as a member at his/her own request in writing; and proposed by the political party concerned to be dismissed. The provisions proposed by the political party concerned for dismissal are further regulated in Article 239 Paragraph 2 must contain provisions if the member of the DPR is unable to carry out his duties on an ongoing basis or is permanently absent; no longer fulfills the requirements for candidates for DPRD members; is declared to have violated the oath/promise, the DPRD's code of ethics, and/or did not carry out his obligations as a DPRD Member; violates the prohibition of

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<sup>11</sup> Jayus, Ulum & Taufiqurrohman, "Examining Recall of the House Member", *supra* note 6.

<sup>12</sup> Shevierra Danmadiyah, Xavier Nugraha & Sayyidatul Insiyah, "A Party's Recall Right in the Concept of Democratic Country" (2019) 19:2 Syariah: Jurnal Hukum dan Pemikiran 151–158.

concurrent positions; found guilty based on a court decision that has permanent legal force for violating a criminal act with a maximum penalty of five years in prison.

Based on the existing juridical framework, recalling members of parliament is under the control of political parties.<sup>13</sup> The dominance of the role of parties in recalling DPR members in parliament seems to have reduced the role of the people who only functioned as voters in elections and gave full authority to political parties. In this case, when a people's representative is elected, the link between the people's representatives and the people becomes thinner and makes the political elite indifferent in considering the aspirations and interests of the public. In supervising members of the DPR, the people do not have much choice in expressing their disapproval of the attitude of their representatives. Members of the DPR are not under the supervision and control of the political party that carries them. It is not surprising that DPR members listen more to the wishes of their political parties than to people's complaints. If a political party considers that its members in parliament are not in line with the party's wishes, the political party can withdraw these members and replace them with more loyal party cadres. The mechanism for the withdrawal of DPR members is regulated in Article 87 Paragraph (2) letter e of the MD3 Law. This regulation gives much power to political parties. In addition, it also limits the rights of citizens as the represented party to provide an assessment of the members of the DPR who have been elected during the election.

People's aspirations are often not in line with the party's will, even the opposite.<sup>14</sup> However, one of the goals of the formation of political parties is to fight for the aspirations of their voters during elections.<sup>15</sup> However many

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<sup>13</sup> Hafid Hasyim et al, "Side Effect of Inter-Time Replacement: Members of the House of Representatives by Political Parties in a Democratic System" (2023) 4:1 *Jurnal Studi Ilmu Pemerintahan* 27–38.

<sup>14</sup> Benito Asdhie & Eza Ista, "Kewenangan Mahkamah Konstitusi Dalam Perlindungan Hak Konstitusional Warga Negara Melalui Konstitusional Complaint" (2019) 4:2 *DE LEGA LATA: Jurnal Ilmu Hukum* 160–174; Christopher Ryan Baquero Maboloc, "The Predatory State and Radical Politics: The Case of the Philippines" (2020) 7:2 *JAS (Journal of ASEAN Studies)* 161–175.

<sup>15</sup> Fathan Ali Mubiina, "Kedudukan Fraksi di Dewan Perwakilan Rakyat Republik Indonesia Pasca Reformasi" (2020) 17:2 *Jurnal Konstitusi* 437–460.

political parties, especially their members in parliament, do not heed the interests of the people properly and maximally. In line with the statement of Political Observer Adi Prayitno who said that the performance of the DPR RI for the 2014-2019 period at the end of his term of office was unsatisfactory.<sup>16</sup> In addition, this statement is also supported by survey data conducted by Litbang Kompas, which was conducted on 529 respondents.<sup>17</sup> The survey results show that 66.2 percent of respondents are dissatisfied with the performance of DPR members<sup>18</sup> in comprehensively absorbing public aspirations. A complicated incident as evidence that the DPR has turned a blind eye to the public is the continuation of the discussion of the Criminal Code Bill amid protests by students and the public is the DPR's worst performance in the current period.<sup>19</sup>

This dilapidated condition of democracy needs to be a concern for all parties to try to restore and succeed the ideals of democracy.<sup>20</sup> It needs a proportional role and contribution from the community as the main element in democratic life. To provide an ideal space for the community, it is necessary to have an explicit affirmation through the rule of law in Indonesia. Therefore, it is necessary to amend Article 22 B of the 1945 Constitution of the Republic of Indonesia by implementing a constituent recall as an alternative solution.

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<sup>16</sup> Dani Prabowo, "Tingkat Kepuasan Publik Terhadap DPR di Atas 50 Persen, Apa Sebabnya?", (2020), online: *Kompas.com* <<https://nasional.kompas.com/read/2020/02/23/18395121/tingkat-kepuasan-publik-terhadap-dpr-di-atas-50-persen-apa-sebabnya>>.

<sup>17</sup> Christoforus Ristiano, "Litbang Kompas: 66,2 Persen Responden Merasa Aspirasinya Tak Terwakili DPR 2014-2019", (2019), online: *Kompas.com* <<https://nasional.kompas.com/read/2019/09/23/08370591/litbang-kompas-662-persen-responden-merasa-aspirasinya-tak-terwakili-dpr>> at 2014-2019.

<sup>18</sup> *Ibid.*

<sup>19</sup> Tsarina Maharani, "Pembahasan RUU Cipta Kerja Berlanjut, YLBHI: DPR Tak Dengarkan Aspirasi Rakyat", (2020), online: *Kompas.com* <<https://nasional.kompas.com/read/2020/08/13/12190441/pembahasan-ruu-cipta-kerja-berlanjut-ylbhi-dpr-tak-dengarkan-aspirasi-rakyat>>.

<sup>20</sup> Fradhana Putra Disantara et al, "The Enigma of Ethics: Code of Ethics Enforcement on Covid-19 Health Protocol" (2022) 7:1 DE LEGA LATA: Jurnal Ilmu Hukum 1-21; Asliani Harahap, "Memaknai Delik Dan Delik Tata Negara" (2019) 4:2 DE LEGA LATA: Jurnal Ilmu Hukum 189-210.

Constituent recall is an official recall made by the people. The implementation of constituent recall has been carried out by several countries, which can reduce legislative officials in the middle of their term of office and executive officials who are considered not in favor of the people. One of the countries that in its constitution implements a constituent recall, Venezuela, can be found in Articles 72 and 233 of the 1999 Constitution.<sup>21</sup> In addition, the Philippines also applies the same concept with the provisions of Article 10 Philippines Constitution.<sup>22</sup> In implementing the constituent recall in the two countries, the people can reduce the roles of or dismiss their representatives through a petition signed directly by the people. A determinant of a people's representative that can be lowered is the existence of a petition approval threshold.<sup>23</sup> As a state of law and democracy, Indonesia needs to implement a constituent recall to strengthen its own democracy. Thus, if the people feel that members have not heard their right to express their aspirations of the DPR, then the people can more freely exercise their constitutional rights in dismissing their representatives in parliament.

The application of constituent recall to emphasize the nature of Indonesian democracy through amendments to the Constitution is matter to be studied further. So, this study will focus on two problem formulations: First, what is the urgency of the amendment to Article 22B of the 1945 Constitution of the Republic of Indonesia? Second, what are the models and procedures for implementing constituent recall in strengthening democracy in Indonesia?

## II. METHODS

The research method used in this research is normative legal research, which includes research based on legal principles, legal systematic research,

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<sup>21</sup> Pierre-Etienne Vandamme, "Can the Recall Improve Electoral Representation?" (2020) 2:6 *Frontiers in Political Science* 1–13.

<sup>22</sup> Michael Buez, "Fast Facts: The recall process", (2014), online: *Rappler* <<https://www.rappler.com/newsbreak/iq/70044-fast-facts-process-recall/>>.

<sup>23</sup> Michael Bueza, "Fast Facts: The Recall Process.", (2018), online: *Rappler* <<https://www.rappler.com/newsbreak/iq/70044-fast-facts-process-recall/>>.

legal history, and comparative law.<sup>24</sup> This research uses a statutory approach, a concept approach, a case approach, and a comparative approach. The legal materials used include primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials in this study include the 1945 Constitution of the Republic of Indonesia, the MD3 Law, and the Political Party Law. Secondary legal materials include legal journals related to research titles, newspapers, magazines and newspapers. The tertiary legal materials which include Black's Law Dictionary and legal dictionaries.

### III. THE URGENCE OF AMENDMENT ARTICLE 22B OF THE INDONESIA CONSTITUTION

The consequence as a country that adheres to a democratic system is the involvement of the people in making public policies through the absorption of their aspirations.<sup>25</sup> Democracy provides opportunities for the people to participate in the process of policy making and national development.<sup>26</sup> In theory, in order for Indonesia to be able to accommodate the aspirations of its people, the House of Representatives must absorb the desire of the DPR. Absorption of aspirations is an effort made by members of the council in the form of receiving, studying, and assess the desires of the community.<sup>27</sup> The DPR absorbs the people's voices regarding policies to be taken by the government and other aspirations related to the interests of the people and national development.<sup>28</sup> The voice or wishes of the people will be conveyed to the executive as the implementer of the laws and aspirations of the people.

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<sup>24</sup> Soerjono Soekanto & Sri Mahmudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2003).

<sup>25</sup> Alan M Jacobs, "Policy Making for the Long Term in Advanced Democracies" (2016) 19:1 Annual Review of Political Science 433–454.

<sup>26</sup> Farahdiba Rahma Bachtiar, "Pemilu Indonesia: Kiblat Negara Demokrasi dari Berbagai Representasi" (2014) 2:1 Jurnal Politik Profetik 1–17.

<sup>27</sup> Michael GH Goni, Herman Nayoan & Daud Liando, "Penyerapan Aspirasi Masyarakat Oleh Anggota Dprd Di Kabupaten Minahasa Selatan Periode 2014–2019" (2019) 3:3 Jurnal Eksekutif 1–8.

<sup>28</sup> Alexander J Sinukaban, "The Existence Of Regional Representative Boards In The Indonesian Representative Institution System" (2020) 2:1 Journal of Law Science 15–23.



Submission of aspirations and reports to the DPR is one of the mechanisms of constitutional democracy. This mechanism is a manifestation of freedom of expression guaranteed by the constitution.<sup>29</sup> This mechanism is also an effort to guarantee the people's voice through representatives of parliamentarians in parliament. However, in practice, many people's expectations cannot be absorbed and followed up optimally by DPR members. This lack of absorption of the people's voice has implications for the decline in the function of the DPR in absorbing the aspirations of the people. One indication that community aspirations have not been properly absorbed can be seen from data on complaints and community aspirations in the last 5 years with the following details:

<b>Report Form and Aspiration</b>	<b>Accepted</b>	<b>Which is Forwarded to the Leaders, Boards, Commissions of the DPR RI</b>
1 SMS	108	32
2 Website	578	578
3 Written Complaint	3.228	3.228
Total	662	3.838

**Table 1.** Number of Public Aspirations/Complaints for the 2020-2021 Session Year.<sup>30</sup>

<b>Report Form and Aspiration</b>	<b>Accepted</b>	<b>Which is Forwarded to the Leaders, Boards, Commissions of the</b>
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<sup>29</sup> Fauzan Khairazi, "Implementasi Demokrasi dan Hak Asasi Manusia di Indonesia" (2015) 8:1 Inovatif: Jurnal Ilmu Hukum 72-94.

<sup>30</sup> Dewan Perwakilan Rakyat, "Laporan Aspirasi dan Pengaduan Masyarakat", (2021), online: <<https://pengaduan.dpr.go.id/laporan>>.

		DPR RI
1	SMS	12
2	Website	614
3	Written Complaint	2.157
Total		2.783

**Table 2.** Number of Public Aspirations/Complaints for the 2019-2020 Session Year.<sup>31</sup>

Report Form and Aspiration	Accepted	Which is Forwarded to the Leaders, Boards, Commissions of the DPR RI
1 SMS	645	257
2 Website	283	221
3 Written Complaint	1.818	1.637
Total	2.746	2.115

**Table 3.** Number of Public Aspirations/Complaints for the 2018-2019 Session Year.<sup>32</sup>

Report Form and Aspiration	Accepted	Which is Forwarded to the Leaders, Boards, Commissions of the DPR RI
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<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

1	SMS	2.186	1.187
2	Website	585	417
3	Written Complaint	2.409	2.090
	Total	5.160	3.694

**Table 4.** Number of Public Aspirations/Complaints for the 2017-2018 Session Year.<sup>33</sup>

	Report Form and Aspiration	Accepted	Which is Forwarded to the Leaders, Boards, Commissions of the DPR RI
1	SMS	5.346	2.618
2	Website	603	462
3	Written Complaint	6.060	3.240
	Total	12.009	6.320

**Table 5.** Number of Public Aspirations/Complaints for the 2016-2017 Session Year.<sup>34</sup>

From the data above, it can be understood that several reports and people's expectation are not forwarded to the Leaders, Boards, or Commissions of the DPR RI. In fact, for the last two years, the problems that have been reported to the DPR are related to legal issues, human rights, security, forestry, environment, energy, mineral resources, education, and technology research, land and agrarian reform, and the financial economy. These problems are closely related to people's lives. This problem can also be a fundamental problem of community life. Thus, if these problems are

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

ignored or even not followed up, it is feared that they will disrupt the stability of people's lives.

The data also does not mention the reasons for the reports and aspirations of the people not being forwarded to the Leaders, Boards, or Commissions of the DPR RI. In fact, this reason is fundamental for the public to know whether there is a form of report or that does not meet the administrative requirements to be called a report or, thus, if the public knows the reason for not forwarding the report or, the public can evaluate it in making the next report.

The act of ignoring of members of the DPR can also be seen in the case of the Job Creation Law. In the process of drafting the law, the DPR did not heed some people's opinions, including academics, on controversial articles that have the potential to harm many groups of people.<sup>35</sup> The case of the Job Creation Law is just one small example of the actions of members of the DPR who do not listening to the voice of the people. There are still several cases that show that members of Parliament do not heed the voice of the people in making policies that affect the lives of many people.

Community reports and aspirations should have a high position to be considered by councillors. This is because people's sovereignty is one of the basic principles of democracy.<sup>36</sup> This includes people's sovereignty over entities called people's representatives or members of the DPR.<sup>37</sup> The people as the holders of sovereignty should be able to summon or recall members of the House of Representatives who are not in accordance with the will of the people or do not heed the aspirations of the people. This is

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<sup>35</sup> Ardito Ramadhan, "Akademisi: Untuk Siapa UU Cipta Kerja jika Rakyat Tidak Didengarkan?", (2020), online: *Kompas.com*.

<sup>36</sup> Benny Bambang Irawan, "Perkembangan Demokrasi di Indonesia" (2006) 5:3 Perspektif 54–64; Vicko Taniady, "Optimalisasi Pembatasan Dana Kampanye Pemilihan Umum: Studi Perbandingan Indonesia dan Selandia Baru" (2021) 3:2 JISoP: Jurnal Inovasi Sosial dan Politik 105–117.

<sup>37</sup> Malicia Evendia, "Implikasi Hak Recall Partai Politik Terhadap Sistem Kedaulatan Rakyat" (2015) 6:3 FIAT JUSTISIA: Jurnal Ilmu Hukum 1–9.

in accordance with the concept of popular sovereignty embodied in institutions.<sup>38</sup>

The lack of concern for members of the DPR towards society's fundamental problems is part of a bad democratic life. This happens because of the lack of public political participation when members of the DPR have been running to carry out their mandate. The public does not have formal legality to have an opinion on the performance of their representatives in parliament. Public disapproval of the attitudes of members of the DPR has primarily been in the form of street demonstrations which have been deemed no longer effective way to voice their wishes. The demonstration itself was born because of the weak role of parliament in fighting for the interests of the people.<sup>39</sup> This situation is very concerning, especially in Indonesia, which upholds the people's sovereignty. At the same time, opinion is one of the rights considered in democracy.

So far, the regulations that have become the juridical basis for the dismissal of members of the DPR are regulated in Article 22B of the 1945 Constitution of the Republic of Indonesia, which reads, "Members of the People's Representative Council may be dismissed from office, the conditions and procedures for which are regulated by law." The article attributes the rules regarding the conditions and procedures for dismissing members of the DPR to regulations at the level of the law. The law that regulates the terms and mechanism for dismissing members of the DPR is Article 239 of the MD3 Law. Article 239 states the reasons that become the basis for members of the DPR to resign from their positions. These reasons include death, resignation, or termination.

Suppose a member of the DPR is dismissed. In that case, it is further regulated in the next paragraph, namely Article 239 Paragraph (2) that a member of the DPR is dismissed if a) is unable to carry out his duties or is permanently absent for 3 consecutive months without explanation, b) violates the oath/promise of office and the code of conduct DPR ethics, c)

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<sup>38</sup> Charles Simabura, "Akuntabilitas Rekrutmen Calon Anggota DPRD sebagai Wujud Kedaulatan Rakyat" (2009) 2:1 Jurnal Konstitusi 7–23.

<sup>39</sup> Neil Harrison & Richard Waller, "Challenging discourses of aspiration: The role of expectations and attainment in access to higher education" (2018) 44:5 British Educational Research Journal 914–938.

convicted by the court for committing a crime punishable by imprisonment of 5 years or more, d) proposed by a political party according to the applicable law, e) not fulfilling as a candidate for DPR member according to election rules, f) violates the provisions of the prohibition, g) is dismissed as a member of a political party, h) and becomes a member of a political party that is different from the political party when nominating as a member of the DPR. For the dismissal of members of political parties, as referred to in Paragraph (2) letters c, d, g, and h, a proposal mechanism by the leadership of the political party to the leadership of the DPR is carried out with a copy to the President as regulated in Article 240 Paragraph (1). Apart from the 4 letter provisions, it is the authority of the Honorary Court of the Council to investigate and verify. From this provision, it can be understood that there are two parties authorized to terminate a member of the DPR from his position, namely, the Honorary Court of the Council and a political party.

The direct involvement of the people in dismissing members of the DPR is contrary to the concept of popular sovereignty. The people, as those who choose their representatives to fight for all their aspirations, only participate in elections at the time of the election.<sup>40</sup> However, its existence in the state administration does not have a reliable power to withdraw representatives who are considered unqualified or ignore the interests of the public. With such regulatory conditions, it is necessary to amend the 1945 Constitution of the Republic of Indonesia, particularly the article that regulates the dismissal of members of the DPR, namely Article 22B. There needs to be a change in the article to provide clear space and authority for the people to improve the formation of DPR members in parliament. Therefore, an addition is necessary for Article 22B to become "Members of the House of Representatives may be dismissed from office by the people, and the legal mechanism is further regulated in the law." This amendment article gives firm authority to the people to dismiss the representatives who are incompetent and ignore the will of the people's conscience. Such an article will provide an opportunity for the people to reform their legislative representatives. This article will later become the legal basis for realizing

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<sup>40</sup> Taniady, *supra* note 36.

the constituent recall mechanism. The editorial of this article provides an opportunity through the sentence "further regulated in the law" to give the authority to dismiss members of the DPR to parties other than the people. Those who have this authority can have interests that harm the ideals of democracy and the general welfare.

#### IV. INITIATING THE IMPLEMENTATION OF CONSTITUENT RECALL IN INDONESIA

The consequence as a country that adheres to a democratic system is the involvement of the people in decision-making. Looking at the current status quo in Indonesia, the recall procedure can be said to be very simple. If you look at the provisions of Article 240 of the MD3 Law, the dismissal of the DPR is carried out with the following procedure; first, the dismissal of a member of the DPR by a political party is proposed to the leadership of the DPR accompanied by a copy to the President; second, after receiving the proposal for the dismissal of members of the DPR, the leadership of the DPR is obliged to submit the proposal for the dismissal of the DPR to the President for approval; and third, after the President receives the proposal to dismiss members of the DPR, the proposal for the dismissal of members of the DPR must be initiated after no longer than 14 days.<sup>41</sup>

Looking at the provisions of Article 240 of the MD3 Law, it can be identified that the primary right to make a recall proposal against members of the DPR is purely in the hands of the political parties. This proves that the nature of the people's sovereignty is becoming increasingly depleted and inconsistent, which is constructed through general elections. The provision for interim dismissal made at the suggestion of political parties and contained in Article 239 Paragraph 1 letter C of the MD3 Law has deviated from the mandate of the fourth principle of Pancasila, which contains 3 fundamental elements. The three elements are people's sovereignty, deliberation, and the implementation of representative

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<sup>41</sup> Bagas Christofel Aruan & Umbu Rauta, "Kewenangan Inheren Mahkamah Konstitusi terhadap Perkara Pengaduan Konstitusional dengan Objek Putusan Pengadilan" (2022) 2:1 Jurnal Kajian Pembaruan Hukum 1–32.

democracy with wisdom and discretion.<sup>42</sup> As the holder of the Constitutional Award, every Indonesian has political rights which should be maximally exercised from the beginning of someone carrying out the mandate until the end of his cycle as a representative of the people.<sup>43</sup> This also includes violations, irregularities, and failure to fulfill people's expectations of their representatives, which allows the people's representatives to be removed before the proper time. If understood comprehensively, the participation of the people in every political phase is nothing but building the nation and the state as mandated by Article 28C paragraph (2) of the 1945 Constitution of the Republic of Indonesia.<sup>44</sup>

*“Errare humanum est, trupe in errore perseverare.”* “It is human to make mistakes, but it is not good to keep them.” Professor Jimly Asshidiqie stated that the recall system currently used in Indonesia needs to be reviewed and replaced with a constituent recall system as a solution.<sup>45</sup> This is intended so that DPR members who are policymakers do not become the subjects of internal party upheaval, which tends to be arbitrators as the holder of control over the continuity of DPR Members during their term of office. In addition, seeing the many aspirations of the people who are often ignored by members of the DPR further adds to their belief that the recall system in Indonesia must be replaced immediately. A decision is needed to place the recall rights of the people in full in order to prevent differences in positions due to power imbalances between members of the DPR and the people.<sup>46</sup> According to KH Abdurrahman Wahid, the placement of recall rights on it is intended that a rhythmic pattern of political interaction occurs and there is no exploitation due to political relations. This is also

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<sup>42</sup> Thalbah, *supra* note 2.

<sup>43</sup> Sekar Dani Ajeng Adinda, Antikowati Antikowati & Rosita Indrayati, “Political Rights of the Indonesian Citizen Possessing Dual Citizenship: A Contextual Analysis” (2020) 1:1 Indonesian Journal of Law and Society 1–22.

<sup>44</sup> Sulistyowati, Wahyu Nugroho & Umar Ma’ruf, “The Problem of Legal Protection for Human Rights Activists” (2023) 6:1 Sociological Jurisprudence Journal 56–62.

<sup>45</sup> Jimly Asshiddiqie, *Penguatan Sistem Pemerintahan dan Peradilan* (Jakarta: Sinar Grafika, 2015).

<sup>46</sup> Ramlan Surbakti & Didik Supriyanto, *Partisipasi Warga Masyarakat Dalam Proses Penyelenggaraan Pemilihan Umum* (Jakarta: Kemitraan bagi Pembaruan Tata Pemerintahan, 2013).



reinforced by Held's opinion, which states how important the elements of freedom and equality are realized through constituent recall.

In the application of constituent recall in Indonesia, it will refer to the four requirements of a democratic government according to Dahl. First, effective public participation, which in this case can be interpreted that all levels of Indonesian society have a practical opportunity in terms of freedom of expression before the policy is implemented. In this case, the constituent recall procedure can be realized due to community participation's direct nature. In short, the participatory line is intended so that the people can easily demand accountability for the performance of DPR members if it is not accommodated through political parties that have their political games. Second, the familiar voice of the community can play an important role. In this case, it means that every component of society has the same opportunity to cast their vote, and the voice of the community must be calculated regardless of ethnicity, religion, race, or any other differences. If the people think that a member of the DPR is not worthy of being given a mandate in the form of a people's vote, then through constituent recall, the people can reduce their representative in the middle of their term of office. Third, people's understanding of relevant alternative policies. Public understanding in relevant alternative policies is as a common thread if the wishes of the community cannot be applied absolutely, but with the existence of alternative policies from the DPR, the community must play an active role in assessing whether this alternative policy has accommodated the expectations of the community or not. The application of constituent recall in Indonesia will encourage the public to be competent in assessing the policies set by members of the DPR. The high level of accountability when implementing constituent recall in Indonesia will encourage DPR members to improve the quality of their work, especially in formulating policies for the community. Fourth, monitoring the work agenda of the DPR is necessary. With the implementation of constituent recall in Indonesia, the supervision of the performance of DPR members will be more expansive because the people are directly involved in it. The monitoring of the work agenda of the DPR by the people is intended to make the policies that will be set for the state more open and

remain under the control of the people. Thus, it will narrow the space for oligarchic politics and return the favor of political parties.

The application of constituent recall in Indonesia is a form of effort to strengthen democracy and human rights. Human rights, in this case, are the political rights of every citizen to withdraw members of the DPR from their positions which are considered not in line with the ideals of the people who have elected them. The constituent recall system will also emphasize and strengthen representative democracy in Indonesia. Because constituent recall has not yet been implemented in Indonesia, a model for applying this system is needed in the future by looking at the implementation of constituent recall systems in various predecessor countries.

Venezuela is a country that implements a constituent recall system in dismissing its representatives from the seat of government.<sup>47</sup> Venezuela's recall provisions are enshrined in Article 233 of the 1999 Constitution. Article 233 of the 1999 Constitution explains why the President cannot hold office permanently due to one of the following events: death, resignation, dismissal from office by decision of the Supreme Court, permanent physical or mental disability authorized by a medical board appointed by the Supreme Court with the approval of the National Assembly, or left his position, declared by the National Assembly.

When an elected President becomes permanently incapacitated prior to his inauguration, new universal suffrage and direct voting elections will be held for 30 consecutive days. Pending the election and inauguration of a new President, the President of the National Assembly will take over the Presidency of the Republic. While waiting for the election and inauguration of a new president, the vice president will take over the presidency of the Republic. The new president will complete the current constitutional term in the cases described above. If the president becomes permanently incapacitated during the last two years of his constitutional term, the vice president shall take over the presidency of the Republic until such term is over.

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<sup>47</sup> Raúl Jiménez, "Forensic Analysis of the Venezuelan Recall Referendum" (2011) 26:4 *Statistical Science* 564–583.

Venezuela's recall procedure is regulated in Article 72 of the 1999 Constitution, namely through several procedures.<sup>48</sup> First, opposition organizers must collect popular consent through the signatures of 1 percent of registered voters from each state within 30 days. Approximately 197,978 signatures that the Venezuelan National Electoral Council (CNE) must be collected. The 1% is purely people's signatures and not community organizations. Second, in terms of participation in people's organizations, community organizations must collect at least 20% of registered voters' signatures to support the implementation of the referendum. More than 19.5 million of Venezuela's 30 million citizens are registered as permanent voters. 20% of the 19.5 million registered voters is the 4 million signatures that must be obtained if the referendum is successful. Third, suppose the referendum is to run smoothly. In that case, it must contain three things that need to be considered, namely at least 25% of registered voters must present themselves in the referendum, in the number of registered voters who attend at least 25% or more must support the recall against a representative, the number of votes in favor of the recall must be greater than those against the recall. Fourth, CNE must validate the voice of the people. In the event of a recall of the people's representatives in Venezuela, CNE will accommodate the people's votes using the people coming to the election center directly to validate their signatures digitally.<sup>49</sup>

In addition to Venezuela, the Philippines has also implemented a constituent recall system in removing people's representatives who are considered not in favor of the public interest. Recall provisions in the Philippines are contained in the Philippines' Constitution of 1987. The constitution describes the recall system in Article 10. Paragraph 3 of the Constitution explains the applicability of the congress to local governments for the realization of a responsive and accountable government system through a decentralized system with withdrawal mechanisms, initiatives, and effective referendum. The recall arrangement in the Philippines

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<sup>48</sup> Alisha C Holland & José Incio, "Imperfect Recall: The Politics of Subnational Office Removals" (2019) 52:5 *Comparative Political Studies* 777–805.

<sup>49</sup> Holly K Sonneland, "Explainer: What Is the Recall Referendum Process in Venezuela?", (2016), online: *AS/COA* <<https://www.as-coa.org/articles/explainer-what-recall-referendum-process-venezuela>>.

implements the mandate of Article 11 Paragraph 1, namely that public office is a public mandate that must be maintained with full responsibility, integrity, loyalty, efficiency, act with patriotism and justice, and live a simple life. The implementation of the recall is accommodated by the Philippine General Elections Commission as its duties and functions are described in the chapter “The Commission on Election” Section 2. The recall process can be carried out in the second year of a public official carrying out the people's mandate; this is because the term of office of local officials is only for three years.

The procedure for recalling public officials in the Philippines begins by collecting signatures from supporters of the recall petition by the people. Second, after reaching enough signatures, the applicants must formally apply for a recall to the Philippine Election Commission called “Comelec”. Third, the Philippine Election Commission will verify the signatures collected and a description of the substance of the application if they feel that the number of signatures is sufficient and the application description is clear. Then, the Philippine Election Commission will set a date for the recall election. Fourth, after the election date is determined, the Philippine Election Commission will hold elections in an area that wants to recall its representatives. Last, the Philippine Election Commission will count the number of votes after the election is held. If there are more votes for the recall of a public official, then that official can be removed.<sup>50</sup>

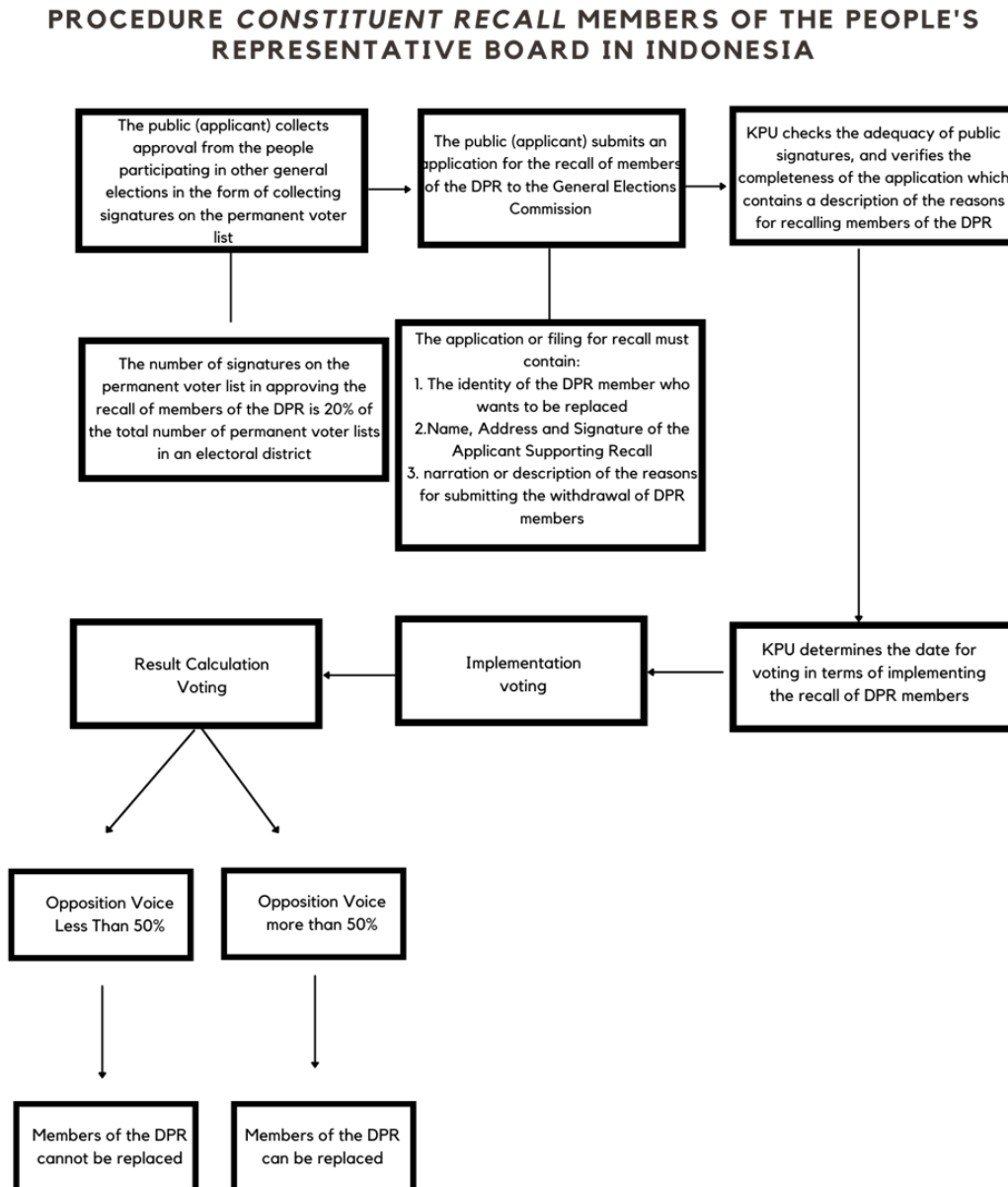
Strengthening public participation in supervising the running of the wheels of government carried out by their representatives is a form of strengthening the true nature of democracy. Implementation models and procedures for constituent recall in Venezuela and the Philippines have facilitated the community in actively participating in the wheels of government from the start of public officials carrying out their mandate. As a democratic country, Indonesia is deemed necessary to adopt the same system as the two countries so that their existence as a country of, by, and for the people can be more substantial. Implementing constituent recall is a solution step in answering the existing problems of democracy. The

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<sup>50</sup> Bueza, *supra* note 23.

application of constituent recall in Indonesia can be carried out with the following model:

**Figure 1.** Ius Constituendum Procedure Constituent Recall Members of the DPR Board in Indonesia. Source: Analysis by Author's.



The scheme explains and describes how the procedure for implementing constituent recall in Indonesia will be. The involvement of the General Election Commissions (KPU) as the successor of constituent recall is expected to accommodate every voice of the people regarding the correction

of the performance of their representatives in the DPR seats. The provision of a minimum of 20% of voter signatures that must support a recall is the main requirement so that the KPU can follow up the recall proposal. This provision reflects on applying the minimum limit for signatures in Venezuela, which amounts to 20%, considering the minimum limit for the Philippines, which is 25%. If the election results show that the majority of voters agree to the recall of a member of the DPR, then it can proceed to the appointment of a DPR official who can be removed. On the other hand, to fill the vacant seats in parliament, they are given to party authorities in finding replacements for the members of the DPR who have been removed. Constituent recall will provide a great opportunity for the community to remove council members who are no longer in line with the wishes of the people. With the implementation of this policy, council members will not prioritize personal or party interests over the interests of the community because the right to recall is given entirely to the people. Thus, the existence of Indonesia as a democratic country will be increasingly visible in the international world.

## VI. CONCLUSION

The people as the holder of the highest power have received a particular position from the state by placing the people's power of attorney in the Constitution. The Pancasila Democracy system adopted by Indonesia is manifested by the direct involvement of the people in the electoral process. The involvement of the people in elections is intended so that the people can choose their representatives in parliament directly in realizing their ideals. One of the main Indonesian elections includes the election of the members of the DPR. The elected DPR members are expected to be the people's mouthpiece in conveying their aspirations towards establishing a constitutional policy. However, the reality on the ground contrasts people's expectations; many members of the DPR break their promises to the people and prioritize the interests of their respective political parties. Against this denial, the people do not have the power to challenge members of the DPR directly. The withdrawal of members of the DPR in the Indonesian constitutional system can only be carried out by political

parties as the leading force, as stated in the MD3 Law. The lack of direct rights of the people in withdrawing members of the DPR has been proven by the editorial of Article 22B of the Constitution as a juridical force. This fact is a denial of the true nature of democracy. In this case, the people should not only be given the authority to vote, but also propose the recall of members of the DPR who are considered to have turned a deaf ear to the people.

The constituent recall is an alternative to the people's recall of people's representatives. By implementing the Constituent recall system, Indonesia will become a true democracy by placing the people's rights in complete monitoring of the performance of their representatives in parliament. However, the implementation of Constituent recall must be strengthened by amending the Constitution, especially Article 22B, and using a comprehensive implementation model. The model for implementing Constituent recall is collecting public signatures with a minimum threshold of obtaining signatures of 20%. Then, application to the KPU to hold an election in the case of the recall of members of the DPR. After the election is held, the final mechanism is vote counting. If the number of opposition votes reaches more than 50%, then a member of the DPR can be removed through the recall mechanism.

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