

THE IMPLEMENTATION OF TRIAS POLITICA CONCEPT IN THE SYSTEM OF GOVERNMENT IN INDONESIAN CONSTITUTION POST AMENDMENT

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Abstract

The purpose of this study is to identify the concept of implementing Trias Politika in the Unitary State Government System of the Republic of Indonesia. This can be seen in the Indonesian National Constitution of the Constitution of the Republic of Indonesia Year 1945, this research was conducted to analyze how the implementation of the political triad based on the 1945 Constitution, in addition, it was studied with case studies related to the material studied. an approach that is descriptive analysis by summarizing and describing the concept of Trias Politika in Indonesia, with library research methods sourced from books and literature. The results of this study show that the principle of checks and balances in the concept of trias politika is a constitutional principle that requires that legislative power, executive power and judicial power are balanced and supervise each other so that the power of state institutions can be regulated.

Keywords: Constitution; System of Government; Trias politika.

Abstrak

Tujuan dari penelitian ini adalah untuk mengidentifikasi konsep pelaksanaan Trias Politika dalam Sistem pemerintahan Negara Kesatuan Republik Indonesia. Hal ini dapat dilihat dalam Konstitusi Nasional Indonesia Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, penelitian ini dilakukan untuk menganalisa bagaimana pelaksanaan trias politika berdasarkan UUD 1945 di Indonesia, Implikasinya terhadap struktur kelembagaan negara Indonesia, dengan menggunakan metode penelitian yuridis normatif dengan menggunakan konseptual, selain itu, dikaji dengan studi kasus yang berkaitan dengan materi yang dikaji. pendekatan yang bersifat analisis deskriptif dengan merangkum dan menggambarkan konsep trias politika di Indonesia, dengan metode keperustakaan (library Research) yang bersumber pada buku dan literatur. Hasil penelitian ini menunjukkan bahwa Prinsip checks and balances dalam konsep trias politika merupakan asas konstitusional yang mensyaratkan agar kekuasaan legislatif, kekuasaan eksekutif dan kekuasaan yudikatif seimbang dan saling mengawasi agar kekuasaan lembaga negara dapat diatur.

Kata Kunci: Konstitusi; Sistem Pemerintahan; Trias Politika.

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INTRODUCTION

Indonesia implements a democratic system that equates a position in the nation and state. Based on the experience of the Indonesian constitution which shows the imbalance between independent institutions of power to realize Justice. The Constitution of the Republic of Indonesia was amended, resulting in frequent constitutional debates and the emergence of a new democratic era¹

The 1945 Constitution of the Republic of Indonesia has undergone amendments, modifying the system and emphasizing democratic principles. Currently, the system of government is closely related to the division and separation of institutions of power and the relationship between state institutions that run the government to achieve the interests of the people, as explained in the preamble to the 1945 Constitution paragraph 4, in realizing the general welfare, educating the life of the nation, and participating in implementing world order based on.²

institutions of state power need to be limited in the administration of government so that there is no arbitrariness, there is no duplication of power, and there is no situation where power is concentrated in one particular institution. In the interest of protecting citizens' human rights, this is in line with Lord Acton's statement,³ that abuse of power is a common thing done by officials who have abuse of power is a common thing done by officials who have power in government institutions. Therefore, state institutions must be separated or divided in order to be able to supervise and compensate each other between institutions to avoid abuse of power.⁴

Furthermore, it requires the limitation of power to avoid concentration in one institution that can give birth to tyranny and arbitrariness. Trias politica is currently applied and divided into 3 (three) institutions namely; legislative (DPR), Executive (President) and judiciary (Judge). The three constitutional institutions are separated, hoping to supervise each other and balance checks and balances.⁵ The post-Amendment Constitution adheres to the principles of separation of powers, namely establishing a mechanism of mutual control between the executive, judiciary, and legislature as state institutions that have the same position. Therefore, based on the above description, researchers are interested in conducting a more in-depth study with the title: implementation of the concept of Trias Politica in the Indonesian government system based on the 1945 Constitution after the amendment.

METHOD

This study uses normative juridical research methods using conceptual, in addition, studied by case studies related to the material under review. descriptive analysis approach by summarizing and describing the concept of trias politica in indonesia, with the method of Library (library Research) which is sourced from books and literature. The author explains and relates it then draws conclusions deductively to help summarize to make it easier to understand and learn the researcher's discussion.⁶

¹ Cora elly Novianty, "Demokrasi Dalam Sistem Pemerintahan", *Pusat Kajian Konstitusi* Vol.10 No.2, Juni 2020, hlm.49.

² Yusmianti, "Kelembagaan Negara Republik Indonesia Menurut Undang-Undang Dasar 1945", *Jurnal Ilmu Pengetahuan Sosial* Vol 4. No. 1.2018, hlm. 89.

³ Sukri Badaruddin, "Dinamika Kelembagaan Negara Dalam Pelaksanaan Sistem Demokrasi di Indonesia", *Jurnal Rechten*, Vol 1 No.3, 2019. hlm. 55.

⁴ Santoso, Agus, Prio, Aris, *Pengantar Ilmu Hukum*, Tim Redaksi: Pustakabarupreass, Yogyakarta, 2021.hlm.35

⁵ Jimly Assidique, *Pengantar Ilmu Hukum Tata Negara*, Catatan Ke 4, PT. Rajagrafindo Persada, Jakarta, Januari 2012, hlm.322.

⁶ Mahmud Marzuki Peter, *Penelitian Hukum*, Edisi Revisi Cetakan Ke 14, Jakarta; Kencana, Mei 2019.hlm.33.

RESULT AND DISCUSSION

1. *Division and Separation of Powers*

One of the important elements in the rule of law is the division and separation of powers in the Indonesian Constitutional experience, the term “separation of powers” itself tends to be connoted by Montesquieu's opinion in absolute terms. The concept of separation of powers is distinguished diametrically from the concept of division of power (division of power) which is associated with the MPR supremacy system which absolutely rejects the idea of separation of powers ala trias politica Montesquieu. In the bpupki sessions in 1945, Soepomo, for example, asserted that the 1945 Constitution did not adhere to the trias politica doctrine in the sense of Montesquieu-style separation of powers, but embraced a power-sharing system.

However, now that the 1945 Constitution has undergone four changes, it can be said that the Indonesian Constitutional system has embraced the doctrine of separation of powers in a real way,⁷ Some evidence of this include:

- a. there is a shift of legislative power from the hands of the president to the House of Representatives. Just compare the provisions of Article 5 Paragraph (1) of the 1945 Constitution before the amendment with Article 5 Paragraph (1) and Article 20 paragraph (1) of the 1945 Constitution after the amendment. The power to form laws previously vested in the president, currently passes to the House of Representatives.
- b. adoption of a system of constitutional testing of laws as legislative products by the Constitutional Court. Previously, no such mechanism was known, since, basically, the law is inviolable in which the judge is considered to be able to apply only the law and should not judge the law.
- c. he admitted that the institution of the actors of popular sovereignty was not only limited to the MPR, but all state institutions, either directly or indirectly, were the embodiment of popular sovereignty. The president, members of DPR and DPD are both elected directly by the people and therefore are both direct implementers of the principle of popular sovereignty.
- d. thus, the MPR also does not have the status of the highest state institution, but is a high state institution that has the same position with other state institutions, such as the President, DPR, DPD, MK and MA.
- e. relations between such state institutions are of a controlling nature with each other in accordance with the principle of checks and balances.⁸

From the five characteristics mentioned above, it can be seen that the 1945 Constitution can no longer be said to adhere to the principle of vertical division of power, but also does not adhere to the trias politica Montesquieu concept that separates the branches of legislative, executive and judicial power absolutely and without being accompanied by a relationship of mutual control with each other, in another sense, in the new system adopted by the 1945 Constitution after the Fourth Amendment is a power-sharing system based on the principle of checks and balances.

⁷ Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara*, Rajawali Pers, Jakarta, 2013, hlm. 291.

⁸ Pasal 24C UUD 1945 dan UU No. 24 Tahun 2003 tentang Mahkamah Konstitusi, LNRI Tahun 2003 Nomor 98, TLN-RI Nomor 4316

The Constitution of the Republic of Indonesia in 1945 has undergone a revision which is an update to the legal framework of the country at that time. A system of Checks and Balances between government agencies is indispensable. the practice of the executive, legislative, and judicial branches of State Administration supervising and balancing each other in realizing good government “Good Governance”. As a democratic country, Indonesia is one of the countries that adheres to this philosophy.

The concept of separation of powers is a normative principle that power cannot be delegated to the same person or institution to prevent abuse of power by those in office or in power, Trias Politica is a doctrine that considers that the power of state institutions consists of 3 (three) powers, namely; Legislative, Executive, and judicial. The legislative power is the power to design and make laws, the executive is the power to enforce and execute laws, while the judicial power is the power to decide an offense.⁹

Researchers describe comprehensively about the functions of state institutions as follows:¹⁰

a. Legislative Power

Legislative is an institution that has a function in making laws the people's Consultative Assembly (MPR), the House of Representatives (DPR), and the House of regional representatives (DPD) are the three (three) legislative bodies in Indonesia. The Legislature plays an important role in the country's Constitution, because the law is a pillar that symbolizes the existence of a country as well as an embodiment that upholds the rights and welfare of citizens. As a legislative body, the legislature only has the capacity to discuss matters related to the formation of laws, law enforcement requires delegation to other state agencies. In this case, the power to enforce the law is “executive”.

b. Executive Power

The executive agency has the role and ability to execute laws made by the Legislature and operate the wheel of government, known as executive power, in the presidential system the power is in the hands of the president as head of state and government, executive power provides state government authority through legislation and the president has the right to assign administrative tasks to the minister as assistant Presisen, based on Chapter V Article 17 of the Constitution of 1945, which states that the president is assisted by ministers of State.

c. Judicial Power

The judiciary or judiciary is the highest judicial institution in indonesia whose duty is to enforce the law and has the power to realize justice for the people, judge and decide a problem in society and the scope of the state. The judiciary as an independent state power to administer justice, enforce law and justice in Indonesia, based on Pancasila and the 1945 Constitution.

⁹ Retno Mawarini Sukmariningsi, “Penataan Lembaga Negara Mandiri Dalam Struktur Ketatanegaraan Indonesia”. *Mimbar Hukum* Vol. 26 No.2, 2014, hlm.39

¹⁰ Heru Nugroho, “Demokrasi dan Demokratisasi: Sebuah Kerangka Konseptual Untuk Memahami Dinamika Sosial-Politik Di Indonesia”. *JPS Jurnal Pemikiran Sosiologi* Vol.1 No.1, Mei 2015, hlm.11.

2. Implementation of the Trias Politica system in the principle of Checks and Balances in Indonesia

The principle of Checks and Balances is very important in the Trias Politica system, with a mechanism for monitoring the powers of state institutions to achieve the ideals of the nation based on the Constitution. In the Indonesian government based on the 1945 Constitution gives great power to the president, the president is given authority as well as legislative and judicial. Based on the 1945 Constitution which is executive heavy in design, meaning that it gives more power to the executive in the implementation of government, especially to the president as head of state and government, Checks and balances are present in the Indonesian political system as applicable to the 1945 Constitution.

This principle is clearly articulated by the state of Indonesia as the main objective of the 1945 Constitution Amendment, which is to more effectively and transparently implement the principles of check and balance in a democratic country and to uphold the basic principles of democracy and good nation building, where one of the objectives of the 1945 constitution amendment is to complete the Basic Rules of State Administration in a modern and democratic manner, through a clearer separation of powers, a stricter and more transparent system, as well as the establishment of state institutions to meet the needs of national development by examination and balance, based on the relationship of institutions as follows:

a. Executive Board

There are two kinds of relationship established between the executive and the president, a cooperative relationship and a supervisory relationship, and the two institutions must work together in making laws, the relationship between the president and the executive is basically one of supervision, and executive supervision of government policy is functioning better than in the previous era, where supervision seems excessive, questioning the management of government policy.

Executive power is the power to enforce laws, the implementation of laws is in the hands of the head of state government. The head of the state government certainly cannot carry out the implementation without other institutions. Therefore, the powers of the head of government of the country entrusts to the government or state officials jointly forming the law-implementing body as the managing Organization of government.

b. Executive and judicial relations

It lies in the exercise of government, that the president has the power to carry out actions such as amnesty, abolition of slavery and judicial rehabilitation. Based on the amendment to the 1945 Constitution, which became the cornerstone of the balance. The president has the authority to consider the decision of the Supreme Court (MA) when granting amnesty or abolition of laws and rehabilitation as a progressive right or privilege owned by the President. consideration of Parliament when granting amnesty and abolishing the death penalty. This is to minimize the power of the president based on the Constitution of 1945 (before the change), often also referred to as the Executive Heavy.

Article 23e (1) of the Constitution of 1945 after the amendment, there is thus a demand in the process of implementing laws involving other institutions to declare state security by the government agency of the Republic of Indonesia BPK, as a stand-alone state institution that makes the draft constitution in the framework of supervision aimed at ensuring state security state under government supervision.

Economic development is based on the functioning of the state within the Republic of Indonesia under the Economic Development Act which establishes the relationship between interests in the system of government of the Republic of Indonesia under the 1945 Constitution, prior to and as amended. Legislative institutions (MPR and DPR), Executive (President) and Judiciary (MA), Priority Rights (DPA) and governing bodies (CPC) still share.

MPR, DPR, DPD, President, BPK, MA, and MK are 7 (seven) government agencies or state institutions that form the government system of the Republic of Indonesia based on the Constitution of 1945 before the changes. These institutions each have state powers. According to the principle of Trias Politica, which divides state power among the three branches of government legislative, executive, and judicial. MPR, DPR, DPD, President, BPK, MA, and MK are among others. Economic development is based on state duties, including legislative, executive, and legislative responsibilities, implicitly applied in the political system in Indonesia based on Montesquieu's theory of Trias Politica, Legislative and judicial relations. The relationship between the Legislature and the judiciary is related to the existence and functioning of both institutions, as well as the realization of a legal system, the content of which does not contradict the provisions of higher powers, as one of the forms of legislation that is a product of the legislative body.

Constitutional Court Constitutional Court as an institution of Justice has the authority to test the law on the Constitution of the 1945 Constitution, the court may decide that the provisions in the law declared invalid because it is contrary to higher regulations or the Constitution. Based on this, that the judiciary has authority in the process of legislation (passive legislation). The relationship between the Legislature and the judiciary is related to the existence and functioning of both institutions, as well as the realization of a legal system that does not contradict the provisions of higher powers.

Based on the idea of constitutional checks and balances in the legislature, executive, and judiciary should all be equal mutual control of each other to avoid and prevent abuse of power by state administrators. The concept of Trias Politica in the democratic system in indonesia that Checks and Balances are very important, this is done to prevent abuse of power by one person or one institution or concentration of power by certain institutions. With this mechanism, the Trias Politica system in its implementation is expected to be able to control each other and even improve between other institutions.

The system of checks and balances in the current Indonesian constitution is certainly not perfect and requires a long process and a long time to realize the ideal constitutional system. Checks and Balances in the process of legal formation produce an ideal concept. However, problems in the dynamics are, of course, inevitable. All kinds of problems that affect the making and testing of laws are caused by the desire to dominate or show the existence of these institutions, both the president, the DPR and the Constitutional Court.

Various problems such as the number of collusion in the presidential legislative system, weak checks and Balances between legislatures, the process of drafting and legislative techniques that are not in accordance with the guidelines and lack of understanding of Checks and Calances in Constitutional Court decision making, interpreting the Constitution and involvement in decisions and problems of Constitutional Court decision making that conflict from laws and problems of constitutional interpretation.

Trias Politica is a political thought about the division of state power, regarding the division of power including legislative, executive and judicial powers. In Indonesia, the prevailing separation of powers refers to the division of powers proposed by Montesquieu. But now, after making changes or amendments to the 1945 Constitution, with the added authority of other institutions, namely the Supreme Audit Agency or BPK. Thus it can be said that the CPC as an independent state institution that is in the realm of legislative power in the field of supervision in charge of checking state finances in the implementation of good and transparent state government.

Legislative institutions, namely the people's Consultative Assembly (MPR), the House of Representatives (DPR), and the House of regional representatives (DPD) are in charge of making laws, while the president is the head of state as an executive and can be assisted by ministers who are given executive authority, the president has the right to give administrative duties to the minister as a presidential aide, based on Article 17 of the 1945 Constitution.

While the judiciary, namely the Supreme Court (MA) and the Constitutional Court (MK) exercise judicial power in the administration of the state based on the 1945 Constitution Article 24 paragraph 1, which states that the judiciary is an independent power to administer justice in order to enforce law and justice, the judiciary is the power in charge of enforcing the law to realize justice for the people. Article 23e (1) of the Constitution of 1945 after the amendment, there is thus a demand in the process of implementing laws involving other institutions to declare state security by the government agency of the Republic of Indonesia BPK, as a stand-alone state institution that makes the draft constitution in the framework of supervision aimed at ensuring state security state under government supervision.

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CONCLUSION

The concept of Trias Politika is a system in a country that reflects the principles and functions in regulating the running of state institutions, while the principle of checks and Balances is a thought that requires the existence of power restrictions in a country so that there is no abuse of power in governance. Based on the description of the results of the previous research and discussion, it can be concluded as follows: the sovereign government must be divided into two or more independent and strong to prevent the concentration of state power, the president has executive power to run state government based on laws made by the DPR as a legislative institution, the principle of checks and, the executive power and judicial power are balanced and supervise each other so that the power of state institutions can be



regulated, limited or even controlled as much as possible so that power is not abused, as a new system of Indonesian Constitutional Law, the concept of checks and balances is certainly not perfect, to realize an ideal system, the role and awareness of.

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