

# An Institutionalization of the State Commissions as a State Institutions on the Basis of the 1945 Constitution of the Republic of Indonesia

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## Abstract

The institutionalize of the state commissions as 'lembaga negara' (the institutional state) is based on UUD 1945. By using the institutionalize of the commission on the state theory, it is found that the term, terminology, and interpretation toward state organization in the institutionalize state is an absolute requirement to have an institutionalize of the state commissions. Based on the Doctrine (The Law Experts Theory) and UUD 1945, such standard cannot be found for being a reference of the institution state arrangement. In the practice of Republic Indonesia constitution, the process of the institutionalize state of the state commissions is done by using unstandardized terminology either from its authority source or its institution's function. Therefore, this research analysis has found that the standard terminology to classified the organization, the institution, and the state commission is the main reference in the institution state arrangements. Recommendation: The main problem in the institutionalize of the state commissions is that there is no 'meaning' reference in the state operational. Therefore, the recommendation of this research, according to the researcher, is that it becomes a main obligation for the government to keep 'meaning' in the state operational.

**Keywords:** state organ, the state commission, the institutional state, 'lembaga negara'.

## I. Background of the Research

Changes in the practice of the state structure in line with some changes in the 1945 Constitution have also resulted in the change of the term 'state institutions'. A number of new agencies, generally named "commissions" or others, either as stated in the Constitution or in Laws, are called "state commissions", and they do not have any status as state equipments acted for and behalf on the state. Considered from the new duties of the new agencies, principally they do administrative jobs or serve as auxiliary agencies or agents.

The formation of the state commissions is always related to the state coordination system, consisting of, among others, functions of each organ and the relationship one and each other. In this case, a mostly adopted concept is that of *trias politica*. This doctrine is firstly proposed by John Lock, and then Montesquie divides a power of state into three, namely, legislative, executive and judicative, each has its own duty, making laws, implementing the law, and bringing any violations to justice, respectively. According to Montesquie, the three should be separated, either in terms of duty (function), or equipment (organ) that perform the job. Especially, Montesquie gives an emphasis on the importance of judicative body's freedom, since it is on the body individual body that exists and human rights are assured and bet.<sup>1</sup> The implementation of the process of the power separation is made by creating state organs with different but inter-connected authorities so that a domination of one power branch may be avoided.

The state commissions are not yet created based on an intact conception for an ideal state system, so that overlapping powers among institutions still occur.<sup>2</sup> The authority given to the commission is varied. In general, however, such an authority is an affirmation of extension from the conception of *trias politica* that divides powers of state into legislative, executive and judicative ones.

Even, the arrangement of the institutional nature of the operator of state functions and state auxiliaries has raised a confusion either in the government order or structure. Such an asynchronous juridical order in the government should be handled in order to eliminate the confusion which enables to raise new state problems in the state structure of the Republic of Indonesia.

<sup>1</sup> Miriam Budiarto, *Dasar-Dasar Ilmu Politik*, PT. Gramedia, Jakarta, 1993, p. 152.

<sup>2</sup> Some relevant and urgent steps taken to build the credibility of the government are as follows: (1) the defrayal of state auxiliaries should be evaluated together with the Parliament, accountability and capability of the members of KPPU should be improved; (b) the capacity of the KPPU in monitoring a more complex competition with international dimension should be improved; (c) the application of self-regulation among the doer should be probed to reduce the load the KPPU has; (d) the mechanism in the court should harmonized, and the judges should understand unique substance of the 1999 law no. 5 and the investigators and the members of the commissions in the KPPU should really master procedures applied in the court; (e) the 1999 Law no. 5 should be as quickly as possible amended; Recommendation from a Seminar with the theme "Membangun Paradigma Baru Pembangunan Hukum Nasional" in: *Laporan Tahunan Komisi Hukum Nasional 2004*, Jakarta, pp. 136.

## II. Main Research Problem

Problems in the institutional nature of the state commission on the basis of the 1945 Constitution in the context of state structure are due to the lack of an understanding of a state institutions. Therefore it is absolute to have a clear definition and conception of state institutions in order to have clear and bases and criteria concerning with an institution that may be categorized as a state institution. Moreover, it is necessary to restructure state commissions in order to make them effective under the context of law reformation in Indonesia and such a reformation should be placed under the context of a state structure system in the Republic of Indonesia.

## III. Objective and Significance of the Research

1. To analyse the institutional nature of the state commissions based on the 1945 Constitution either at theoretical or normative and practical levels growing in the state structure system of the Republic of Indonesia.
2. Practically, it is expected that this research may identify institutionalization of the state commissions as state institutions in a proper framework of a state structure system.

## IV. Research Method

The object of this research is included into an investigation and examination according to the law science, and especially it is a study under the constitutional law. Therefore, a description of objects of studies in this present research was made based on the object of law science.<sup>1</sup>

Therefore, it is a normative law or legal research.<sup>2</sup> Therefore, a juridical-normative approach was employed. The materials include primary, secondary and tertiary ones.<sup>3</sup> To collect such materials, a library research was given an emphasis or priority, and a field study merely served as a complement. Meanwhile, a juridical qualitative analysis was made and the results were described in a descriptive-analytic form.

## V. The Institutional nature Commissions as a State institutions

Table 1: Conception of institution based on the objective of the formation:

No.	INSTITUTION	OBJECTIVE
1	Public	The objective of their formation is related to the general/public interest.
2	Private	The objective of their formation is related to the interest of limited people

Source: Secondary law materials, modified.

Moreover, an institution is also distinguished on the basis of its formation process.<sup>4</sup>

Table 2: Conception of institution based on the process of the formation:

No.	INSTITUTION	OBJECTIVE
1	Government	Involving the government
2	Non-Governmental Organization	People's initiative

Source: Secondary law materials, modified.

In relation to the Constitution, the term institution was used as a nomenclature to call a container for government functions as stated in the 1945 Constitution which had not been changed.<sup>5</sup>

<sup>1</sup> The research object of law science includes: *First*, a positive law, namely a law prevailed especially in the constitutional law. *Secondly*, a investigation of laws which were prevailed in the constitutional law. *Thirdly*, an investigation of laws that are expected to be prevailed in the future related to the institutional nature of state commissions in the constitutional system of the Republic of Indonesia in the future; Bagir Manan, *Hubungan Antara Pusat dan Daerah Berdasarkan Asas Desentralisasi Menurut UUD 1945*, Disertasi, Pascasarjana Universitas Padjajaran, Bandung, 1990, p. 12.

<sup>2</sup> Soerjono Soekanto and Sri Mamudji, 1979, *Peranan dan Penggunaan Perpustakaan di dalam Penelitian Hukum*, Pusat Dokumentasi Hukum Fakultas Hukum Universitas Indonesia, Jakarta, p. 15

<sup>3</sup> Sorjono Soekanto and Sri Mamudji, 1979, *Penelitian Hukum Normati: Suatu Tinjauan Singkat*, Rajawali Press, Jakarta, 1985, pp. 34-35.

<sup>4</sup> Another word that may also be used to call institution is body, that may generally be distinguished between public and private bodies. See C.S.T Kansil and Christine Kansil, *Pokok-Pokok Badan Hukum*, Jakarta: Pustaka Sinar Harapan, 2002, p. 113; Compare it with Jimly Assididqie, *Kemerdekaan Berserikat, Pembubaran Partai Politik, dan Mahkamah Konstitusi*, Jakarta, Kompas, 2005, pp. 74-75.

<sup>5</sup> The stipulation made by the MPR (People's Consultative Assembly) of the Republic of Indonesia No. III/MPR/1978 on the Position and Relation of work procedures among the Highest State Agencies and/or inter High State Agencies. Before the Stipulation, the stipulation made by the MPR governing state agencies is the Stipulation of MPR No. VI/MPR/ 1973 on the relation of work procedures among the Highest State Agencies and/or inter High State Agencies.

Table 3: Conception of institution based on the process of the formation:

No.	TERMS	AGENCIES
1	Highest State Institution	MPR
2	High State institutions	President, DPR, DPA, BPK and MA

Source: Secondary law materials, modified.

## VI. Institutionalization of State Commissions as A State institutions according to Doctrines (Teachings from Law Experts)

Sri Soemantri<sup>1</sup> interprets that state commissions resulted from the changes are BPK, DPR, DPD, MPR, President and Vice President, MA, MK, and KY (state commissions). This opinion is based on the thought of an institutional system of state due to the changes in the 1945 Constitution that is divided into 3 (three) fields/functions in terms of:

1. regulation
2. monitoring
3. appointment of supreme judges

Bintan R. Saragih categorizes state institutions functionally in relation to state operators, covering executive, legislative ad judicative fields.<sup>2</sup> Also, Jimly Asshiddiqie explores more deeply the thoughts and ideas on the nature of power institutionalized and organized into a constitutional building constitution

A conception on state organs or institutions cannot merely be limited into Montesquieu's trias politica: legislative, executive ad judicial. Since the three branches of powers have mutually related to and controlled one another in line with a check and balance principle. Jimly Assiddiqie categorizes state commissions into five layers or parts.<sup>3</sup>

Table 4: Categories of State institutions in Its Senses and Criteria

NO	SENSE	CRITERIA
1	The widest: State institutions cover "every individual" serving functions in law creating and applying	An emphasis is on the word "every individual". The individual may be anyone (either people or 3 branches of powers) in law creating and applying context, for example, in a general election held by all people.
2	Wide: but narrower than the first sense. State institutions cover "individual" who performs two above functions and possesses a position as or in the job position in government.	The key in the sense of state institutions lays in the "individual in a certain position in the government or state. So, any citizen or person are excluded in the state institutions in the second sense.
3	Narrow State institutions as "body" or "organization" performing functions of applying law under the framework of government or struktur kenegaraan and system.	State institutions cover bodies established based on a constitution or other regulations under it in a country. This sense is narrower than the second sense and they mean as their bodies or organization (instead of person/individual) in the context of constitutional structure. More importantly, state institutions cover those established the Constitutions, Laws, President Regulations, or by lower levels of decisions, either in central or local levels. The third sense of "state organ" covers those from central to local levels, including sub-district, kelurahan, and others (RT/rukun tetangga, RW/rukun warga).
4	Narrower State institutions are merely limited to terms 'state institution established on the basis of the Constitution, Laws or other lower regulations.	A keyword to distinguish the third and fourth terms of "state institution" is "decisions of which levels are lower", either in central or local levels. The fourth is limited to those in central and local levels (to local Parliament).
5	Much narrower A speciality of state institutions in central levels where their establishments are regulated and determined by the 1945 Constitution.	The institutions cover MPR, DPR, President, MA, MK, and BPK.

Source: Jimly Asshiddiqie, 2006: 40-41

<sup>1</sup> Sri Soemantri, *Ekistensi Sistem Kelembagaan Negara Pasca Amendemen UUD 1945*, KRHN, Jakarta, 2004, pp. 15.

<sup>2</sup> See, *Ekistensi Sistem Kelembagaan Negara dalam Sistem dan Struktur Pemerintahan Yang Berubah*, KRHN, Jakarta, 1 Oktober 2004.

<sup>3</sup> Jimmly Asshiddiqie, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia, Jakarta, 2006, pp.40-41.

Also, the judges of the Constitution Court have different opinions<sup>1</sup> in interpreting state institutions. It is clear from its decisions, especially those dealing with disputes of authorities of state institutions. For example, to determine a prerequisite for a legal standing of a state institution to bring its dispute to the Court is that the institution gets its authority from the 1945 Constitution, on the basis of the article 24 C verse (1) of the 1945 Constitution and article 10 verse (1) letter b, and verse 61 of laws of the Constitution Court, which have so far been interpreted textually that:

- a. An authority of a state institution is given by the 1945 Constitution
- b. The state institutions that have a dispute possess a direct interest with the authority disputed.

Any decisions made by the Constitution Court concerning with disputes on authorities among state institutions, that may seem to become references in general, are from textual meanings and refer to original intents of the formulators of changes of the 1945 Constitution when they adopt article 24 C verse (1).

For instance, a case of dispute on *Komisi Pemilihan Umum (KPU)* (Electoral Election Commission), the statement “one general election commission which is independent, permanent and national” which is written in small letter, seems to become a structural and formal perspective dominating any textual interpretation that may be adopted. It also appears in the Constitution Court Regulation No 08/PMK/2006 (PMK 08/2006), where it is constitutively stated that those that may become ‘requester’ and requested” in any case on a dispute of state institution are state institutions, namely DPR, DPD, MPR, BPK, and President, which were called high and highest state institutions. However, in the PMK 08/2006, there is also a state institution that gets an authority from the 1945 Constitution, namely *Local Government*, without any confirmation whether the Local Government and Local Parliament, which are components of a Local Government, which is separated one another, may be categorized as state institutions of which their authorities are from the 1945 Constitution.

As admitted by the Constitution Court itself, such an interpretation is something dynamic, of which its development has not yet been thought to be a final concept, as a result a compromise reached has made the PMK 08/2006 in the article 2 letter g, states that there is another “state institution of which its authority is given by the 1945 Constitution.” It means that any possibility is still open that there are any state institutions that get authorities from the 1945 Constitution, and this condition may open any interpretation according to contexts and dynamics in the life of the nation and state, before a final form is reached.

Concerning with any interpretation which is thought to get authorities from the 1945 Constitution, it is *subjectum litis* viewed from a dispute of state institution as stipulated in the Constitution. In the Decision by the Court no. 06/SKLN-III/2005, besides a prerequisite of authority given by the Constitution, there are other three prerequisites for legal standing stated in the article 3 PMK/ 8/2006.:

- (1) Requesters are state institution that consider their constitutional authorities are taken, reduced, hindered, and/or inflicted by other institutions;
- (2) Requesters have direct interests in the disputed authority.
- (3) The requested is state institution considered to have taken reduced, to have hindered, to have underestimated and/or to have inflicted the requester.

The Constitution Court in its Decision No. 04/SKLN-IV/2006 determines that regents and Local Parliaments as state institutions do shall not obtain their authorities in performing their autonomies as wide as possible from the 1945 Constitution but from laws. The judge Maruarar Siahaan having dissenting opinion, says that local government namely regents and local parliaments are state institutions that obtain their autonomies to perform local government as wide as possible from the 1945 Constitution, as stated in article 18 verse (4), saying that the authorities of local heads are to lead some of government duties, and local parliaments legalize local regulations.

From opinions of law experts on state institution under the framework of state organization, it can be concluded that in giving a sense to the institutional nature of state is influenced by underlying perspectives and thinking paradigms. However, they are still not comprehensive enough. This may result in terms, terminologies, and interpretation which are not comprehensive yet under the framework of the constitutional system of the Republic of Indonesia.

## VII. Institutionalization of State Commissions as a State Institution According to the 1945 Constitution

What is meant by state institutions and what institutions are included in state institutions. The Constitution does not confirm what state institutions mean and what institutions are included in the state institutions. The term state institution has been known since the decision MPR/VI/MPR/1973 was made to distinguish:

1. The highest state institution: MPR
2. High State Institutions: President, DPA, DPR, BPK, and MA.

The stipulation in the decision MPR No. III/MPR/1973 was then changed through the decision MPR/VI/1978.

<sup>1</sup> See some decisions made by the Court concerning with disputes of authorities of state institutions; www.mahkamahkonstitusi.go.id. Even, almost decisions by the Court about authorities of state institutions are produced by dissenting opinions from almost half (2-4) number of 9 judges.

State Institutions in the Tap MPR/III/1973 are the same with those of Tap MPR/VI/MPR/73. Since the decision of MPR No. /MPR/2003 was legalized, the decision of MPR No.III/MPR/78 was withdrawn and is not valid anymore (article 1). Therefore, a classification of the highest and high state institutions is not recognized anymore.

Changes in the 1945 Constitutions turn out eliminating a state institution DPA in the one hand and on the other hand new institutions are born namely DPD, MK, Judicial Commission, Central Bank. If classified based on the functions, the state institutions may be shown in Table 5.

**Table 5.** A Classification of State Institutions Based on the State Functions After hanges in the 1945 Constitution

No.	FUNCTION	1945 CONSTITUTION	STATE INSTITUTION
1	Representation	Chapter II, Chapter VII, Chapter VII A	MPR, DPR, DPD
2	Implementation	Chapter III	President & Vice President
3	Monitoring	Chapter VIII A	BPK
4	Justice	Chapter IX	MA, MK, KY

Source: Primary Law Materials, modified.

For example, the problem is whether the Judicial Commission is included in state institutions. This question arises since the function of the Judicial Commission is not to perform the function of power of justice. On the basis of the stipulation in article 24 of the 1945 Constitution, the power of justice is performed by the Supreme Court and the Constitution Court.

To study the question for example, a comparative approach may be applied, namely a comparison with German Institutional System. In the System, terms “state organ” and “constitutional organ” are distinguished. A “constitutional organ” means an organ (institution) of which its status and substantial authority is directly regulated by the Constitution. On the basis of the criteria, *Bundesbank* is “state organ” instead of “constitutional organ”.<sup>1</sup> Although the literal translation of “state organ” is state institution and the “constitutional organ” is constitutional institution, in the institutional system of Indonesia, however, it is state institution which is used.<sup>2</sup>

In a historical study, there are some terms used to identify institutions or organs functioning to operate the state. The 1949 Constitution (the Union of the Republic of Indonesia, RIS) for example, the Federal State of the Republic of Indonesia consists of: President, Ministers, Senate, House of Representative, Indonesian Supreme Court and DPK. The 1950 Temporary Constitution name it “complementary organ of state”. The article 44 of the 1950 Temporary Constitution stated that the organ consists of: President and Vice-president, Ministers, House of Representative, Supreme Court and Dewan Pengawas Keuangan.

The 1945 Constitution, that prevailed before the 1949 RIS Constitution and the 1950, that was prevailed again after the 1959 President Decree, did not give any guidance in identifying or giving meanings to the state organs. In the 1945 Constitution, no term “state institution” is found, so that it raises a difficulty in identifying giving meanings to the term ‘state institution’. But it is the word “body” that may be found, for example in the article 23 verse (5) of the 1945 Constitution. The word “body” is used to call BPK, in the article 24 to call “body of justice”. In the article II of the Change Rule (Aturan Peralihan) the term “body” is employed. To call the MPR, in the explanation of the 1945 Constitution, it is used the word “body”. For the local parliament, it is also “body” which is stated in the article 24 of the 1945 Constitution.

The term “body” which is consistently used in the main body (batang tubuh) and in the explanation of the 1945 Constitution as state organ by the MPRS, then was changed or interpreted as “institution”. The terminology ‘state institution’ emerges and may be met in decisions of the MPR. The term ‘state institution’ firstly appeared and was regulated in the decision of the MPRS No. XX/MPRS/1966 on the Memorandum of the *Dewan Perwakilan Rakyat Gotong Royong*” on the *Sumber Tertib Hukum Republik Indonesia*” and *Tata Urutan Peraturan Perundang-undangan Republik Indonesia*. In the decision, it is also a scheme of the structure of the power of the state of the Republic of Indonesia placing the MPR as the highest state institution in the Constitution, while the President, DPR, DPA, and MA as state institutions under the MPR.<sup>3</sup> Though the decree has determined the scheme of the power of state, it is not yet dealing with the term ‘highest and high state

<sup>1</sup> ANke Freckman and Thomas Wegerich, *The German Legal Sytem*, Sweet & Maxell, London, 1999. p. 62, a cited by: Phillips M. Hadjon, *Sengketa Kewenangan Lembaga Negara*, A National Seminar “Mahkamah Agung dan Mahkamah Konstitusi Dalam Mewujudkan Supremasi Hukum Yang berkeadilan dan Menjunjung Tinggi Hak Asasi Manusia” held by Laboratorium HTN Fakultas Hukum Ubaya dan Asosiasi Pengajar HTN and HAM Jawa Timur, Hotel Elmi Surabaya, June 23, 2004, p. 3.

<sup>2</sup> Compared with the German system “constitutional organ” is state institution. Therefore, state institution is an institution of which status and authority is directly regulated by the 1945 Constitution. So, is the Judicial Commission also included into state institution?; *Ibid*

<sup>3</sup> See attachment of the Decree of the MPRS No. XX/MPRS/1966 on the *Memorandum of the Dewan Perwakilan Rakyat Gotong Royong* on the *SUMBER Tertib Hukum Republik Indonesia*.



institutions”. The term state institution may be met in the Decision of the MPRS No. XIV/MPRS/1966 on the formation of Ad Hoc Committee with the duty of examining the state institutions, arranging a scheme of the division of powers among state institutions according to the system in the 1946 Constitution, a plan for giving complementary explanation to the Constitution and also details of human rights.

The term state institution is also found in the Decree of the MPRS No. X/MPRS/1969 on the Position of All State Institutions at the Central or Local Levels in the Position and Functions as stated in the 1945 Constitution. Through the decision, there are 2 (two) word referring to state organ, namely “body” and state institution”. In point (a) it is stated that MPRS is the highest body in the Republic of Indonesia. The article 2 states that all state institutions at the central and local levels are placed in the positions and functions according to the 1945 Constitution.<sup>1</sup>

Through the Decree of the MPR No. III/MPR/1978, the term state institution has started founding its concept, since the decree divides state institutions into 2 (two) categories: the highest and high state institutions. The highest state institution, according to the decision, is the MPR, while the high state institutions are adapted to the orders as stated in the 1945 Constitution, consisting of 5 (five) institutions namely (a) President, (b) DPA, (c) DPR, (d) BPK and (e) MA.<sup>2</sup>

As a comparison, South Africa is one of countries that explicitly organize the existence of state commissions in its constitution covering authorities, duties, memberships, their work relation to other institutions, and the like, so that their existences are explicit and do not result in controversies in its institutional structure. As a result, in South Africa is one of countries that organizes their state commissions neatly from juridical perspective, since they have an institutional umbrella compared with those in other countries which are leading into democracy consolidation agenda. The Constitution of South Africa<sup>3</sup> regulates the existence of state commissions in Chapter 9 on the State Institution Supporting Constitutional Democracy. Article 181 verse (1) on the Formation and Government Principles states that idealized state commissions may reinforce a constitutional democracy.

**Table 6:** State Institutions Supporting Constitutional Democracy in the Constitution of South Africa

No.	INSTITUTION	AUTHORITY
1	The Public protector	Making investigations, reports and recoveries on deviating public administrative actions
2	The Human Rights Commission	Making investigations and reports on human rights monitoring
3	The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities	Monitoring, investigating, researching, educating, influencing, advising, reporting all problems dealing with cultural, religious and linguistic rights.
4	The Commission for Gender Equality	Monitoring, investigating, researching, educating, influencing, advising, reporting all problems dealing with gender equality
5	General Auditor	Auditing and reporting accounts and financial management from administration and departments either in the scale of national, provincial, municipal levels and other institution established based on the regulation either at the national or provincial levels.
6	The Electoral Commission	Holding general election at national, provincial or municipal levels and assuring the implementation of the free and sincere general election and announcing the results

Source: Primary Law Materials, modified

Furthermore, article 181 verse (2) states that the six State Institutions Supporting Constitutional Democracy are independent institutions, merely subject to the stipulation in the constitution and laws, impartial, and performing powers and functions without any fear, discrimination and bad presumption. Other state institutions by the constitution should help and protect the State Institution Supporting Constitutional Democracy to get assurance of independence, impartiality, prestige, and effectiveness. Each institution is responsible for its own activity at least in a year period.

<sup>1</sup> See the Decree of the MPR No. X/MPRS/1969 on the Position of all state institution at the central and local levels as stipulated in the 1945 Constitution.

<sup>2</sup> See the Decree of the MPR No. III/MPR/1978 on the Position and Relation of the Work Structure of the Highest State Institution with/among high state institutions.

<sup>3</sup> The Constitution of South Africa was approved on May 8, 1996, was changed on October 11, 1996, and is effectively valid on February 7, 1997.

Other state institutions which are also regulated in the Constitution of South Africa are Judicial Service Commission possessing a function to give advices to the President on the appointment and dismissal of chair and vice-chair of Constitution Court, and judges in all justice institutions. The Public Service Commission possesses an authority to investigate, monitor, and evaluate organizations and administrations of public services, and the Financial and Fiscal Commission has an authority to make any recommendation on financial and fiscal problems. Meanwhile in Thailand, the Phillipines, and South Korea also explicitly regulate the existence of state commissions in their constitution covering their authorities, duties, memberships and others.

In Indonesia, the 1945 Constitution before having some changes actually does not directly mention the existence of state institutions. The Decision of MPR then confirmed the existence of state institutions and organs as stated in the Constitution. On the basis of the Change Rules in article II, state organs as mentioned in the 1945 Constitution should be called as ‘state bodies’ instead of ‘state institutions’. It is more proper to mention state bodies since the word ‘body’ refers to an organ and so it has a more limited meaning than the word ‘institution’ that has multiple meanings.

In the 1945 Constitution after some changes, there are 2 (two) stipulations that mention the words “state institution”

**Table 7:** “The Term “State Institution” in the 1945 Constitution After some Changes

No.	STIPULATION	SENTENCE
1	Article 24 C (Authority of Constitution Court	The sentence .” decides on a dispute on authorities of legal institution of which their authorities are given by the Constitution ...”
2	Change Rules article II	“All existing state institutions are still in functions as long as they implement stipulations stated in the Constitution and no change is made according to the Constitution”.

Source: Primary Law Materials, modified

Therefore, the 1945 Constitution, after some changes, does not seem to give some direction as a basic reference for the arrangement of the institutional nature of state. This can be understood either from the use of term, terminology, above all, its juridical interpretation. The paradigm adopted to build the institutional nature of state as formatted in the formulations of article in the 1945 Constitution has not also been standard. A mismatch between the sense functions, institutions, state bodies and the term government institution is also a basic problem.

### VIII. Conclusion and Recommendation

Concerning with the research problems, in the institutional nature of state commissions according to the 1945 Constitution, in my opinion, concepts, paradigm including the format of institutional nature of state according to the Constitution should be determined first. This may function as a direction and reference to organize the institutional nature of state, including the institutional nature of state commissions.

In relation to terms, terminology and interpretation of state institution in this present research, as an alternative, the researcher offers the following perspectives:

1. All institutionalized elements and possessing a function as norm creating and norm applying may be categorized in a terminology “state organ”.
2. The terminology “state institution” is used for state organ possessing main functions in the constitutional system of the Republic of Indonesia. This state institution has the main function, to make it able to establish state organs derived from its main function it possesses.
3. “State commissions” are used for state organs having supporting functions in the constitutional system of the republic of Indonesia.

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