



DOI: <https://doi.org/10.31933/unesrev.v6i1>

Received: 21 Oktober 2023, Revised: 8 November 2023, Publish: 10 November 2023

<https://creativecommons.org/licenses/by/4.0/>

Implementation of The Trias Politica Concept and The Prospects For Establishing New High State Institutions in Indonesia

Demson Tiopan¹, Agus Setiawan², Kevin Alim Rabbani³

¹Fakultas Hukum, Universtas Kristen Maranatha, Bandung, Indonesia.
Email: demson.tiopan@maranatha.edu

²Fakultas Hukum, Universtas Kristen Maranatha, Bandung, Indonesia.
Email: agus.setiawan@law.maranatha.edu

³Fakultas Hukum, Universtas Kristen Maranatha, Bandung, Indonesia.
Email: banikevin26@gmail.com

Corresponding Author: demson.tiopan@maranatha.edu

Abstract: *State institutions play a significantly central role in the implementation of governance. The doctrine of trias politica has been implemented in the structure of the Indonesian state, establishing a division of powers among three branches: the executive, legislative, and judicial. Nevertheless, over time, Indonesia has expanded the trias politica doctrine by incorporating a novel branch of power, namely the examinative institution operated by the The Audit Board of the Republic of Indonesia. The high state institutions established in accordance with the constitution enjoy robust and enduring positions and authorities. On the other hand, state institutions formed through legislation tend to possess comparatively weaker and non-permanent positions and authorities, as they are susceptible to amendments or even dissolution by the House of People's Representatives (Dewan Perwakilan Rakyat, DPR), which holds legislative functions. The Ombudsman and Corruption Eradication Commission (Komisi Pemberantasan Korupsi or KPK), as auxiliary state institutions playing pivotal roles in the governance system, face vulnerability due to their establishment being founded on statutory laws. Consequently, there arises an urgent necessity and opportunity for the establishment of a new high state institution by elevating the Ombudsman and KPK to the status of high state institutions. However, there are inherent challenges that must be navigated, specifically the requirement for an amendment to the 1945 Indonesian Constitution, contingent upon the political will of the members of the People's Consultative Assembly (Majelis Permusyawaratan Rakyat or MPR).*

Keyword: *Trias politica, high state institution, the 1945 constitution of the Republic of Indonesia.*

Abstrak: Lembaga-lembaga negara memainkan peran sentral yang signifikan dalam pelaksanaan pemerintahan. Doktrin trias politica telah diimplementasikan dalam struktur

negara Indonesia, dengan menetapkan pembagian kekuasaan di antara tiga cabang: eksekutif, legislatif, dan yudikatif. Namun demikian, seiring berjalannya waktu, Indonesia telah memperluas doktrin trias politica dengan memasukkan cabang kekuasaan yang baru, yaitu lembaga pemeriksa yang dioperasikan oleh Badan Pemeriksa Keuangan Republik Indonesia. Lembaga-lembaga tinggi negara yang dibentuk sesuai dengan konstitusi memiliki posisi dan kewenangan yang kuat dan bertahan lama. Di sisi lain, lembaga-lembaga negara yang dibentuk melalui undang-undang cenderung memiliki posisi dan kewenangan yang relatif lebih lemah dan tidak permanen, karena rentan terhadap amandemen atau bahkan pembubaran oleh Dewan Perwakilan Rakyat (DPR) yang memegang fungsi legislatif. Ombudsman dan Komisi Pemberantasan Korupsi (KPK), sebagai lembaga negara yang berperan penting dalam sistem pemerintahan, menghadapi kerentanan karena pendiriannya didasarkan pada undang-undang. Oleh karena itu, muncul kebutuhan dan peluang yang mendesak untuk membentuk lembaga tinggi negara baru dengan meningkatkan status Ombudsman dan KPK menjadi lembaga tinggi negara. Namun demikian, terdapat tantangan yang harus dihadapi, yaitu perlunya amandemen UUD 1945, yang bergantung pada kemauan politik anggota Majelis Permusyawaratan Rakyat (MPR).

Kata Kunci: Trias politica, lembaga tinggi negara, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

INTRODUCTION

Essentially, humans are social beings who always live in a community, as stated by Aristotle, referring to them as "zoon politicon".¹ As social creatures, humans inherently desire to interact and cooperate with one another.² This inclination towards interaction and cooperation arises naturally from within humans due to their innate nature. The social nature of humans, on a larger scale, is further manifested through the establishment of a state, which is solely aimed at achieving common goals. Indonesia, as an independent nation, has enshrined its national goals in the 1945 Constitution of the Republic of Indonesia, which include safeguarding the entire Indonesian nation, promoting the general welfare, advancing the intellectual life of the nation, and contributing to the establishment of a just and orderly world order based on freedom, eternal peace, and social justice.

According to Bellefroid, a state is a legal association that occupies a territory permanently and is equipped with supreme authority to promote the utmost prosperity of its people.³ Therefore, the formation of a state is essentially based on the purpose of providing welfare to its citizens. The establishment of a state involves the delegation of power by the people to their representatives to realize the state's goals. As a result, the state possesses the authority to take necessary actions to achieve its intended goals. The exercise of state power has a long history and has undergone various developments in its implementation. Before the concept of the state was known, the exercise of power in a territory was based on the concept of kingdoms. The concept of kingdoms often tended towards absolutist patterns of authority, leading to a bitter history for human civilization. Absolutism gave rise to leaders who acted arbitrarily, and the people became victims of the cruel actions of absolute rulers. Even after the formation of the concept of the state, such patterns continued to recur. World War II stands as a real witness to the history of how cruel the absolutism of power, as exemplified by Hitler, could be. Indeed,

¹ Marpaung, L.A. (2018). *Ilmu Negara*. Jakarta: Penerbit Andi. p. 2.

² Muslim, A. (2013). Interaksi Sosial dalam Masyarakat Multietnis. *Jurnal Diskursus Islam*, 1(3), 483-494. https://journal3.uin-alauddin.ac.id/index.php/diskursus_islam/article/download/6642/5402. p. 484.

³ Marpaung, op.cit. p. 4.

such occurrences can be attributed to the absolutist pattern that grants absolute power to a single individual, with no other comparable force to control the exercise of such power.

In contemporary development, states are governed by a government consisting of state organs that hold state authority based on the separation of power. This separation of power is intended to prevent the concentration of power in the hands of a single individual, which could lead to absolutism. The separation of power is based on the concept of the trias politica, a notion originated from John Locke and further developed by Montesquieu. The implication of this separation of power is the establishment of a system of checks and balances. This mechanism allows for the control and supervision of state institutions over one another. The process of checks and balances must be conducted among state institutions to ensure mutual oversight of their performance and prevent any single institution from assuming superior authority.⁴ Montesquieu contended that the separation of powers into distinct branches could safeguard a nation's independence.⁵ Therefore, it can be argued that the separation of powers holds significant importance in the implementation of the state's governance.

In the Indonesian constitutional system, the concept of the separation of powers is based on Montesquieu's version of the Trias Politica, consisting of the executive, legislative, and judicial branches. However, this concept is not purely adopted in Indonesia as the state powers are not entirely separated but rather divided. This division of powers results in a close interrelation among high state institutions. Moreover, the existence of a new independent institution, namely the examinative institution responsible for auditing state finances, is assigned to the Audit Board of the Republic of Indonesia (Badan Pemeriksa Keuangan or BPK). Satjipto Rahardjo points out that the law is not a final scheme but rather continuously moves, changes, and adapts to the dynamics of human life. Based on this perspective, the law is subject to change in line with societal developments, including the structure of state institutions, whose existence is regulated by law. Prof. Jimmly Ashidqie also suggests that currently, countries worldwide are transforming the format of state institutions that have been inherited from the past.⁶ The transformation of the state institution format is carried out in response to the increasing demands of the people's aspirations. Based on the above exposition, we are interested in exploring the Implementation of the Trias Politica concept and the prospects for establishing new high state institutions in Indonesia. More specifically, this study focused on answering the following questions: 1). How is the implementation of the Trias Politica concept in Indonesia? and 2). What is the prospect for establishing new high state institutions from the perspective of Indonesia's state institutional structure?

RESEARCH METHOD

This normative legal study focused on examining the implementation of principles and norms in positive law.⁷ This study was descriptive in nature. It described and analyzed the phenomenon based on facts in the form of secondary data obtained from primary and secondary legal materials.⁸ This study employed statute and comparative approach by examining relevant

⁴ Mariana, M. (2017). Check and Balances Antar Lembaga Negara di Dalam Sistem Politik Indonesia. *LOGIKA Jurnal Ilmiah Lemit Unswagati Cirebon*, 12(1), 20-28. <https://scholar.archive.org/work/ltyozuiku5cyzgnzebbmgafbeq/access/wayback/http://jurnal.unswagati.ac.id/index.php/logika/article/viewFile/967/638>. p. 22.

⁵ Ruhenda, et.al. (2020). Tinjauan Trias Politika Terhadap Terbentuknya Sistem Politik dan Pemerintahan di Indonesia. *Journal of Governance and Social Policy*, 1(2), 58-69. <https://doi.org/10.24815/gaspol.v1i2.18221>. p. 62.

⁶ Asshiddiqie, J. (2008). Hubungan Antar Lembaga Negara Pasca Perubahan UUD 1945. *Makalah disampaikan dalam Seminar Nasional Sekretariat Negara Republik Indonesia, Jakarta*, 25. p. 1-26.

⁷ Ibrahim, J. (2007). *Teori dan Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia Publishing. p. 54.

⁸ Soekanto, S. (1986). *Pengantar Penelitian Hukum*. Jakarta: Universitas Indonesia. p. 34.

regulations and comparing one regulation to another.⁹ This study used secondary data, obtained from primary, secondary, and tertiary legal materials.

RESULTS AND DISCUSSION

The implementation of the Trias Politica concept in Indonesia

The government of a country undoubtedly possesses numerous and diverse functions. In a centralized government, it is said that the government holds absolute power simultaneously in various aspects, which becomes a hindrance in governance. Increasingly, many states take arbitrary actions against state governments when they have absolute power over certain matters, such as legislation, execution of government missions, and justice, which are entrusted to the government. Undoubtedly, this presents a significant issue as arbitrariness results in injustice for society. Consequently, some Western political thinkers began to develop the notion of the separation of powers and the theory of the separation of powers. Political thinkers such as John Locke and Montesquieu pioneered the idea of avoiding arbitrariness in national administration. Essentially, the two ideas proposed by John Locke and Montesquieu have both differences and similarities. John Locke initiated the idea of dividing powers within the government to avoid centralized government absolutism. Indeed, half a century later, Montesquieu proposed the concept of the separation of powers in his work "The Spirit of the Laws" (1748). This concept is also known as Trias Politica. Naturally, the essence of Montesquieu's thought shares a common foundation with Locke's ideas. That is, both aim to avoid the concentration of government power, which may lead to governmental arbitrariness.¹⁰

According to Locke, power is divided into three categories: (1) legislative power, (2) executive power in domestic affairs, which includes government and courts, and (3) federative power, which pertains to actions against foreign entities for the benefit of the nation or its citizens.¹¹ Montesquieu analyzed the English government as follows: (1) when legislative and executive powers are combined in the same person or institution, there is no freedom; (2) there can be no freedom if the power of the judiciary is not separated from legislative and executive powers; (3) it would be exceedingly unfortunate if the same person or institution were to exercise all three powers, namely enacting laws, executing public decisions, and adjudicating crimes or disputes among individuals.¹²

Trias Politica is the notion that state power consists of three types of power: firstly, legislative power or the power to create laws (commonly referred to as the rule-making function); secondly, executive power or the power to implement laws (rule application function); and thirdly, judicial power or the power to adjudicate violations of the law (rule adjudication function). Trias Politica is a normative principle that these powers (functions) should not be vested in the same person to prevent the abuse of power by those in authority. Thus, the protection of citizens' fundamental rights is ensured.¹³

Montesquieu asserted that freedom can only be guaranteed when the three functions of power are not held by a single individual or entity but by three separate individuals or entities. He stated that if legislative and executive powers are unified in one person or authority, there will be no liberty. It would be disastrous if one person or authority, whether consisting of

⁹ Marzuki, P.M. (2008). *Metode Penelitian Hukum*. Jakarta: Kencana Prenada Media Group. p. 65.

¹⁰ Marzuki, P.M. (2009). *Penelitian Hukum*. Jakarta: Kencana. p. 45.

¹¹ Wirjono, P. (1983). *Azas-Azas Hukum Tata Negara di Indonesia*. Jakarta: Dian Rakjat.p. 40.

¹² Montesquieu. (2007). *The Spirit of Laws, Dasar-Dasar Ilmu Hukum dan Ilmu Politik, diterjemahkan oleh M. Khoiril Anam*, Bandung: Nusamedia. p. 43.

¹³ Asshiddiqie, J. (2003). *Struktur Ketatanegaraan Indonesia Setelah Perubahan Keempat UUD Tahun 1945*, Jakarta: Makalah Seminar Pembangunan Hukum Nasional VIII. p. 2-3.

nobility or common people, is entrusted with the execution of all three powers, namely the power to make laws, enforce public decisions, and adjudicate matters among individuals.¹⁴

As a state of law (Rechtsstaat), Indonesia also follows the division of powers in the government into three branches, in line with Montesquieu's views. This division of powers is enshrined in the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). In general, the state power in Indonesia is divided into three branches: the executive, legislative, and judicial branches. However, the examinative institution was established later due to the need for its existence. The breakdown of the division of state power in Indonesia is as follows:

1. The Legislative Institution:

The legislative institution comprises representatives elected by the people through general elections to represent the interests of the public. In essence, the primary task of the legislative institution is law-making, as emphasized by Montesquieu. Referring to the UUD NRI 1945, the legislative institution is divided into the People's Consultative Assembly (MPR), the House of People's Representative, and the Regional Representative Council (DPD). Their respective tasks can be outlined as follows:

a. People's Consultative Assembly (MPR):

Based on Article 2 of the 1945 Constitution, the MPR has the following tasks:

- 1) Amending and establishing the Constitution (UUD);
- 2) Inaugurating the President and Vice President based on election results;
- 3) Deciding on the proposal from the DPR regarding the Constitutional Court's decision to dismiss the President and/or Vice President during their term of office, following the submission of explanations by the President and/or Vice President during a DPR plenary session;
- 4) Inaugurating the Vice President if the President resigns, is dismissed, or is unable to perform duties;
- 5) Electing the Vice President from among two candidates proposed by the President;
- 6) Electing the President and Vice President if both of them cease to hold office simultaneously from two pairs of candidates for President and Vice President proposed by the winning political parties in the election and the political party with the second-highest number of votes, within a maximum period of 30 (thirty) days;
- 7) Establishing regulations on the MPR's internal rules of procedure and code of ethics.

b. House of People's Representative (DPR):

Based on Article 20 of the 1945 Constitution, the DPR has the following tasks:

1. Formulating laws that are discussed jointly with the President to obtain joint approval;
2. Discussing and providing approval for Government Regulation in Lieu of Law (Perpu);
3. Receiving and discussing proposals for Draft Laws submitted by the Regional Representative Council concerning specific regional matters;
4. Determining the State Budget together with the President, taking into account the considerations of the Regional Representative Council (DPD);
5. Overseeing the implementation of laws, the State Budget, and government policies;
6. Discussing and following up on the results of financial accountability examinations presented by the Audit Board;
7. Providing approval to the President for declaring war, making peace, and entering into agreements with other countries; and
8. Accommodating and following up on public aspirations.

¹⁴ Budiardjo, M. (2008). *Dasar-Dasar Ilmu Politik. Edisi Revisi, Cetakan Pertama*. Jakarta: Gramedia, 2008. p. 4.

c. The Regional Representative Council (DPD):

Based on the provisions of Article 22C to Article 22D of the 1945 Constitution, the tasks of the DPD are as follows:

- 1) Proposing bills to the DPR;
- 2) Participating in the discussion of bills;
- 3) Monitoring the implementation of laws related to regional autonomy, the formation, expansion, and merger of regions, the relationship between the central government and regions, the management of natural resources and other economic resources, the implementation of the state budget, taxation, education, and religion, and submitting the results of its monitoring to the DPR as consideration for follow-up actions; and
- 4) Providing considerations to the DPR.

2. The Executive Institution:

The executive institution is a body that primarily holds the power and authority for implementing policies based on the law. The executive institution is generally held by a President or a Monarch. In the context of Indonesia's state system, the executive institution is represented by the President, who simultaneously holds the positions of head of state and head of government. Referring to the provisions of the 1945 Constitution of the Republic of Indonesia, the tasks and authorities of the President as the head of state are as follows:

- a. Holds the highest authority over the Army, Navy, and Air Force (Article 10);
- b. Appoints ambassadors and consuls (Article 13 Paragraph 1);
- c. Receives foreign envoys with consideration from the House of People's Representative (Article 13 paragraph 3);
- d. Declares war, makes peace, and enters into agreements with other countries (Article 11 paragraph 1);
- e. Grants titles, decorations, and other honors as regulated by law (Article 15);
- f. Grants amnesty and pardons with consideration from the House of People's Representative (Article 14 paragraph 2).

As the head of government, the President has the following tasks and authorities

- 1) Holds the government's power (Article 4 paragraph 1);
- 2) Issues government regulations to implement the laws properly (Article 5 paragraph 2);
- 3) Appoints and dismisses ministers (Article 17 paragraph 2);
- 4) Enacts draft laws that have been jointly approved to become laws (Article 20 paragraph 4);
- 5) Proposes the State Budget draft for discussion with the House of People's Representative, taking into account the considerations of the Regional Representative Council (Article 23 paragraph 2);
- 6) Officially appoints members of the Audit Board (Article 23F paragraph 1);
- 7) Appoints the Chief Justice (Article 24A paragraph 3);
- 8) Appoints and dismisses members of the Judicial Commission with the approval of the House of People's Representative (Article 24B paragraph 3);
- 9) Appoints 9 (nine) justices of the Constitutional Court (Article 24C paragraph 3); and
- 10) Issues government regulations in lieu of law (Article 22 paragraph 1).

3. The Judicial Institution

The Judicial Institution is a body vested with authority in the realm of justice that operates independently and free from political and other influences. Primarily, the judicial institution acts as an adjudicator of violations of the law. In the context of Indonesia's state system, the judicial institution comprises two branches of power, namely the Constitutional Court and the Supreme Court, each possessing distinct authorities. However, over time, the

Judicial Commission has emerged, which holds the primary mandate of overseeing the performance of judges. If expounded, the tasks of each institution are as follows:

a. Supreme Court

Based on Article 24A of the 1945 Indonesian Constitution, the Supreme Court has the authority to adjudicate legal cases at the cessation level, review regulations below laws against the constitution, and possess other powers granted by the law. In its implementation, the Supreme Court presides over various judicial bodies, including general courts, military courts, administrative courts, and religious courts.

b. Constitutional Court:

According to Article 24C of the 1945 Indonesian Constitution, the Constitutional Court has the authority to adjudicate cases at both the first and final levels, with its decisions being conclusive, to review laws against the Constitution, settle disputes regarding state institutions' powers as granted by the Constitution, decide on political party dissolution, and settle disputes regarding election results.

c. Judicial Commission:

As stipulated in Article 24B of the 1945 Indonesian Constitution, the Judicial Commission has the authority to propose the appointment of Supreme Court judges and possesses other powers to uphold the honor, dignity, and conduct of judges.

4. Examinative Institution:

The examinative institution is a body vested with the primary authority as the auditor of the state's finances. Referring to Article 23E, the examinative institution in the context of Indonesian statehood is the State Audit Board (Badan Pemeriksa Keuangan Negara - BPK). The BPK's duties include examining the management and accountability of state finances, and the examination results are submitted to the DPR (People's Consultative Assembly), DPD (Regional Representative Council), and DPRD (Regional People's Representative Council) for further actions in accordance with the law.

Based on the explanation of these institutions, it can be stated that Indonesia does not strictly adhere to the concept of *trias politica* in an absolute sense. This can be seen from the presence of two high state institutions that are not explicitly mentioned in the teachings of Montesquieu's or John Locke's *trias politika*, namely the Judicial Commission and the State Audit Board. The State Audit Board functions as an examinative institution. *Trias politica* consists of only three branches of power: executive, legislative, and judicial. Therefore, the examinative institution can be seen as a development of the *trias politika* concept. Despite the addition of this new branch of power, it does not lead to a deviation of the state structure from the *trias politica* concept.

Upon close examination, from a teleological perspective, the concept of *trias politica* aims to prevent the concentration of power in the hands of a single institution, which may lead to absolutism. This is in line with Lord Acton's view that power tends to corrupt and absolute power corrupts absolutely.¹⁵ Therefore, the presence of these institutions can be interpreted as an expansion of the concept of *trias politica*. However, regarding the Judicial Commission, it can be argued that its true function does not align with the traditional understanding of a judicial institution as per the *trias politika* doctrine. According to the *trias politika* concept, the judicial branch is considered an institution with the authority to adjudicate cases.¹⁶ However, upon closer examination, the Judicial Commission is indirectly related to the judiciary as it is responsible for proposing the appointment of supreme court justices and safeguarding the honor, dignity, and behavior of judges. In essence, the Judicial

¹⁵ Pujianti, et.al. (2020). Reformulasi Stolen Asset Recovery dalam Sistem Pemeriksaan Delik Korupsi Sektor Swasta. *Jurnal Hukum Lex Generalis*, 1(4), 43-58. <https://doi.org/10.56370/jhlg.v1i4.207>. p. 43.

¹⁶ Asshidiqie, J. (2005). *Konstitusi dan Konstitualisme*, Jakarta: Konstitusi Press. p. 12.

Commission functions as a body for overseeing the judiciary. Therefore, it can be asserted that in this context, the Judicial Commission's position is appropriately placed within the judicial branch.

The prospect for establishing new high state institutions from the perspective of Indonesia's state institutional structure

A country is governed by a state structure consisting of state institutions or organs. According to Jimly Ashidique, there are more than 34 organs or institutions whose existence is regulated in the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). To differentiate them, these organs or institutions are categorized based on two criteria. First, the hierarchy criterion is based on the normative source that determines their authority. Second, the nature of their functions, whether they are primary or supporting functions within the state power system.¹⁷ The hierarchy criterion refers to the legal foundation upon which the institutions are established. This legal foundation also determines their hierarchical position. In this context, state institutions can be categorized as follows:

1. High State Institutions

High state institutions are established based on the constitution. In the Indonesian context, high state institutions include the President as the executive branch; MPR, DPR, DPD as the legislative branch; MA, MK, KY as the judicial branch; and BPK as the examinative institution. The consequence of being established based on the constitution is that their positions are relatively strong and permanent. This is due to the difficulty of amending the constitution, as it requires specific requirements to be fulfilled for any amendments to take place.

2. State Institutions

State institutions are established based on laws. In the Indonesian context, state institutions include the Indonesian National Armed Forces (TNI), the Indonesian National Police (Polri), the General Elections Commission (KPU), the Central Bank of Indonesia (BI), the Corruption Eradication Commission (KPK), and others. The consequence of being established based on laws is that their positions are relatively not permanent. This is because the laws that govern these institutions are subject to changes at any time, provided that there is political will from the DPR members and the President to obtain joint approval when amending the foundational structure of these institutions or even disbanding them.

3. Third-layer state Institutions or Commissions

The third layer of state institutions or commissions comprises institutions or commissions established based on regulations under the law, such as Presidential Decisions, Presidential Regulations, Ministerial Regulations, and other regulations. In the context of Indonesia, these third-layer state institutions or commissions include entities like the Presidential Staff Office, the National Economic and Industry Committee, the Indonesian Tourism Promotion Board, and others. The consequence of their establishment based on regulations under the law is their non-permanent nature, and they can be disbanded at any time when the establishing authority desires or based on certain considerations, such as bureaucratic efficiency or budget savings.

In addition to the hierarchy based on normative sources, state institutions can also be distinguished based on their functions, such as state administrative functions, auxiliary functions, and ad-hoc functions (established temporarily to address specific needs). In practice, institutions with auxiliary state functions tend to be independent and not subject to any authority. These auxiliary state institutions can serve as a link between the state authorities

¹⁷ Asshiddiqie, J. (2010). *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*. Jakarta: Sinar Grafika. p. 11.

and the public, facilitating communication and coordination between the government and the people. However, when auxiliary institutions are normatively subject to the authority of higher state institutions such as the President, they may become inclined to be biased and lose their independence. Despite clear provisions in the law stating their independence, in reality, these institutions still maintain a coordinative relationship that cannot be fully separated from the higher state institutions. The existence of auxiliary institutions is perceived as necessary for the public to interact with higher state institutions. Two examples of such auxiliary state institutions are the Ombudsman and the Corruption Eradication Commission (KPK). Both institutions, based on their authorities, serve as supporting bodies.

Referring to Article 2 of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia ("Ombudsman Law"), the Ombudsman is an independent state institution that is not organically connected to other state institutions and government agencies. The Ombudsman is also free from interference by other powers when performing its duties and authorities. Based on this definition, the law explicitly states that the Ombudsman is an independent institution and is not affiliated with other state institutions. However, in practice, the Ombudsman still maintains a relationship with higher-level institutions, namely the President and the DPR (People's Consultative Assembly). This relationship comes into play when the recommendations of the Ombudsman are not implemented by the respondents and their superiors. In such cases, the Ombudsman reports the matter to the DPR and the President. If examined further, there is no provision in the Ombudsman Law that specifically mandates the President and DPR to respond to the Ombudsman's reports. In other words, the Ombudsman's authority in carrying out its duties is considered weak and still dependent on higher state institutions. This situation arises due to the Ombudsman's status as a state institution established by law. In terms of functional significance, the Ombudsman is deemed necessary to accommodate the public's needs in addressing maladministration in public services. Public services are a matter of great importance that the state must take seriously, as they represent the implementation of the constitutional mandate concerning the welfare of the people. This aligns with the theory of the welfare state, which states that the state has a role and responsibility in ensuring the fulfillment of its citizens' basic needs¹⁸, including in the context of public services as a manifestation of such needs.

The Corruption Eradication Commission (KPK) is a state institution currently tasked with combating corruption, collusion, and nepotism. In terms of its structure, the KPK is placed under the executive authority, namely the President. This assertion is supported by Article 1 Number 3 of Law No. 19 of 2019 concerning the Second Amendment to Law No. 30 of 2002 concerning the Corruption Eradication Commission, which states that the Corruption Eradication Commission is a state institution within the executive branch that carries out the tasks of preventing and eradicating corruption.

Although Article 3 mentions that the KPK is independent and free from the influence of any authority, this does not guarantee the KPK's complete independence. This argument is based on the fact that the KPK is categorized as a state institution established by law. As mentioned earlier, laws are formulated by the DPR and jointly approved by the President. Hence, the position of the KPK is considered weak since its legal foundation, in the form of a law, can potentially be altered to restructure the institution. This has indeed occurred twice, most recently in 2019, through the enactment of Law No. 19 of 2019 concerning the Second Amendment to Law No. 30 of 2002 concerning the Corruption Eradication Commission. One significant change that occurred in the KPK's structure relates to the employment status of its

¹⁸ Roza, D. (2019). Partisipasi Masyarakat dalam Pembentukan Perundang-Undangan Untuk Mewujudkan Indonesia Sejahtera dalam Pandangan Teori Negara Kesejahteraan. *Jurnal Cendekia Hukum*, 5(1), 131-144. <http://doi.org/10.33760/jch.v5i1.185>. p. 136.

employees, who are no longer independent but are classified as civil servants. As civil servants, they are subject to executive authority, which can be deemed inconsistent with being independent employees, as their status aligns with an executive agency that leans towards the executive power. Considering these points, the independence of the KPK becomes contradictory to the provisions of Article 3. The current situation, as presented regarding the positions of the Ombudsman and the KPK, indeed poses potential obstacles to their efforts in combating corruption.

Both state institutions face structural and functional constraints due to their weak status as institutions formed based on laws. This consequence arises from the establishment of state institutions by law, which leaves room for the Ombudsman, the KPK, and other state institutions at the same level to elevate their status to that of high state institutions based on the constitution. By doing so, their positions and authorities would become more permanent and stronger, equivalent to the existing legislative, executive, and judicial institutions.

However, achieving this goal comes with its own challenges, such as amending the 1945 Constitution of the Republic of Indonesia (UUD NRI). The last amendment to the UUD NRI was carried out in 2002, making it 21 years since any amendment has been made. Recently, discussions regarding a limited fifth amendment faced opposition from various elements. The rejection was based on the belief that amending the UUD NRI is a sacred step that requires careful consideration. Nonetheless, from a normative standpoint, amendments can be carried out by adhering to the applicable requirements stated in Article 37 of the UUD NRI. In practice, a proposal to amend the 1945 Constitution must be submitted in writing by at least one-third of the total members of the MPR and must clearly specify the parts to be amended. Additionally, for the amendment to take effect, it requires the presence of at least two-thirds of the total MPR members. Furthermore, in making decisions, at least the approval of 50% + 1 of the total members of the MPR is required. In practice, amendments to the 1945 Constitution are determined by the political will of the MPR members, which includes members of DPR and DPD. Consistency of perception and objectives regarding the desire to change the status of the Corruption Eradication Commission (KPK) and the Ombudsman (as well as other equivalent state institutions, if deemed necessary) is necessary among members from different factions. J.J. Rousseau stated that democracy is essential for a nation's progress towards perfecting its constitutional system.¹⁹ This implies that MPR members, as the holders of the people's sovereignty, should be aware of the significance of democracy itself as a means to achieve a more perfect constitutional system. One of the steps to achieve this can be taken through limited amendments to transform the status of the KPK and the Ombudsman into high state institutions, solely for the welfare of the nation and the state.

CONCLUSION

In practice, the state is governed by three branches of power consisting of the legislative, executive, and judicial institutions, based on the concept of *trias politica*. As a state of law, Indonesia divides its powers into three branches: the executive, led by the President; the legislative, represented by the People's Consultative Assembly (MPR), the House of People's Representative (DPR), and the Regional Representative Council (DPD); and the judicial, consisting of the Supreme Court (MA), the Constitutional Court (MK), and the Judicial Commission (KY). However, Indonesia does not strictly adhere to the pure concept of the separation of powers due to the existence of an examinative institution, which expands the traditional *trias politica*, represented by the State Audit Board (BPK).

¹⁹ Thallah, HM. (2009). Teori Demokrasi dalam Wacana Ketatanegaraan Perspektif Pemikiran Hans Kelsen. *Jurnal Hukum*, 16(3), 483-494. <https://doi.org/10.20885/iustum.vol16.iss3.art6>. p. 415.

State institutions or organs can be categorized into three layers based on their hierarchy in the normative source, namely high state institutions, state institutions, and third-layer state institutions or commissions. The high state institutions tend to have stronger and more permanent positions and powers compared to the other two types of institutions below them, as their establishment is enshrined in the constitution. On the other hand, state institutions' positions and powers are less robust and less permanent since their establishment is only prescribed in laws.

State institutions, considering their functions, play a central role as auxiliary institutions such as the Corruption Eradication Commission (KPK) and the Ombudsman. However, their positions are relatively weaker and not permanent due to their establishment based on laws, which can be amended in their institutional structure or even dissolved at any time. In this context, there is an urgency to save the Corruption Eradication Commission (KPK) and the Ombudsman by elevating their status to that of high state institutions, equivalent to the executive, legislative, and judicial branches currently in existence. However, achieving this goal requires overcoming certain challenges, namely amending the 1945 Constitution, which necessitates political will, shared perception, and common objectives among the members of the People's Consultative Assembly (MPR).

BIBLIOGRAPHY

- Asshiddiqie, J. (2003). *Struktur Ketatanegaraan Indonesia Setelah Perubahan Keempat UUD Tahun 1945*, Jakarta: Makalah Seminar Pembangunan Hukum Nasional VIII.
- Asshiddiqie, J. (2010). *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*. Jakarta: Sinar Grafika.
- Asshiddiqie, J. (2005). *Konstitusi dan Konstitualisme*, Jakarta: Konstitusi Press.
- Budiardjo, M. (2008). *Dasar-Dasar Ilmu Politik. Edisi Revisi, Cetakan Pertama*. Jakarta: Gramedia, 2008.
- Ibrahim, J. (2007). *Teori dan Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia Publishing.
- Marpaung, L.A. (2018). *Ilmu Negara*. Jakarta: Penerbit Andi.
- Marzuki, P.M. (2008). *Metode Penelitian Hukum*. Jakarta: Kencana Prenada Media Group.
- Marzuki, P.M. (2009). *Penelitian Hukum*. Jakarta: Kencana.
- Montesquieu. (2007). *The Spirit of Laws, Dasar-Dasar Ilmu Hukum dan Ilmu Politik, diterjemahkan oleh M. Khoiril Anam*, Bandung: Nusamedia.
- Soekanto, S. (1986). *Pengantar Penelitian Hukum*. Jakarta: Universitas Indonesia.
- Wirjono, P. (1983). *Azas-Azas Hukum Tata Negara di Indonesia*. Jakarta: Dian Rakjat.
- Asshiddiqie, J. (2008). Hubungan Antar Lembaga Negara Pasca Perubahan UUD 1945. *Makalah disampaikan dalam Seminar Nasional Sekretariat Negara Republik Indonesia, Jakarta, 25, 1-26*.
- Mariana, M. (2017). Check and Balances Antar Lembaga Negara di Dalam Sistem Politik Indonesia. *LOGIKA Jurnal Ilmiah Lemit Unswagati Cirebon*, 12(1), 20-28. <https://scholar.archive.org/work/ltyozuiku5cyzgnzebbmgafbeq/access/wayback/http://jurnal.unswagati.ac.id/index.php/logika/article/viewFile/967/638>.
- Muslim, A. (2013). Interaksi Sosial dalam Masyarakat Multietnis. *Jurnal Diskursus Islam*, 1(3), 483-494. https://journal3.uin-alauddin.ac.id/index.php/diskursus_islam/article/download/6642/5402.
- Pujianti, et.al. (2020). Reformulasi Stolen Asset Recovery dalam Sistem Pemeriksaan Delik Korupsi Sektor Swasta. *Jurnal Hukum Lex Generalis*, 1(4), 43-58. <https://doi.org/10.56370/jhlg.v1i4.207>.

- Roza, D. (2019). Partisipasi Masyarakat dalam Pembentukan Perundang-Undangan Untuk Mewujudkan Indonesia Sejahtera dalam Pandangan Teori Negara Kesejahteraan. *Jurnal Cendekia Hukum*, 5(1), 131-144. <http://doi.org/10.33760/jch.v5i1.185>.
- Ruhenda, et.al. (2020). Tinjauan Trias Politika Terhadap Terbentuknya Sistem Politik dan Pemerintahan di Indonesia. *Journal of Governance and Social Policy*, 1(2), 58-69. <https://doi.org/10.24815/gaspol.v1i2.18221>.
- Thallah, HM. (2009). Teori Demokrasi dalam Wacana Ketatanegaraan Perspektif Pemikiran Hans Kelsen. *Jurnal Hukum*, 16(3), 483-494. <https://doi.org/10.20885/iustum.vol16.iss3.art6>.