

The Development of Legal State Institution in Indonesia

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Abstract

Indonesia is a state of law which is adopts a presidential governance and institutional assisted countries arranged in the state system in order to run a good governance and justice based on Pancasila and the Constitution . As is understood that Indonesia also subscribe to the theory trias politica developed the theory of the division of powers . In the development of state institutions in Indonesia undergo structural changes that occur in some of the reign and as a result of amendments of the constitution.

Keywords: legal state, government, institution.

1. Introduction

In 2002 after the fourth amendment, almost all contents of the 1945 Constitution of the Republic of Indonesia (UUDRI 1945) underwent fundamental changes. The number of the contents in 1945 UUDRI experienced changes from originally 71 clauses into 199 clauses, they consist of 174 clauses that were changed and the 25 original clauses (unchanged). The fundamental changes were in the Indonesian constitutional system

The paradigm of Indonesian constitutional system is centered on state institutions, as it is understood that the state institutions are civil organizations deliberately established by the state to serve as important instruments in the government. The concept of state institutions began from the doctrine of separation of authorities which was first proposed by John Locke (1632-1704) and further was developed by Montesquieu (1689-1755). According to John Locke, the authority of the State is divided into three: (1) Legislative authority; (2) executive authority, including the authority to administer justice (3) federative authority. Meanwhile, according to Montesquieu, the authority of the State is divided into three, namely: (1) Legislative authority (rule making function) (2) executive authority (rule application function); cq, Federative authority; and (3) the authority to administer justice for violations of Law / Judicial (rule adjudication function) (Jimly Asshidiqie, 2006: 14).

The division into three authorities of state power makes the doctrine called the doctrine "trias politica". With the understanding of that each of these authorities is separated from one another, both on the tasks (functions) and organ (attachements) for implementing. Therefore the triad politica theory is also known as the theory of separation of powers. The Separation Of Powers doctrine is intended to prevent the concentration of power in absolute on one hand, thus it will lead to arbitrary and abuse of power (mis-use of power, abus de droit, willekeur).

These conditions bring forth the thinking about the need to establish mechanisms for cooperation and mutual monitoring among institutions, thus then to modify the doctrine of separation of powers into the theory of the distribution of powers. According to this theory, the authorities remain separated from each other, but coupled with a mechanism (system) monitoring each other in balance (checks and balances system). Thus the authorities between one and another are not separated at all, but it is still possible to establish cooperation according to the function and duties of each of the power holders. Theory of power-sharing has been widely adopted by many countries and one of them is Indonesia in addition to Japan, India, Singapore, Pakistan, and the Philippines.

In Indonesia, the government conditions are depicted in some phases which affect the character of the constitutional system and in particular on the existence of state institutions. There are several state institutions that are still preserved and others discontinued, and in its development, there are also state aid agencies commonly referred to non-structural independent agencies outside UUDRI 1945. Thus, the researcher is interested in reviewing and re-construct the institutional development of state law in terms of the constitutional system of Indonesia in accordance with the government periods that have been implemented.

2. Research Methods

A research is a principal means in the development of science. A research has the objective to reveal the truth systematically, methodologically and consistently, this also includes the legal research. As a sui generis science, meaning the science of law is a science of its own, legal studies has a distinctive characteristic that is normative characteristic (Philip M Hadjon and Tatik Sri Djatmiati, 2005: 1). Thus the methods of research in the legal study also have its own methods. The research methods and procedures in natural sciences and social sciences can not be applied in the legal study (Peter Mahmud Marzuki, 2006: 26).

The type of research in this study is using normative juridical type with normative legal research

methods, which are reviewing and analyzing legal materials and legal issues related to the problems studied. This research was done to solve the arisen problems, while the results achieved will be in the form of prescriptions about what should be done to resolve the issue.

The approach used in this study is the constitutional approach (statute approach), the historical approach and the conceptual approach. Historical approach allows the researcher to understand more deeply of the system, institution, or specific legal arrangements so that we can minimize the errors, both in the understanding and the application of an institution or specific legal provisions. The current law order contains the elements of the legal order from old days and formed the beginnings on the rule of law in the future.

Constitutional approach (statute approach) conducted by reviewing all laws and regulations relevant to the legal issues that are being addressed. Constitutional approach will give opportunities for the researcher to study the consistency and compatibility between a law with other laws or the laws with the 1945 Constitution of the Republic of Indonesia or between regulation and land law (Peter Mahmud Marzuki, 2006: 93).

The historical approach is done by examining the background of what is learned and the development of legal issues in present. This research is done in order to track down the history of legal institutions from time to time. On the other hand the researcher must also be able to look for the basis of dynamics philosophy of law from time to time, such as a study on 1945 Constitution of the Republic of Indonesia before and after the amendment.

Conceptual approach is an approach starting from the views and doctrines in the science of law. These views and doctrines will find ideas that gave birth to notions of law, legal concepts and principles of law that are relevant to the legal issues encountered in this study.

The legal material source used in this study is the Primary Law Materials which is authoritative legal materials, meaning that the legal materials have authority, which consists of legislation, official records or treatises.

In this research, legislation as the primary legal materials is the 1945 Constitution of the Republic of Indonesia (UUDRI 1945). The secondary law is including all publications of the law which is not an official document. The publication of the law includes text books, theses, dissertations law, legal dictionaries, commentaries on court decisions also the opinions of the legal experts published through journals, magazines or the Internet.

3. Result and Discussion

For approximately three and a half centuries Indonesia was ruled by the colonial, even Japanese participated in the occupation. The struggle of Indonesian to gain its freedom was not considered easy, until August 17, 1945 Ir. Sukarno proclaimed the independence of the Republic of Indonesia. As the result of the colonialism the Netherlands legal systems up to this moment still have influence on the Indonesian legal system and political elements of the government. The legal basis on the continuous use of the Netherlands legal system products is the transitional rules in the 1945 Constitution of the Republic of Indonesia which states that "any legislation presence is still valid as long as the new legislation has not been made under this constitution."

The history of the establishment of the 1945 Constitution of the Republic of Indonesia began on the fulfillment of the Japanese government promise to provide unconditional independence as well as to form the investigation Committee of Preparatory for Indonesian Independence (BPUPKI). It consisted of 62 (sixty two) members with Radjiman Widyadiningrat as the Chairman and R.P. Soeroso as the Deputy Chief given the task to study the things needed to organize a country.

BPUPKI did some trials; the first trial to date was on: May 29th, 1945, the BPUPKI Chairman appealed to its members to deliver the Basis of independent Indonesia. Next, to form a committee of nine and on June 22nd, 1945 an agreement between the Islamic and nationalist parties had been made written in a draft of Basic Law Preamble, Known as: JAKARTA CHARTER. In the substance of the Basic Law Preamble draft (the term before the constitution) there was the state basic design of the Basic Law Preamble draft prepared by nine members of BPUPKI and delivered in BPUPKI session.

After the completion of the tasks and authority of the BPUPKI, thus BPUPKI reported the results to the Japan's army Government and this was accompanied by the proposals for establishing a new institution, which was the Committee for Indonesian Independence or PPKI which had wider tasks and ranges. On the basis of this proposal, thus PPKI was established on August 7th, 1945, which consisted of 21 members with Ir. Soekarno as the Chairman and Drs Moh. Hatta as the deputy.

On August 9th, 1945 the Chairman and his deputy as well as former Chairman of BPUPKI were asked to meet General Terauchi, South Region Commander of the Japanese Army, which was based in Dalat. On August 12th, 1945 the General of the Japanese Army delivered the news that the Government in Tokyo had approved the independence of Indonesia, about the time of independence would be announced later and handed it to PPKI. After a bit chaotic and complicated situation, the conditions were able to be resolved by PPKI on August 18th, 1945, they approved the removal of a sentence or seven words in the preamble draft and replaced it

with the sentence *Believe in the one Supreme God*. Along with the proclamation of the independence, the Constitution of the Republic of Indonesia was also established and approved by PPKI - the Committee for Indonesian Independence in a hearing, in accordance with Article III of the Transitional Provisions of the 1945 Constitution, thus the first election of President and Vice-President was carried out with Ir. Soekarno as the first President and Mohammad Hatta (Bung Hatta) as his Vice President.

In running the state and government, the President and Vice President are assisted by the state institutions that become state apparatus which also help organizing the government as stipulated in the UUD RI 1945; they include the People's Consultative Assembly (MPR), House of Representatives (DPR), President, Supreme Advisory Council (DPA), the Supreme Court (MA) and the Supreme Audit Agency (BPK).

Of the state institutions that exist in the Constitution of 1945, it seems that the drafting of 1945 Constitution of the Republic of Indonesia in BPUPK and PPKI was greatly influenced by similar institutions that existed in the constitutional system of the Netherlands Kingdom. Excluding the People's Consultative Assembly (MPR), other state institutions in the 1945 Constitution of the Republic of Indonesia can be compared with the institutions in the Netherlands, namely the Head of State (the Queen), Chief of Executive Government (Prime Minister), Staten Generaal (Parliament), Rekenkamer (Audit), Raad van State (State Advisory Dean) and Hogerechtshof (Supreme Court).

The state apparatus is a form of *trias politica* or power theory adopted by Indonesia. Patrialis Akbar stated that for a newly established country like Indonesia it was already correct at the first opportunity and as soon as possible after the declaration of independence to establish state institutions as the main apparatus that functioned to organize the state authority. Thus the country could begin to work and function as a *propre* just like other countries so it could be seen by the world that Indonesia had been run effectively. Considering the national and global security and political situation were uncertain at the beginning of the independence days, where Japanese soldiers still occupied Indonesia but in the position to lose the war, while World War II was over but the winner of the war had not yet arrived in Indonesia to disarm the Japanese army. With the existing limitations, state institutions as mandated by the 1945 Constitution of the Republic of Indonesia were not all formed yet at the beginning of the country. In the beginning of the independence the positions in the presidency were finally able to fill when PPKI in its meeting voted Sukarno and Mohammad Hatta as President and Vice-President overwhelmingly (Patrialis, 2013: 10).

State institutions in Indonesia are divided into three authorities, namely the executive, legislative and judicial. The structure of Indonesian constitution prior to the 1945 Constitution of the Republic of Indonesia consisted of the People's Consultative Assembly as the highest body that oversees the House of Representatives, the Supreme Advisory Council, the Supreme Audit Agency and the Supreme Court. While in the structure of the Indonesian state administration after the amendment of the 1945 Constitution of the Republic of Indonesia, there are some state institutions still retained, added and abolished. Some state institutions after the amendment, they are House of representatives, Leadership of political party at provincial/regional level, people's consultative assembly, the President, Supreme Audit Agency, Supreme Court, Constitutional Court and KY. Here are the institutional developments of the state institutions in the 1945 Constitution of the Republic of Indonesia:

The People's Consultative Assembly (MPR)

Constituent state institution is an institution established by the president before the 1945 Constitution of the Republic of Indonesia was set. The work outcome of the constituent for a decade brought forth the affirmation of commitment towards democracy, the affirmation of commitment towards human rights, and recognition on the matter of authorities as well as approving on the formulation of the fundamental principles in the political, economic, social, cultural, also created two Preamble drafts to the Constitution and articles of constitution on Human rights and on the Citizens Rights and Obligations. The People's Consultative Assembly (MPR) was established in 1959 by presidential determination No. 2 year 1959 to replace the Constituent State institution in charge of aiding the president. MPR became the highest state institution in charge of other state institutions.

Post the 1945 constitutional amendment of the Republic of Indonesia, the rank of MPR in the state system had changed, the 1945 Constitution of the Republic of Indonesia abolished the terms of highest state institutions and positioned MPR on the same level with other state institutions. Before it was the authorization of the MPR to elect the President and Vice President, since the 2004 general election the duty of MPR also includes changing and setting the 1945 Constitution of the Republic of Indonesia, inaugurating the President and/or Vice President, impeach the President and/or Vice President of their term of office in accordance to the 1945 Constitution of the Republic of Indonesia.

House of Representatives

In the reign of the Republic of Indonesia Union, the Transitory House of Representatives (DPRS) was formed and became the dominant national political actors as it applied a parliamentary system. The members of DPRS were elected by the states which were furnished by minorities. States mentioned here are the provinces today,

considering that Indonesia is an archipelago country.

After some time based on the results of the 1955 election, the House of Representatives was established with reference of the Provisional Constitution of 1950 (UUDS 1950). After Indonesia went back to the 1945 Constitution of the Republic of Indonesia and based on the presidential determination No. 1 year 1959, the House of Representatives remained assigned despite its nomen klatur had not been arranged in the 1945 Constitution of the Republic of Indonesia and president Sukarno reformed and renamed the House of Representatives into the Mutual Cooperation House of Representatives. Until the new order was in reign, this was still in progress and became part of the legislative power.

Post the amendment the 1945 NRI constitution restored the main functions of the House of Representatives which was as legislative (law making). Given Indonesia adheres to the theory of the authority division, thus the 1945 NRI Constitution also authorized the president to submit a bill to the House of Representatives, in this case the legislative and the executive make laws together.

President

The government system of the Indonesian Republic, based on the 1945 NRI Constitution, applied presidential system. But still a young country, about three months old, there had been a fundamental change in our constitutional practice, the enactment of the parliamentary system. This was triggered by the government notice issued on November 14th, 1945, announcing the names of the new ministers in the new cabinet. In the notice mentioned above it was announced that the ministers were no longer work under the leadership of the president, instead it became a council headed by a prime minister (Joeniarto, 1996: 52).

Parliamentary system did not last long, with the Presidential Decree was issued on July 5th, 1959 and the 1945 NRI Constitution was applied once again then the presidential system was applied again. During the reigns from the two regimes up to the reformation era the president and vice president were appointed by the People's Consultative Assembly (MPR). But in mid-reign of reformation regime the president and vice president were elected by the people, and the first general elections in the reformation era was in 2004 as a form of the amendment implementation of the 1945 NRI Constitution.

Supreme Advisory Council

Supreme Advisory Council (DPA) was formed after the proclamation of independence and it is the state institution of presidential advisory. In the 1950 Transitory Indonesia Republic (RIS) and UUDS the existence of DPA was unrecognized, after returning to the 1945 NRI Constitution and through regulation No. 3 year 1967 it was then revised by regulation No. 4 year 1978 DPA was recognized as a state institution. Unfortunately, in the next government after the new order the Supreme Advisory Council written in the 1945 NRI Constitution, after the last amendment, was removed and replaced with the Presidential Advisory Council.

Supreme Court

In the early application of the 1945 NRI Constitution, Indonesia did not have supreme judicial body. The only provision which referred to the highest judicial body was Article 24 paragraph (1) 1945 NRI Constitution and the issuance of Government Decision No. 9 year 1946 set the position of the Supreme Court of the Republic of Indonesia was in Jakarta. in the early establishment, the Supreme Court as an institution of judicial power was linked to the Attorney General under the Ministry of Justice. Before, Supreme Court was the highest federal court and other federal courts were under the law because at the time of the Republic of Indonesia was incorporated in the Republic of Indonesia.

Essentially the Supreme Court (the Judicial power) was an independent judicial authority without government interference, but what happened in the old order Post Presidential Decree July 5th, 1959 the judicial power lost its independency with the chief of supreme court seated as a minister in the cabinet, which was the coordinating minister, even in judicial authority bill it was clearly stated that there was an intervention of the president in the court

After the shifting from the old order to the new order the position of the Supreme Court was as an independent Judicial Authority as defined in the article No.14 year 1970 on Basic Provisions of the Judicial Power article No. 48 year 2009, the Supreme Court as the highest state institution regarded as the last judicial body that oversaw and supervised all four jurisdictions, namely the general courts, religious courts, military courts and courts of the State Administrative. The existence and the position of the Supreme Court in the state system is still maintained, it is even strengthened in the 1945 NRI Constitution post the amendment, including the addition of Article 24 set the authority of the Supreme Court in detailed and structured.

Supreme Audit Agency

Supreme Audit Agency (BPK) is the state agency in the field of state financial examination. In addition to BPK during the reign of RIS Financial Supervisory Board was also formed, then these two institutions merged, some

time later by the Presidential Decree of July 5th, 1959 and UUDS 1950 they went back into the BPK. The positions of BPK were returned to its original position and function as a high state institution and it was also stipulated regulation No. 5 year 1973 on it.

After the reign of old order and the new order ended and the amendment went back to the 1945 NRI Constitution the position and role of BPK re-solidified as an independent and professional institution by adding several articles about BPK in one chapter in the 1945 NRI Constitution.

Regional Representative Council

In the RIS Constitution and the 1945 NRI Constitution before the amendment did not regulate the existence of state institution similar to Regional Representative Council (DPD), and then an initiative was born based on the amendment of the 1945 NRI Constitution in the reformation period to establish DPD. The membership of DPD is representatives of all provinces in Indonesia and chosen through elections.

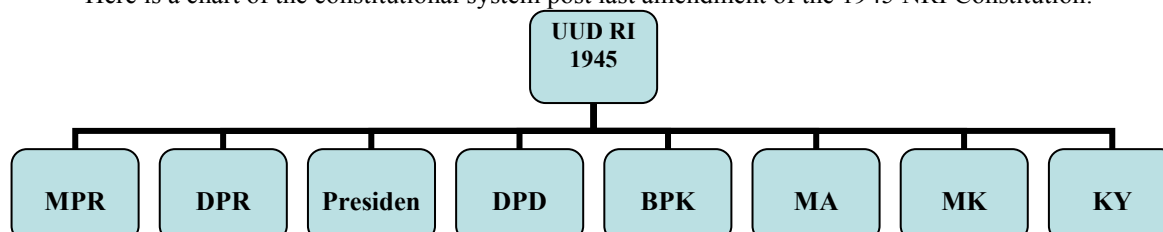
Constitutional Court

Ideas and thoughts to form the Constitutional Court in Indonesia began from the Pure Theory of Law, which suggested the need for an organ that controls the constitutionality of laws by examining whether the law violated the 1945 NRI Constitution or not. Hierarchically, legislations in Indonesia as it is set in Article No. 12 year 2012 on the establishment of legislations, are consisted of the 1945 NRI Constitution, MPR Decree, Government Law/Regulation in Lieu of Law, Government Regulation, President Regulation, Provincial Regulations and District/City Regulations.

Judicial Commission

The idea of establishing an independent judicial supervisory institution has been around for some time. The commitment for establishing an external supervisory institution to supervise the judges, and reforming the judicial institution reappeared and become a momentum to make fundamental changes in the life of our nation. In the 1998's the idea was back and became increasingly intense and solid discourse since there was a pressure of unifying the roof for the judges, which would require an external supervision of an independent institution in order to realize the idea of fair, clean, transparent and professional trial can be achieved (Patrialis Akbar, 2013: 32-33).

Here is a chart of the constitutional system post last amendment of the 1945 NRI Constitution:



4. Conclusion

Institutional development in Indonesian is determined in several factors, the first was government systems from several periods, namely the old order, the new order and reformation. the Second was the Birth of the Constitution from RIS, UUDS until the 1945 NRI Constitution which then underwent a structural change toward state institutions, thus the changes of the state institutions had different characters in accordance to the changes of the 1945 NRI Constitution.

Departing from the concept of authority separation that has long been applied in the constitutional system of Indonesia, then shifted to the concept of authority sharing (distribution of powers). basically, the authority of state institutions remains separated from each other, but is accompanied by a system of continuously mutual monitoring for each other (checks and balances system) so that it is possible to establish cooperation among state institutions according to their functions and duties.

UUD RI 1945 = the 1945 NRI Constitution

MPR = The People's Consultative Assembly

DPR = House of Representatives

DPD = Regional Representative Council

BPK = Supreme Audit Agency

MA = Supreme Court

MK = Constitutional Court

KY = Judicial Commission

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