

JUDICIAL PREVIEW MODEL IN THE BUDGET FUNCTION OF THE LEGISLATIVE BODY

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Abstrak

Penelitian ini mengusulkan model Judicial Preview yang dapat berfungsi untuk mengurangi perilaku koruptif dalam hal fungsi anggaran yang dilakukan lembaga legislatif. Perilaku koruptif sering terjadi dalam fungsi anggaran yang dilakukan oleh anggota legislatif sendiri, hal ini menjadi cerminan rendahnya kualitas lembaga legislatif. Penelitian ini merupakan penelitian normatif, dengan menggunakan menggunakan metode pendekatan perundang-undangan dan pendekatan konseptual. Penelitian ini menggunakan metode deduktif sebagai metode analisisnya, serta menggunakan bahan hukum yang dikumpulkan melalui metode studi kepustakaan. Hasil dari penelitian menawarkan cabang kekuasaan yudikatif untuk dapat melakukan konsep judicial preview tanpa perlu mengurangi independensi yang dimiliki lembaga tersebut, sehingga lembaga yudikatif tidak akan ikut serta dalam political arena secara praktis. Organ yudikatif ini hanya berfungsi untuk melakukan tindakan hukum pada fase pencegahan sehingga permasalahan tidak kembali terjadi.

Kata kunci: judicial preview; legislasi; penyusunan anggaran

Abstract

This research proposes a Judicial Preview model that aims to reduce corrupt behaviour in terms of the budget function performed by the parliament. Corruption behaviour often occurs in the budget function performed by members of the parliament is a reflection of the low quality of the legislature. This research is normative research, using the statute approach and conceptual approach. This research uses the deductive method as the method of analysis, as well as using legal material collected through the literature study method. The results of this research are that the judicial branch of power can conduct the judicial preview model without reducing the independence of the institution so that the judiciary will not practically involved in the political arena. This judicial organ only functions to take legal action in the prevention phase so that problems do not re-occur.

Keywords: budgeting process; judicial preview; legislation

Introduction

Finance is a vital part of every country in carrying out its duties, functions and roles of the state and realizing the country's aspirations. Finance is the key for the state, so there needs to be a special mechanism to regulate the pattern of state finances. Indonesia regulates state finances through the 1945 Constitution of the Republic of Indonesia in Article 23 which specifically provides general regulations in matters of state finances. According to Soeriaatmadja, the provisions in Article 23 of the 1945 Constitution have legal consequences, namely as follows:²

1. The budgeting process must be carried out in a transparent and accountable manner. Transparent and accountable means that all parties can access the process so that they are able to absorb as much as possible the aspirations of the community and close the gap for the abuse of authority.
2. The budget that is prepared has the goal of maximizing the prosperity of the people. This means that budgeting is not only for the interests of the Ministries/Institutions, but must be aimed at Ministries/Institutions programs that are directly related to the needs of the people.

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² Arifin Soeriaatmadja, *Kompedium Bidang Hukum Keuangan Negara* (Jakarta: Badan Pembinaan Hukum Nasional, 2010).

3. Budget arrangement through the prevailing laws and regulations. This then provides a guarantee of legality throughout the budgeting cycle from the planning stage to the accountability stage.

Article 23 paragraph (2) of the 1945 Indonesian Constitution after the amendment stipulates that the State Revenue and Expenditure Budget Bill (RUU APBN) is proposed by the President to be discussed with the House of Representatives (DPR) by taking into account the considerations of the Regional Representative Council (DPD). This article confirms the people's right to determine the APBN, namely by involving the DPR to discuss the RUU APBN and the involvement of the DPD to be able to provide considerations. This APBN is actually a form of people's sovereignty.³

In a parallel differential, the Regional Revenue and Expenditure Budget (APBD) preparation mechanism is similar to the APBN preparation process. This can be seen in Article 20 of Law Number 17 of 2003 on State Finances according to the needs of the regions. Regional autonomy which then gives authority to regions to carry out financial management independently while still receiving supervision from the central government which involves DPRD in preparing the APBD. This can then be seen in Law Number 17 of 2014 concerning the MPR, DPR, DPD, and DPRD (MD-3 Law) in Article 69 which explains the functions of the House of Representatives (DPR), namely one of the budget functions. The same thing is also found in Article 316 and Article 365 which regulates the functions of Provincial and Regency/City DPRD.⁴

APBN and APBD are regulated in Law Number 17 of 2003 on State Finance. This arrangement is based on an analysis of the needs of state and regional administration in collecting revenue.⁵ In fact, many corrupt acts were carried out by members of the legislature in budget formulation both at the discussion level and at the budget amendment.⁶ This corruptive behavior can occur because, as a whole, the budgeting process can be categorized as an action that is full of discretion from the compilers.⁷ In general, in the budgeting process, there are 2 (two) views on what is meant by budget politics: first, it is defined as a policy-making process which includes the determination of income, expenditure and management policies, as well as financial supervision and control. Second, it is defined as a "battle of interests" between interested parties in the budgeting process.⁸ This practice often occurs in the budget formulation process where it is urgent to find an appropriate formulation so that it does not repeat itself in the future.

Based on the introduction given above, this research then aims to create a stronger mechanism so as to reduce corrupt actions in the budget preparation process. This study is

³ Abdul Halim, *Pengelolaan Keuangan Negara-Daerah: Hukum, Kerugian Negara, dan Badan Pemeriksa Keuangan* (Yogyakarta: UPP. STIM YKPN, 2011), 67.

⁴ Indonesia, 'Undang-Undang Nomor 17 Tahun 2014 tentang Majelis Permusyawaratan Rakyat, Dewan Perwakilan Rakyat, Dewan Perwakilan Daerah, Dan Dewan Perwakilan Rakyat Daerah', Pub. L. No.182 Tahun 2014, Pasal 20 (2014).

⁵ W. Riawan Tjandra, *Hukum Keuangan Negara* (Jakarta: Grasindo, 2006), 29.

⁶ KPK, "Laporan Tahunan Komisi Pemberantasan Korupsi Periode 2012, 2013, 2014, dan 2015" (KPK, 2012 2013, 2014, dan 2015), 10-34.

⁷ Mochamad Shulthoni, "Perilaku Oportunistik Legislatif Dalam Penganggaran Daerah," *Jurnal Akuntansi dan Ekonomi Bisnis* 6, no. 1 (April 2017), 31.

⁸ Nian Riawati, "Potensi Korupsi Dalam Kebijakan Publik: Studi Kasus Korupsi Program Penanganan Sosial Ekonomi Masyarakat di Provinsi Jawa Timur," *Jurnal Ilmu Sosial dan Ilmu Politik* 19, no. 2 (November 2015), 154.

different from previous studies, there were 3 (three) previous studies that were similar to this study. The first study entitled "Reduction of the DPR's Budget Function in the Framework of Checks and Balances", was conducted by Yut Audience Yunus & Reza Faraby. This research discusses the concept of a democratic rule of law and checks and balances and the function of the executive and legislative budgets in preparing the state budget. Based on this research, it is known that the checks and balances function is where the government realizes the function of development planning and budgeting, while the DPR realizes the political budget function in accordance with the mandate of the 1945 Constitution of the Republic of Indonesia.

The second study which is similar to this research is entitled "Implementation of the Legislative Function of the House of Representatives after the 2014 Election: Problems and Efforts to Overcome Them", conducted by Ratna Solihah, Siti Witianti. The study concluded that the lack of optimal legislative function carried out by the DPR is indicated by several things, ranging from the recruitment of legislative candidates by political parties that do not pay attention to the level of education, experience and capability as candidates for people's representatives, lack of ability or skill of the legislative members' human resources in understanding the substance. Laws, the DPR's working mechanism and laws and regulations related to their duties as DPR members have not been understood and implemented, as well as the inadequate use of technical and administrative facilities by DPR members in carrying out the legislative process. Apart from that, the factor of cooperation among DPR members in formulating and shaping policies, the occurrence of tug of interest in the legislative process in the DPR and the provisions of Law No. 17 of 2014 which regulates the duties of the Legislative Body, with the loss of one of the duties of the Legislative Body's authority in proposing a bill, which also results in the lack of legislation products produced by the DPR. For this reason, several things need to be done in an effort to overcome the problems in carrying out the legislative function.

The third study which is similar to this research is entitled "Harmonization of DPD and DPR Functions in People's Representative Institutions in the Bicameral System for the Implementation of Checks and Balances", which was conducted by Titik Triwulan Tutik. The research discusses the harmonization of the functions of the DPD and DPR in people's representative institutions in the bicameral system. The results show that first, the DPD as a state institution in the bicameral system is formulated as a people's representative institution that institutionally has the same position as the DPR, even in terms of the character of representation based on regions, the DPD has a broader representation character than the DPR because the dimensions of representation are based to all the people in the regions. Second, the DPD as the people's representative institution has the same duties and powers as the DPR, namely having budget, legislative and supervisory functions even though it is limited in nature. Third, in the context of the Indonesian constitution, there is no synchronization and harmonization of positions and functions between the DPD and the DPR, this situation weakens the function of the DPD as a state institution.

Based on 3 (three) previous studies that are similar to this study, no one has specifically discussed the same problems as this study. The formulation of the problem raised in this study is how the damage to the Legislative Institution in Carrying Out Budget Functions?

And how is the application of the Judicial Preview Mechanism in Budget Formulation by the Legislative Body?

Research Method

This research is a conceptual research with normative research type. The approach used in this paper is a statutory approach and a conceptual approach. The technique of collecting legal materials in this study was carried out by using literature study techniques. This research uses the deductive legal material analysis method, in which the legal materials that have been collected are classified and then conclusions are drawn from general matters into specific things.

Discussion

Malfunctions of Legislative Institutions in Carrying Out Budget Functions

The large Indonesian dictionary explains malfunction as an existing system but does not work properly.⁹ This study defines a malfunction as a failure of the legislative system in the budget preparation process, where the budget preparation process is not running properly in accordance with statutory regulations. Broadly speaking, according to Glenn A Welsch, *budget is defined as Profit planning and control may be broadly as defined as a systematic and formalized approach for accomplishing the planning, coordinating, and controlling the responsibility of the management.*¹⁰ A good budget cycle itself, according to research conducted by Robert Anthony, contains 3 (three) main elements, namely; Strategic planning this explains that the process of determining the budget ceiling must pay attention to matters such as, among other things, determining work programs and policies; Management control the meaning is Ensure ceiling of funds allocated during the budget planning process can be used effectively¹¹ and efficiently after being approved; and Operational control the meaning is effective and efficient budget execution by Ministries/Institutions.¹²

The budget setting cycle defines the relationship between the executive and legislature as having an attachment to each other, so that the two are inseparable systems. Referring to the separation of powers theory and the Checks and Balances mechanism, the legislature provides an opportunity to control the executive and vice versa.¹³ Budget formulation is indeed carried out by two institutions which are basically separate powers from one another, but in its implementation, these institutions continue to monitor each other. One form of the checks and balances concept implemented by the government of the Republic of Indonesia is the budget function. The budget function in Indonesia is carried out by the legislative body in the budget planning stages (both R-APBN and R-APBD) together with executives.¹⁴ The executive, as the party that carries out the authorization function, carries out its function to

⁹ Kementerian Pendidikan dan Kebudayaan, "KBBI Daring Arti Kata Malfungsi," <https://kbbi.kemdikbud.go.id/entri/malfungsi>, 10 April 2020.

¹⁰ Rahmani Timorita Yulianti, "Transparansi Anggaran: Suatu Upaya Efisiensi dan Antisipasi Korupsi di Indonesia," *Jurnal La Riba Ekonomi Islam* 4, no. 2 (Desember 2010), 241.

¹¹ Susi Siswati, Perilaku Oportunistik Penyusun Anggaran Dan Dampaknya Terhadap Pertumbuhan Ekonomi Di Indonesia, *Jurnal Riset Manajemen dan Bisnis* 13, no. 2, (Desember 2018), 23.

¹² Lee Jr, Robert D., Ronald W. Johnson, and Philip G. Joyce. "Public budgeting systems. Jones & Bartlett Learning. New York: Marcel Dekker. Inc, 2020, 144.

¹³ H.A. Kartiwa, *Implementasi Peran dan Fungsi DPRD Dalam Rangka Mewujudkan Good Governance* (Bandung: Universitas Padjadjaran Press, 2009), 4.

¹⁴ Yutirsa Yunus dan Reza Faraby, "Reduksi Fungsi Anggaran DPR dalam Kerangka Checks and Balances," *Jurnal Yudisial* 7, no. 2 (2014), 197.

use the budget that has been prepared responsibly along with the instruments and resources that they had.¹⁵ It is hoped that the mechanism that has been built in such a way will make the budget determination and preparation process more efficient and maximized.

Indicators of whether the budget function is working or not will appear from how much change has occurred from the budget proposal submitted by the executive compared to the budget set or discussed by the legislative body. So far, the legislature has tended to accept the macroeconomic assumptions proposed by the government. Likewise, in terms of aggregate income and expenditure, there has not been much change.¹⁶

The budgeting process itself is an integral part of the political process that cannot be separated.¹⁷ According to Garamfalvi, political corruption occurs in the budget preparation phase when political decisions are very dominant, by diverting the allocation of public resources. Meanwhile, corruption that occurs in budget execution is called administrative corruption because administrative decisions are more dominant. Ultimately political corruption will lead to administrative corruption.¹⁸ Based on this opinion, indeed acts of corruption can occur since the budget formulation and discussion processes carried out by the legislative and executive bodies. Then this will affect the legislative process carried out by the legislative body. Legislative institutions will create those that do not bring people's interests in them because of the legislative egocentricity. The formulation of a budget draft is often riddled with money politics.¹⁹ This is inversely proportional to the principles of budgeting, which include: complying with the rule of law, being fair, and oriented towards efficiency and effectiveness.²⁰

The budget as the main tool for the government to implement all its policies in the form of an integrated concrete plan in terms of what actions will be taken, what results will be achieved, at what costs and who will pay these costs.²¹ Political manipulation of public policies makes the allocation of resources in the budget ineffective and inefficient.²² Further, according to Martinez-Vasquez:

¹⁵ Abdul Rais Asmar, "Dana Perimbangan dalam Pembagian Urusan Pemerintahan Pusat dan Daerah," *Jurnal Jurisprudentie* 4, no. 2 (Desember 2017), 3.

¹⁶ Sulistiyowati, "Ketidakadilan DPR-RI Dalam Menjalankan Fungsinya," *Jurnal Topik Utama* 39, no. 2 (2011), 78.

¹⁷ Yuliana Kusuma Dewi dan Herwan Parwiyanto, "Multiple Accountabilities Disorder dalam Kajian Penganggaran Hibah dan Bantuan Sosial Kota Surakarta," *Jurnal Spirit Publik* 13, no. 2 (Oktober 2018), 49.

¹⁸ Garamfalvi, L, "Corruption in the public expenditures management process" (8th International Anti-Corruption Conference, Lima, Peru, 2013), 17.

¹⁹ "Wakil Rakyat Penjajah Anggaran," *Majalah Tempo*, Mei 2010, 5.

²⁰ Nunuy Nur Afiah, "Pengaruh Kompetensi Anggota DPRD dan Aparatur Pemerintah Daerah, Pelaksanaan Sistem Informasi Akuntansi, Penganggaran Serta Kualitas Informasi Keuangan Terhadap Prinsip-Prinsip Tata Kelola Pemerintah Daerah Yang Baik: Survey Pada Kabupaten/Kota di Jawa Barat," *Jurnal Sosiohumaniora* 12, no. 1 (Maret 2010), 2.

²¹ Dobell, Peter, dan Martin Ulrich, "Parliament's performance in the budget process: A case study," *Policy Matters Enjeux Publics* 3, no. 5 (2002), 24.

²² Syukriy Abdullah, "Perilaku Oportunistik Legislatif Dalam Penganggaran Daerah: Bukti Empiris Atas Aplikasi Agency Theory Di Sektor Publik'" (Simposium Nasional Akuntansi ke IX, Padang, 2006), 10.

*“Political corruption arises when politicians or senior-level bureaucrats are able to capture the state apparatus for their own private benefit or for the benefit of those close to them. Political corruption does not regularly involve the direct execution of openly illegal or fraudulent activities, but rather the use of political power to influence the resource allocation process or the regulatory framework so that private gains are obtained as a result of public power under the veil of “legal” means.”*²³

The high number of corruption cases committed by legislators who have a budget function is a concern for all circles. In order to suppress the number of corrupt actions committed by members of the legislature related to the budgetary function of this legislative body, the Constitutional Court (MK) through the Constitutional Court Verdict Number 35/ PUU-XI/2013,²⁴ decided to delete some of the material contained in Law Number 17 of 2003 concerning State Finance. The Constitutional Court deleted Article 15 paragraph (5), one of the key articles in which corrupt acts against state finances can be carried out by legislators declared invalid. The enactment of Article 15 paragraph (5) of Law Number 17 of 2003 can then create legal crimes in such a way as to be committed by the perpetrators of these acts which can lead to state losses²⁵ which unfortunately is mutually agreed upon by the legislative body as a legal law so that it must be implemented. This then becomes a gap in the legal products made by the legislature. Legal products are incompatible with the goals of the state because they have been infiltrated by personal and group interests. According to Mc Kinney, the focus point in budgeting is how to prevent state / regional finances and assets from being used for illegal purposes.²⁶ This is contradict with the opinion which given the high possibility of corrupt acts committed by the legislature. However, there are still inconsistencies in the Constitutional Court Decision, namely by not immediately removing the material of Article 20 paragraph (5) which resembles Article 15 paragraph (5) so that the opportunity for evil acts committed by legislative institutions at the regional level is still wide open.

Related to the chaotic implementation of the budget function carried out by the legislative body, it raises the view that the legislative institutions monopolize the implementation of the budget function through the budget body which then becomes the door for illegal actions. This is interpreted by the legislature as an absolute authority so that the legislature can then make the necessary corrections if the budget plan is deemed to have shortcomings. The estuary of this shift in the system towards a heavy legislative body is then interpreted by the legislature that the implementation of governance after the constitutional amendment is centered on the legislature as a representation of the people. After the verdict of the Constitutional Court Number 35/PUU-XI /2013 which then narrowed the space for the budgetary body to move in its function, the MD-3 Law in Article 112 is still a weapon for

²³ Martinez-Vazquez dkk., *Corruption, Fiscal Policy, and Fiscal Management* (USA: United States Agency International Development (USAID), 2004), 25.

²⁴ Mahkamah Konstitusi, “Putusan Mahkamah Konstitusi Nomor 35/PUU-XI/2013,” Pub. L. No. 35/PUU-XI/2013 (2013), 156.

²⁵ Indonesia, “Undang-Undang Nomor 1 Tahun 2004 tentang Perbendaharaan Negara,” Pub. L. No. 5 Tahun 2004, Pasal 15 ayat (5) (2004).

²⁶ Mustopadidjadja AR, “Sistem, Fungsi, dan Proses Penyusunan APBN” (BP-7 Pusat dalam rangka menyiapkan Tim Ahli anggota DPR-RI Golongan Karya Tahun 2013-2002, Jakarta: DPR RI, 2013), 3.

a person or group of people who want to commit corrupt acts.²⁷ A similar thing can be found in Article 80 (J) which provides an opportunity for legislative members to submit proposals for selected regional programs. This can open up gaps in the phrase 'proposed area' which can be used as an excuse for creating line items.²⁸ This then contradicts the spirit of accountability in budget preparation considering that later this Article can become a gap in budget preparation.²⁹ The inter-agency checks and balances mechanism became a tool which was later abused by the legislative body in the budget preparation process, which in turn became disastrous in the entire budget preparation process where the interests were not necessarily contained in the budget plan. The MD-3 Law is proven to still open a gap in the subjectivity of the legislature to open new budget items that allow fraud to occur.

The powerful condition that the legislature has causes the pressure on the executive to become even greater so that the executive seems to be "lower" than the legislature, making it difficult for the executive to reject legislative recommendations in allocating resources that provide benefits to the legislature, causing the budget outcome in the form of public services to experience distortion and harm the public.³⁰ The reality is that in the process of allocating resources there are always conflicts of interest among the actors involved in the budgeting process.³¹ The application of the judicial preview concept in this budget cycle will then lead to the principle of efficiency, so that it does not require a process of cancellation of articles that have the potential to cause budgeting malfunctions by the legislature to the Constitutional Court. The authority of the Budget Agency as stipulated in Article 110 of the MD-3 Law can be strengthened by involving the branch of legal power to preview the budget plan, before the budget plan is passed. Strong political will is absolutely necessary to revise this Law so that this mechanism can work.

Implementation of the Judicial Preview Mechanism in Budget Formulation by the Legislative Body

The judiciary branch of power³² in the case of judgments, then this institution has knowledge in dealing with gaps that will arise in the budget preparation process. Law enforcers will have responsibility both morally and prophetically, supported by knowledge and legal technical capacity to carry out this preview mechanism.³³ The judiciary can carry out its judicial function on the draft budget so that it can identify gaps in corruption that can

²⁷ Indonesia, "Undang-Undang Nomor 17 Tahun 2014 tentang Majelis Permusyawaratan Rakyat, Dewan Perwakilan Rakyat, Dewan Perwakilan Daerah, Dan Dewan Perwakilan Rakyat Daerah," Pub. L. No. Lembaran No. 182 Tahun 2014 (2014).

²⁸ Indriyani Astuti, "Mafia Anggaran, Praktik Lama, Modus Baru," <https://mediaindonesia.com/read/detail/28749-mafia-anggaran-praktik-lama-modus-baru>, 10 April 2020.

²⁹ Siregar, Baldrice, and Rudy Badrudin, The Evaluation of Fiscal Decentralization in Indonesia Based on the Degree of Regional Autonomy, *Journal of Reviews on Global Economics* 8 (2019): pp. 615.

³⁰ Kathleen M. Eisenhardt, "Agency theory: An assessment and review," *The Academy of Management Review* 14, no. 1 (1989), 57-74.

³¹ P.M. Jackson, *The Political Economy of Bureaucracy* (Oxford: Philip Allan, 1982), 45.

³² Bagir Manan, *Kekuasaan Kehakiman yang Merdeka dan Bertanggungjawab Andai Saya Terpilih: Janji-janji Calon Ketua dan Wakil Ketua MA* (Jakarta: LeIP, 2002), 13-24.

³³ Saryono Hanadi, Wiwik Yuni Hastuti, dan Alef Musyahadah Rahmah, "Tindak Pidana Korupsi Dalam Penyusunan APBD (Kajian Putusan Nomor 76/Pid.B/2008/PN.PWT)," *Jurnal Yudisial* 3, no. 1 (April 2010), 20.

be proven based on law, then action can be taken against the draft and then lead to disapproval of the draft.³⁴

This method will resemble the judicial preview method or it can also be called the anticipatory judicial review carried out by the judiciary or other state organs appointed to conduct the preview, can conduct a review of the legislation before it is promulgated by the maker or it is still in the form of a draft law.³⁵ According to Ni'matul Huda, the concept of judicial preview is a mechanism that functions to improve laws because the examination will be carried out thoroughly outside the institution that produces the legal product itself.³⁶ According to Alec Stone, the preview concept is very different from the review concept that has been used by the government of the Republic of Indonesia. The preview here is carried out when the process of a statutory regulation is still at the draft level and has not been officially enacted.³⁷ According to Bivitri, within the framework of legislation, there are 2 (two) main things that must be considered, namely substance and process.³⁸ The preview can then be done not only at a substantial level, but at the ongoing budgeting cycle process. This mechanism will then provide stronger monitoring efforts so as to minimize deviant actions.

As it is known, the budgeting cycle in Indonesia aims for the greatest possible prosperity of the people. Until now, there has been no mechanism by which the public can participate directly in the government process. Public participation can be an instrument for public officials to express the values that develop in society. In relation to the budget cycle, the values that develop in this society can then be interpreted as a need that develops in society in accordance with the dynamics that occur. Indonesia then adapted the representative mechanism, so that the people could participate using this method. It is unfortunate if the representatives who are elected directly through the general election method injure the main principles of the representatives themselves. According to using this judicial preview method, the branches of power that carry out the judicial preview can play the role of the people. Several reasons why this concept can represent the role of society, among others:

- a. Provide information to the government regarding real conditions that occur in the dynamics of society. The government can then capture these dynamics to process them into targeted policies;
- b. Community participation from the beginning, can increase the level of public acceptance of the policies that have been created. This will happen automatically because the policies that are born are policies that are effective in accordance with public needs.
- c. Provide a more certain legal guarantee. Deviant actions that occur in the budget cycle can then be minimized because supervision has been implemented from the start.

³⁴ Nurhayati Nurhayati, Aliah Pratiwi, Puji Muniarty, Kamaluddin Kamaluddin, Opportunism and Internal Conflict of the Executive and Legislative in Planning and Budgeting, *Advances in Social Science, Education and Humanities Research* (Proceding, August-2020): pp. 13.

³⁵ Imam Soebechi, *Hak Uji Materiil* (Jakarta: Sinar Grafika, 2016), 52.

³⁶ Ni'matul Huda, "Judicial Preview Sebagai Mekanisme Verifikasi Konstitusionalitas Suatu Rancangan Undang-Undang," *Jurnal Konstitusi* 11, no. 2 (Desember 2014), 640.

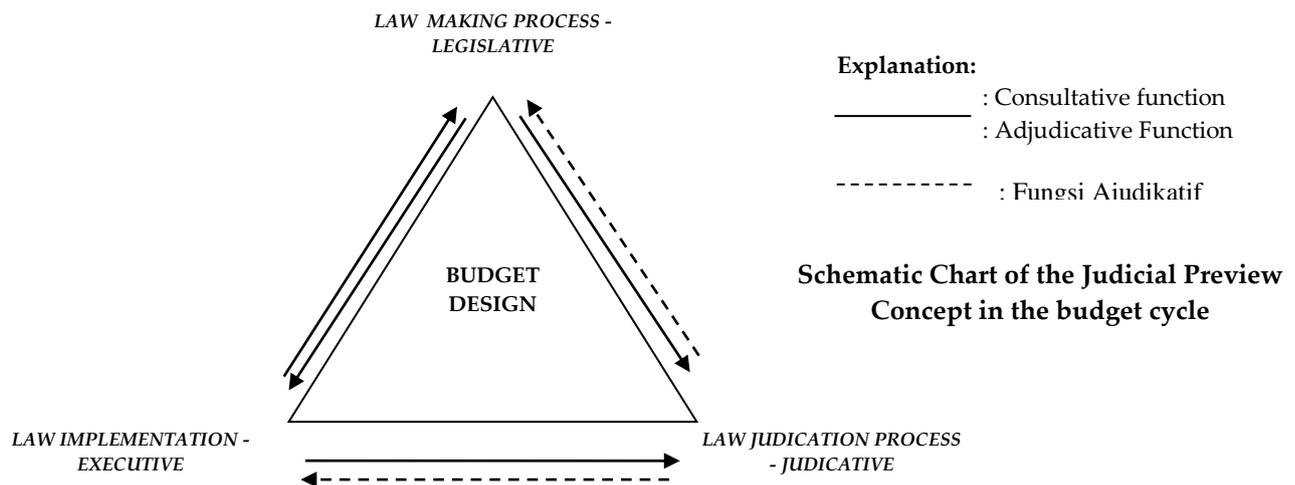
³⁷ Alec Stone Sweet, *Governing With Judges: Constitutional Politics in Europe* (New York: Oxford University Press, 2000), 24.

³⁸ Bivitri Susanti, *Bobot Kurang. Janji Masih Terutang: Catatan PSHK tentang Kualitas Legislasi DPR 2006* (Jakarta: Pusat Studi Hukum dan Kebijakan, 2007), 25.

d. Ensuring the running of the principles of democracy, where in a good democratic process, the prioritization of the public is everything.

Community participation is then not only important in the process of creating a good law-making process but also becomes an early detection instrument if there is potential for public loss in implementing the budget cycle.³⁹

The following is a concept flow chart offered by the author in relation to the judicial preview. This concept is then combined with the idea of a separation of powers that is carried out on the budget design in order to realize a check and balance mechanism which will completely appear as follows:



Source: Research Results

Adapting the concept of judicial preview to be used as a preventive supervision system in budget execution in Indonesia, it is necessary to remember that so far the judicial power only plays a role after the occurrence of legal problems, which later shows that the upstream of these problems is during the legislative process carried out in the budget draft. In such a case the judiciary which is deemed to have the authority to perform this preview function is the Supreme Court. This is because the Supreme Court already has sufficient knowledge and experience in criminal cases of corruption related to the budget so that with these skills, the Supreme Court is deemed capable of being able to close the loophole for corrupt acts in the budget sector.

Conclusion

Based on the discussion that has been described, can be concluded that implementing a judicial preview mechanism is one solution because the judiciary has the ability to handle corrupt cases in budget formulation. With the existence of the judiciary in the budget function does not mean depriving the independence of the judiciary by entering the political arena, but independence is shown by carrying out legal supervision at the preventive level.

³⁹ Alek Karci Kurniawan, "Judicial Preview Sebagai Mekanisme Verifikasi Konstitusionalitas Suatu Rancangan Undang-Undang," *Jurnal Konstitusi* 11, no. 4 (Desember 2014), 646.

Therefore, the adoption of the judicial preview mechanism is expected to be able to suppress corrupt actions in the budget formulation process by the judiciary. It takes a strong political will to be able to implement this mechanism. The implementation of this preview mechanism will then bring out the principle of efficiency considering that related articles that have the potential to cause corrupt actions do not need to be filed for annulment at the Constitutional Court. This mechanism can then run by revising Article 110 of the MD-3 Law which regulates the duties of the Budget Agency. The branch of judicial power that is most relevant to this concept is the Supreme Court, which is capable of having experience with cases of abuse in the budget cycle process. Implementation of the judicial preview mechanism will not only be able to return the budget cycle back to its running, but also increase public confidence in the legislative body.

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