

**The Position of State Institutions (Main & Supporting) Against the *Trias Politica*
Concept Based on the Indonesian State Administration System**

Muhammad Hoiru Nail
Islam Jember University
Email: hoirunail88@gmail.com

Abstract

State institutions in a country listed in its constitution are a reflection that the country exists to provide certainty that the country is present for its citizens. State institutions themselves in a constitution consist of at least 2 (two) namely the main state organs (main state organs) and state auxiliary bodies (state auxiliary body), but in the 1945 Constitution of the Republic of Indonesia this is not explicitly stated. The two state institutions have a very important role in the Indonesian state administration system. the existence of the *trias politica* concept affecting the position of state institutions guaranteed in the 1945 Constitution of the Republic of Indonesia, requires a complete and comprehensive understanding of the study of the powers of state institutions guaranteed in a constitution. The flow of changes to the 1945 Constitution of the Republic of Indonesia only on the pretext of the need or importance of existing state institutions and has not been explicitly stated in the 1945 Constitution of the Republic of Indonesia must be dammed considering the sacredness of the 1945 Constitution of the Republic of Indonesia must be maintained (it is not easy to change the 1945 Constitution of the Republic of Indonesia).

Keywords: Main State Institutions, Supporting State Institutions, *Trias Politica*.

1. Background

Reviews of state institutions cannot be separated from a constitution or constitution of a country, and vice versa, reviews or discourses on the constitution of a country, state institutions cannot be separated from the study of the discussion. In the state constitution, in principle, all constitutions clearly state in a limitative manner what state institutions are held in a constitution, this is intentionally done at the time of drafting a constitution to ensure the fulfillment of the rights of citizens that can be carried out or get guaranteed fulfillment by the institution. the country.

State institutions are deliberately used in this paper to avoid misinterpreting a state institution which is officially held by the state in its constitution. Institutions and the state are words that cannot be separated to provide a complete understanding and refer to official state institutions (formally listed in a constitution), because if no distinction is made, other institutions will appear (eg private institutions, community institutions). etc). State institutions in the context of this paper are state institutions that are expressly stated in the

1945 Constitution of the Republic of Indonesia (as well as state institutions which according to this paper are included in the category of state institutions that are not explicitly stated in the constitution but are included in the class of auxiliary state institutions in the state administration system in Indonesia). Indonesia.

The 1945 Constitution of the Republic of Indonesia with the last amendment in 2002 (the First Amendment was ratified on October 19, 1999, the second amendment was ratified on August 18, 2000, the third amendment was ratified on November 10, 2001, and the fourth amendment was ratified on August 10, 2002.), placing several state institutions to exercise power/fields. -specific fields. The existence of these state institutions is considered by some to be unclear in the direction and placement/position of state institutions, on the other hand there is also a lot of encouragement for several studies carried out, it is necessary to have institutions that explicitly include these state institutions in the constitution or the 1945 Constitution of the Republic of Indonesia.

Some Indonesian legal literature at least mentions that these state institutions are divided into 2 (two) namely the main state organ or main state institution and the state auxiliary body or auxiliary state institution. The terminology for the two state institutions is based on English, main which means main, state organ means state organization or also means main state institution, while state (state) auxiliary means assistant and body means organ.

The 1945 Constitution of the Republic of Indonesia itself explicitly does not explicitly mention the main state institutions and auxiliary state institutions (these only exist in the legal sciences/libraries and doctrines that develop in constitutional law. At least from all the provisions in the 1945 Constitution of the Republic of Indonesia, the word state institution verbatim only appears as much as 2, namely in Article 24C Paragraph 1 and the Transitional Rules of Article II of the 1945 Constitution of the Republic of Indonesia.

The position of a state institution is very important to be studied from the point of view of constitutional law to avoid disagreements on matters related to state institutions that must be included in the 1945 Constitution of the Republic of Indonesia, what is the position of a state institution that is not listed in the 1945 Constitution of the Republic of Indonesia. , which is more important which is the position of state institutions that have been listed in the 1945 Constitution of the Republic of Indonesia with state institutions that are not listed and or auxiliary/complementary state institutions in the 1945 Constitution of the Republic of Indonesia. These questions must of course get an answer from legal science (state

administration), including to prevent a current or opinion that encourages the amendment/change of the 1945 Constitution of the Republic of Indonesia with the theme of placing a state institution that has not been listed in the current 1945 Constitution of the Republic of Indonesia.

In general, state institutions based on the theory stated by Montesquieu are that there are 3 (three) branches of power. The first is the power to form laws or laws (legislative power), the second is the power to run the law (executive/government power, and the third is the power to enforce laws (judicial power). whether the three branches of power according to Montesquieu are in accordance with the concept intended in the *trias politica*, in this paper will be discussed clearly and completely.

Based on the above, a problem can be drawn, namely: First, what is the current position of state institutions and how important is the position between (main state institutions and auxiliary state institutions). Second, how to apply the concept of *trias politica* in the 1945 Constitution of the Republic of Indonesia.

2. Formulation of the problem.

What is the position of state institutions in Indonesia and how important is the position between the main state institutions and the auxiliary state institutions from the *trias politica* perspective?

3. Research methods

This paper is a normative legal study related to the ambiguity of the position of state institutions which is not mentioned and explained in the 1945 Constitution of the Republic of Indonesia explicitly and clearly regarding the positions of these state institutions (Article 24C Paragraph 1 and Transitional Rules Article II). The sources of law used in this research are all forms of legislation and some existing literature research.

4. Theoretical Foundation.

Trias Politica.

The concept of *trias politica* in the 1945 Constitution of the Republic of Indonesia needs to be explained comprehensively to avoid misunderstandings related to the basic concept of *trias politica* which is linked to the reality in the 1945 Constitution of the Republic of Indonesia. The concept of *trias politica* may be different for other countries, because each country These countries have different constitutional characteristics which can be traced through their constitution.

In essence, the rule of law theory is one of the supporters or strong juridical reasons to state that a country can be said to be a country that adheres to a state law system, one of which must be characterized by the state in it in exercising its power to distribute its power. According to Julius Stahl, the concept of the rule of law (rechtstaat) must include 4 things, namely:

- a. Protection of Human Rights
- b. Power Sharing
- c. Government by law
- d. state administrative court.

Understanding the concept of trias politica is not necessarily seen from the point of view of the separation of powers as categorized by the Montesquie, namely the existence of 3 state institutions (legislative power, executive power, judicial power) and applying them in a strong or firm and rigid manner. According to the researcher, especially if it is linked to the 1945 Constitution of the Republic of Indonesia, the basic concept of the trias politica must be divided into 2 (two) things, namely the separation of power or separation of power and the distribution of power.

The basic concept of trias politica in terms of separation of power or separation of power is carried out in a strong or firm manner that in fact the power in a country must be separated into 3 (three) major powers in the administration of a country. These powers are the power in terms of forming laws or legislative power, the power to carry out laws or executive power and the last is the power to enforce the law or laws/judicial power, this has been explained clearly and previously described in this article. this.

The formation of laws and regulations which are normally the domain of legislative power is not purely in the legislative power. The 1945 Constitution of the Republic of Indonesia in Article 5 Paragraph 1 gives attribution authority to the president (executive) to hold the power to form laws, which in the case of the formation of the law must obtain mutual approval with the DPR RI.

5. Results & Discussion

5.1. The position of the Main and Auxiliary State institutions in the 1945 Constitution of the Republic of Indonesia

Countries everywhere in the world must have a constitution or constitution (regardless of each country using the name between the two), which in terms of the principle of the country's constitution states in its constitution the existence of a permanent state institution. This opinion was expressed by James Bryce, who was quoted directly by constitutional law expert C.F. strong in his book "Modern Political Constitutions"

"constitution is a frame of political society, organized thought and by law, one in which law has established permanent institutions which recognize and definite rights."

(translation by author: constitution is a socio-political framework, well organized by law, within which a law has established a permanent institution which recognizes certain rights).

Based on the definition of the constitution above, Dahlan Thaib as quoted by widodo ekatjajana provides a simple definition related to the arrangement of state constitutions which basically in the constitution the law (constitution) has stipulated several things as follows:

1. Arrangements regarding the establishment of permanent institutions.
2. Functions and fittings.
3. Certain rights that have been established

The discussion regarding the position of the main state institutions and auxiliary state institutions which have been clearly and unequivocally stated in the 1945 Constitution of the Republic of Indonesia requires an in-depth investigation, first of all in this discussion it must also be clear what state institutions are explicitly stated in the NRI Constitution. 1945. The following are state institutions that are expressly regulated and listed in the 1945 Constitution of the Republic of Indonesia.

1. The People's Consultative Assembly of the Republic of Indonesia (MPR RI/CHAPTER II) whose composition consists of the House of Representatives of the Republic of Indonesia (DPR RI/CHAPTER V) and the Regional Representatives Council of the Republic of Indonesia (DPD RI/VIIA).
2. President and Vice President of the Republic of Indonesia, CHAPTER III (Power of State Administration) of the 1945 Constitution of the Republic of Indonesia.
3. Ministry of State CHAPTER V of the 1945 Constitution of the Republic of Indonesia.
4. The General Election Commission of the Republic of Indonesia (KPU RI) CHAPTER VIIB of the 1945 Constitution of the Republic of Indonesia.

5. Central Bank/Bank Indonesia CHAPTER VIII of the 1945 Constitution of the Republic of Indonesia.

6. Supreme Audit Agency CHAPTER VIIIA of the 1945 Constitution of the Republic of Indonesia.

7. Judicial Powers (MA, MK, KY) CHAPTER IX of the 1945 Constitution of the Republic of Indonesia.

8. Indonesian National Army and State Police of the Republic of Indonesia Chapter XII of the 1945 Constitution of the Republic of Indonesia.

Based on an inventory of the existence of state institutions that are explicitly stated in the 1945 Constitution of the Republic of Indonesia, there are 8 (eight) state institutions whose position and existence are guaranteed in the constitutional system in Indonesia. however, the 8 (eight) state institutions need classification/categorization to be classified into main state institutions and auxiliary state institutions and also pay attention to the concept of separation of powers based on the *trias politica* concept.

The classification of the main state institutions or main state organs cannot be separated from the grand concept of *trias politica* stated by Montesquie which separates power in general in a country (legislative, executive, and judicial). The next researcher will classify the existing state institutions based on the criteria of the main state institutions based on the general separation of powers.

Legislative power or the power to form laws if examined based on the authority granted by the 1945 Constitution of the Republic of Indonesia, then the state institution is the MPR whose composition consists of the DPR RI and DPD RI. In this paper, the author deliberately puts forward the special DPR institution in the context of the formation of laws because constitutionally the DPR holds the power to form laws. The People's Legislative Assembly holds the power to make laws, the researcher deliberately does not include the MPR and DPD in terms of legislative power in the true sense for several reasons as follows.

First, the MPR is not the main institution in the true sense that has the authority to make laws, this is because since the MPR TAP Number 1 of 2003 concerning the Review of the Material and Legal Status of the Provisional People's Consultative Assembly and the Decree of the People's Consultative Assembly of the Republic of Indonesia in 2003 From 1960 to 2002, all MPRS and MPR decisions were subject to a legal review of their legal status. Furthermore, after the fourth amendment or amendment to the 1945 Constitution, the

constitution does not provide regulatory/regulatory powers that are binding out for the MPR institution to make a regulation/law.

Based on these circumstances, the MPR in its true sense can no longer be categorized or classified as a state institution that has the authority to make laws in the true sense. Apart from this, even though until now, the MPR decree has become part of the From the form and hierarchy of the Legislation as referred to in Article 7 paragraph (1) of Law 12 of 2011 concerning the Establishment of Legislation, this condition does not necessarily make the MPR institution exist or can become a law-making institution.

Second, is the juridical reason the DPD RI is not included in the real sense in terms of the power to form laws, this happens because the constitution or the 1945 Constitution of the Republic of Indonesia does place the position of this state institution as a supporting system of legislation or a supporter of the legislative system. The DPD RI does not necessarily become a state institution that can form laws independently, its existence as part of the legislative power is still dependent/determined by the existence of the DPR RI.

The Regional Representative Council may submit to the House of Representatives a draft law relating to regional autonomy, central and regional relations, the formation and expansion and amalgamation of regions, management of natural resources and other economic resources, as well as those relating to the balance of central and regional finances. .

The 1945 Constitution of the Republic of Indonesia still provides conditions for the DPD RI to submit a draft law to the DRR RI, and even then for certain fields that can be proposed by the DPD RI. Finally, the state institutions that make laws remain in the power of the DPR RI. This is what Jimly Asshiddiqie calls the DPD as a co-legislator, the real essence of these two state institutions (DPR and DPD) is to represent the people for the DPR and represent the regions for the DPD, this concept is a concept to avoid double representation or double representation.

Executive power in the context of the separation of trias politica in the 1945 Constitution of the Republic of Indonesia rests with the presidential institution (President and Vice President). In the inventory carried out by the previous author (8 state institutions in the 1945 Constitution of the Republic of Indonesia) there are state ministries of state institutions, these state ministries actually become a package in executive/government power because the position of this state ministry is as assistants to the president in certain fields.

The main state institution in the field of executive power is the President of the Republic of Indonesia as the holder of the highest authority in the field of government. The

President of the Republic of Indonesia holds governmental power according to the Constitution. While the position of state institutions of the state ministry is assistants to the president in certain fields, the President is assisted by state ministers. The president as a state institution that holds executive power is responsible for the implementation of laws made by the legislature in the intended concept of *trias politica*.

The main state institutions that hold power in the executive field are state institutions (the Constitutional Court/MK and the Supreme Court/MA). The two state institutions are state institutions that are given constitutional authority to enforce laws or laws. while the state institution of the Judicial Commission is not included as part of the judicial power in the true sense because the existence of KY is required by the state in terms of maintaining the honor, nobility, and behavior of judges. The existence of KY is not actually the power of state institutions in the judiciary/law enforcement or laws as intended in the *trias politica*.

Based on the description above, what can be classified in the main state organ or main state institution in the concept of *trias politica* is that the power to form laws/legislatures rests with the DPR RI institution. The main state institution in the *trias politica* concept in executive power/implementing the law is the presidential state institution (including the state ministry), lastly the judicial power or the power to enforce the law or laws based on the basic concept of *trias politica*, namely the state institutions of the Constitutional Court and the Supreme Court as the main state institutions which are clearly stated in the 1945 Constitution of the Republic of Indonesia.

Furthermore, after stating several main state institutions in the concept of *trias politica* based on the results of the above study, which state institutions are intended as auxiliary state institutions or auxalery bodies referred to in the 1945 Constitution of the Republic of Indonesia. then the author will display the existence of these state institutions in a table.

The main state institution/main state organ in the basic concept of <i>trias politica</i>	A state auxiliary body whose existence is guaranteed in the 1945 Constitution of the Republic of Indonesia
1. Legislative power/forming laws rests with the State Institution of the DPR RI. 2. Executive power/implementing laws rests with the Presidential institutions (President and Vice President) and state ministries. 3. Judicial power/enforcement of laws or laws rests with the state institutions	1. The People's Consultative Assembly of the Republic of Indonesia 2. RI Regional Representative Council 3. The Supreme Audit Agency of the Republic of Indonesia 4. RI General Election Commission 5. RI Judicial Commission 6. Indonesian National Army

of the Constitutional Court and the Supreme Court	7. Indonesian National Police 8. Central Bank/Bank Indonesia Note: the existence of these auxiliary state institutions is a fact that exists and is listed in the constitution or the 1945 Constitution of the Republic of Indonesia, besides that the institutional status of these state institutions is impartial and independent (though not all)
---	---

5. 2 The Main and Auxiliary State Institutions both have a very important role in accordance with the existing functions and authorities.

The answer to this must be done carefully, because all of the state institutions mentioned above are guaranteed to exist in the 1945 Constitution of the Republic of Indonesia. So the author will not immediately answer clearly and unequivocally if between the two (main and auxiliary state institutions) must be chosen. one of the two.

The author will answer the big question by juxtaposing a parable of the two institutions, or this answer is an answer to find the right basis for the position of how important state institutions are that have been guaranteed and listed in the 1945 Constitution of the Republic of Indonesia.

The author likens the existence of the two institutions as a vehicle (car), which is the basic component of a car to be able to walk or move from one point to another. These components are brakes and gas, the main essence of the existence of brakes and gas on a car vehicle is the brakes to stop and the gas to go, so that both brakes and gas are components in a car that are very important if it (the car) is to be called a vehicle. car (can stop and walk/go).

The main state institutions (DPR, President, MK and MA) are a gas in the parable of a car, their existence is very important to advance or in the context of the state administration to achieve or exercise power in the state. Likewise, state auxiliary agencies or state auxiliary bodies can be likened to brakes, where a vehicle needs brakes so that the car is not hit by another vehicle or other things.

The main state institution or main state organ and state auxiliary body are equally important, researchers cannot choose which of the two is more important. If you only state that the main state symbol is more important (which in this case is likened to gas in a car) then a car will always run without being able to stop, because it only cares about gas and doesn't think brakes are important. Likewise, if you consider the brakes (assisting state

institutions) as the most important component, then the car will not run, because of this the real nature of the existence of these state institutions is equally important in the Indonesian state administration system.

The Indonesian constitutional system sees that both (main and auxiliary state institutions) which are expressly stated in the 1945 Constitution of the Republic of Indonesia have an equally important role or position in accordance with the existence of which their existence and authority have been determined by the constitution. All of the existing state institutions must carry out the authority that has been explicitly given by the constitution properly and correctly, without having to consider or question the existence of the main or auxiliary state institutions. The state institution is essentially a state institution that has the function and authority to fulfill the rights of citizens as well as the manifestation of the realization to achieve the goal of the founding of the Indonesian state (paragraph 4 of the 1945 Constitution of the Republic of Indonesia).

The 1945 Constitution of the Republic of Indonesia has designed as well as possible the position of the main and auxiliary state institutions in accordance with the functions and constitutional powers they provide. The design or concept of the 1945 Constitution of the Republic of Indonesia deliberately does not provide or make a rigid and strong distinction on the existence of the main and auxiliary state institutions, this is a feature of the Indonesian constitution which, according to the author, is deliberately made so that there is no selfishness between existing state institutions. because it is based on the position of the main or auxiliary state institutions (a strong distinction in the constitution in creating sectoral egos of certain state institutions and subverting other state institutions). The most important thing to be achieved in the establishment of state institutions that exist in the 1945 Constitution of the Republic of Indonesia is to be able to carry out their functions and authorities in order to achieve the fulfillment of the rights of citizens and the achievement of state goals in accordance with the opening of the 1945 Constitution of the Republic of Indonesia, paragraph IV.

5.2. Conclusion

Referring to the discussion above, some conclusions that can be put forward by the author include:

The main state institutions or main state organs that exist in the 1945 Constitution of the Republic of Indonesia in the concept of trias politica montesquie are the Indonesian People's Representative Council (legislative power or form laws), the President (including the minister of state) the power to carry out legal orders, the Constitutional Court and the Constitutional Court. MA as judicial power or the power to enforce laws or laws. State auxiliary state institutions are the Indonesian People's Consultative Assembly, the Indonesian Regional Representatives Council, the Indonesian Supreme Audit Agency, the Central Bank, the Indonesian Judicial Commission, the Indonesian General Elections Commission, the Indonesian National Army, the Indonesian National Police.

The main state organ (main state organ) and the state auxiliary body (state auxiliary body) cannot be chosen, one of them has the most important position in the state administration system in Indonesia. both are mutually important and complementary institutions to promote and ensure the rights of citizens are fulfilled through these state institutions.

6. Recommendations.

The concept of trias politica must be divided into 2 (two) namely the separation of power or separation of power and the distribution of power. In the 1945 Constitution of the Republic of Indonesia, the basic concept of trias politica tends to lead to the division of power over existing state institutions or there is not really a strong/rigid separation of the branches of state power by state institutions in Indonesia based on existing characteristics. in the 1945 Constitution of the Republic of Indonesia.

Bibliography

Book

Asshiddiqie, J. (2012). *Hukum Acara Pengujian Undang-Undang*. Cetakan kedua. Jakarta: Sinar Grafika.

Asshiddiqie, J. (2010). *Perkembangan dan konsolidasi Lembaga Negara Pasca Amandement*. Jakarta: Sinar Grafika.

Ekatjahjana, W. (2015). *Negara Hukum, Konstitusi, dan demokrasi (Dinamika dalam penyelenggaraan Sistem ketatanegaraan Republik Indonesia)*. Jember: Jember University Press.

Redi, A. (2018). *Hukum Pembentukan Peraturan Perundang-undangan*. Cetakan Pertama. Jakarta: Sinar Grafika.

Strong, C.F. (1949). *Modern Political Constitutions*. London: Sidgwick & Jackson Limited.

Thaib, D. (2004). *DPR Dalam Sistem Ketatanegaraan Indonesia*. Yogyakata: Liberty.

Tutik, T.T. (2008). *Pokok-Pokok Hukum Tata Negara Indonesia Pasca Amandemen*. Jakarta: Cerdas Pustaka Publisher.

Legislation

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan. (Lembaran Negara Republik Indonesia Tahun 2011 Nomor 82. Tambahan Lembaran Negara Republik Indonesia Nomor 5234)

Undang-Undang Nomor 15 Tahun 2019 tentang Perubahan Atas Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan. (Lembaran Negara Republik Indonesia Tahun 2019 Nomor 183. Tambahan Lembaran Negara Republik Indonesia Nomor 6398)