

The Development of state organ in the implementation of Indonesian Constitutional

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Abstract

State institutions as a state organ or equipment in the country made to apply the state powers. The existence of state institutions in particular country would be organized and regulated by the Constitution or the Constitution in which Indonesian Constitution is called as in the 1945 Indonesian Republic Constitution. In addition, there are also state institutions which are not regulated in the 1945 Indonesian Republic Constitution. Those state institution varies in their form as well as the legal basis for their existence.

Key Words: State Organs, Forms, Legal Basis.

A. Background

Sustainability of the country would require officials government to realize the ideals and purpose of the state. Organizers of the aforementioned state is a sovereign government. Described in the published literature regarding the definition of government and its presence in the organization of life of the state. Executive and government scientifically have different meaning. Executive is "an organ (instrument) of state whose run its duty (function)"². Meanwhile, the definition of rule is "all government affairs undertaken by state in order to achieve welfare as well as the country interest. Therefore, government cannot only be interpreted as an executive power, but also the task of the legislative and judicial duties"³.

Government in carrying out the tasks mentioned above requires state organs.. It means the state organs are built up to implement the principle of Trias Politica. This research discuss the term of state organs and state institutions. The definition of state organ, submitted by Padmo Wahjono is "organ of the state whose has a basic role in running the state power or affair."⁴ In addition, Asshiddiqie argued that the state organ is "any institutions whose are established by state not as a non government organization are called state institutions (organ)."⁵ The term of state organs in Indonesian Consitution was primarily introduced in the Indonesian Republic Constitution 1950. While the (hereinafter referred UUDS RI 1950). Meanwhile, The Indonesian Republic Constitution 1945 does not explicitly mention the term of state organ.

Further terms of state organ in the constitutional system of the Republic of Indonesia can be seen from the People's Consultative Assembly Decree. The People's Consultative Assembly decree explained the term of a state organs in the People's Consultative Assembly Decree Number III / MPR / 1978. The People's Consultative Assembly decree was created with consideration for harmonizing the relationship and the working procedures of the highest state institutions with / or inter-state institutions.

Section 1 the People's Consultative Assembly Decree No. III / MPR / 1978 states, that is the highest state organ is the People's Consultative Assembly Decree. Meanwhile the definition of the high state organs are the Council of Representatives (hereinafter referred to as the Parliament), the President, the Supreme Court, the State Audit Board and the Supreme Advisory Council.

The presence of state organs was set out in the Constitution. It refers to the opinion of K .C. Wheare, "constitution may establish the principal institutions of government, such as the houses of the Legislature, an executive council and a supreme court".⁶ K.C. Wheare asserted that the Constitution set the main state institutions, but it also suggests the existence of additional state institution outside the Constitution.

For the sake running of the government, in addition to state organs regulated in the Indonesian Constitution of 1945, there are also established state institutions which are not regulated in the 1945 Indonesian Constitution. Indonesian state institutions whose are not regulated in the 1945 Indonesian Constitution needs to be re-set out due to the shape and the legal basis for legitimazing the existence of the state institutions . The shape of the state

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² C.S.T. Kansil, *Sistem Pemerintahan Indonesia*, (Jakarta : Aksara Baru, 1983), page 21.

³ Moh. Kusnardi dan Harmaily Ibrahim, *Pengantar Hukum Tata Negara Indonesia*, (Jakarta : Pusat Studi HTN FH UI dan CV. Sinar Bakti, 1988), page 171

⁴ Padmo Wahjono (I), *Beberapa Masalah Ketatanegaraan Di Indonesia*, (Jakarta : CV. Rajawali, 1984), page 17.

⁵ Jimly Asshiddiqie (I), *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*, (Jakarta : Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, 2006), page 33.

⁶ Wheare, K.C., *Modern Constitutions*, (London : Oxford University Press, 1966), page. 3

institutions may have no regulation, so that the shape of diverse state institutions. Similarly, the legal basis, not simply by the Act (hereinafter the Act), but also there is the legislation under the Act.

Indonesian constitutional practice has led many state institutions that are not regulated in the Constitution of 1945. Indonesia state institutions have varied in forms. There could be a form of the board, the body, institutions, commissions as well as no other form. Similarly, the legal basis is also different. there could be the law, others by government regulation (hereinafter referred to as PP) and there is also a presidential decree, (hereinafter referred to as Decree) and there is a presidential regulation (hereinafter referred Perpres).

Thus, the state institutions which are not regulated in the 1945 Indonesian Constitution are considered to have problematic legitimacy. The problems were also included the philosophical, theoretical problematics, the problematics of juridical and sociological problematics. Philosophically, state institutions which are not regulated in the 1945 Indonesian Constitution is important to be presented. Unfortunately, there are good philosophical problems of the ontological, epistemological and axiological.

Ontological is relating to the nature of state institutions that are not regulated in the Indonesian Constitution 1945. Basically, the state organs are state institutions supporting the state institutions whose are regulated in the Constitution of 1945. In addition Indonesian state institutions should be harmonious, consistent, harmonious and have a purpose the same with state institutions regulated in the 1945 Indonesian Constitution. In fact, there is less cooperation and coordination between the state institutions are regulated in the 1945 Indonesian Constitution with state agencies that are not regulated in the 1945 Indonesian Constitution.

B. Problem Questions

1. Why many kinds of forms and legal basis in regulating the state institutions that are not regulated in the 1945 Indonesian Constitution? Is there political law related to it?
2. How is the arrangement of the existence of the state institutions that are not regulated in the 1945 Indonesian Constitution on the Indonesian Constitutional System?

C. Research Design

The focus of this research is the variety of forms of state institutions that are not regulated in the 1945 Indonesian Constitution. Most forms of state institutions are nothing matches the shape of the state institutions are regulated in the 1945 Indonesia Constitution and there are other forms. In addition, the legal basis for its existence is different, so there is uncertainty.

Variety of arrangement form and the legal basis of state institutions that are not regulated in the 1945 Indonesian Constitution, which can cause haziness norm and legal inconsistency. This is clearly seen in the form of state institutions that are not regulated in the 1945 Indonesian Constitution, namely: councils, bodies, agencies, commissions and other forms, such as: the council, committee, office and other forms besides these forms.

To explore these issues in depth both knives sharp analysis used in the sense of using multiple theories. It means that in this study some theories designed in a theoretical framework. The theoretical framework meant is some legal theory consisting of State Theory, Theory of State Organs and Institutions, the Authority Theory and Theory of Legislation. While the role of each of these theories is that State Theory as the grand theory, theory of the State Organs and Institutions as a middle theory as well as the Authority Theory and Theory of Legislation as applied theory.

D. Research Result

The existence of the state institutions that non- the 1945 Indonesian Constitution a subject of research and discussion conducted, because of given appears there is no clarity of form and there is no certainty the type of legislation that serve as a legal basis. In addition, a wide variety of status and position of the institution - the state institutions.

a. With regard to State Institutions That Do Not Regulated In The 1945 Indonesian Constitution.

The existence of the state institutions that are not regulated in the 1945 Indonesian Constitution a subject of research and discussion conducted, given appears there is no clarity of form and there is no certainty the type of legislation that serve as a legal basis. In addition, a wide variety of status and position of the institution - the state institutions.¹

It further states the amount, form, status, position and legal basis for the existence of state institutions that are not regulated in the 1945 Indonesian Constitution. Meaning the Unitay State of the Republic of Indonesia prior to the consideration of the results of the study need to be delivered the following analysis:

¹ Michael E. Milakovich & George J. Gordon, *Public Administration in America*, (USA : Wadsworth & Thomson Learning, Seventh Edition, 2001), page. 432 & 443

1. The State has the power to regulate and determine the form and legal basis of state institutions that are not regulated in the 1945 Indonesian Constitution NRI, so there will be vague norm and inconsistency;
2. The State shall organize and form the legal basis of the state institutions, thus clearly supporting its existence as a state institution;
3. Form and legal basis of state institutions with the Act is expected to be known more concrete legal politics behind the diversity of forms and legal basis for setting the state institutions.

Research on the existence of state institutions that are not regulated in the 1945 Indonesian Constitution result the number of state institutions is 69 (sixty nine). Having carried out a study of sixty-nine state institutions acquired some respects, as the discussion below:

1. A variety of forms of state institutions that are not regulated in the 1945 Indonesian Constitution NRI decomposed as follows:
 - a. Shaped board of a number of 14 (fourteen) state institutions;
 - b. Incorporated a number 25 (twenty five) state institutions;
 - c. Shaped institutions of 9 (nine-) state institutions;
 - d. Shaped commission number 11 (eleven) state institutions;
 - e. Other shaped in a sense other than the board-shaped, bodies, agencies and commissions number 10 (ten) state institutions.
2. The status of state institutions that are not regulated in the 1945 Indonesian Constitution NRI, too diverse, such as:
 - a. The status of Non-Government Institutions amounted to 24 (twenty four) state institutions or 34.78%;
 - b. The status of non-structural institution totaling seven (7) state institutions or 10.13%;
 - c. Independent Institutions status of 6 (six) state institutions or 8.69%;
 - d. Not the status of state institutions amounted to four (4) state institutions, or 5.80%;
 - e. The status of the State Institute consists of 3 (three) state institutions, or 4.35%;
 - f. Independent Institutions status consists of 3 (three) state institutions, or 4.35%;
 - g. The status of the Board consists of 3 (three) state institutions, or 4.35%;
 - h. Institutions status than 2 (two) state institutions, or 4.35%;
 - i. Other status each and amounted to 17 (seventeen) state institutions or 1.45% respectively.
3. The position of state institutions that are not regulated in the 1945 Indonesian Constitution, too diverse, namely:
 - a. Under and responsible to the President amounted to 61 (sixty one) state institutions or 88.40%;
 - b. Domiciled not under and responsible to the President amounted to 8 (eight) state institutions or 11.60% and respectively a state agency based variety, such as: government partners and not part of the government, submit a report to Parliament, the President and Supreme Court, is responsible to the public, under the supervision of Parliament, is free from political interference, does not have a relationship with other state institutions and free from interference by other parties.
4. The legal basis of state institutions that are not regulated in the 1945 Indonesian Constitution , too diverse, namely:
 - a. With the Act amounted to 47 (forty seven) state institutions;
 - b. With Government Regulation than 2 (two) state institutions;
 - c. By decree amounted to 10 (ten) state institutions;
 - d. With the regulation amounted to 10 (ten) state institutions.
5. Act as the legal basis for the existence of state institutions that are not regulated in the 1945 Indonesian Constitution NRI can be grouped as follows:
 - a. Law set the state institutions that are not regulated in the 1945 Indonesian Constitution;
 - b. Law regulate a matter that any of the material cargo regulates more than 1 (one) state institutions that are not regulated in the 1945 Indonesian Constitution as well as the Unitary State of the Republic of Indonesia and no further stipulated by the regulations under the Act;
 - c. Law regulate a matter that one of the subjects payload set of state institutions that are not regulated in the 1945 Indonesian Constitution and further stipulated by laws and regulations under the Act;
 - d. Law regulate a matter that one of the subjects payload set of state institutions that are not regulated in the 1945 Indonesian Constitution and no further stipulated by laws and regulations under the Act;

- e. Law regulate a matter that any of the material cargo calls at a glance the state institutions that are not regulated in the 1945 Indonesian Constitution and further stipulated by laws and regulations under the Act;
 - f. Law regulate a matter that any of the material cargo calls at a glance the state institutions that are not regulated in the 1945 Indonesian Constitution and no further stipulated by laws and regulations under the Act.
6. State agencies which are not regulated in the 1945 Indonesian Constitution with the same legal basis (the same law or some state agencies in the Act) amounted to 9 (nine) state institutions;
 7. State agencies which are not regulated in the 1945 Indonesian Constitution with the same legal basis (decree and regulation of the same or a few institutions in the country and the Presidential Decree of 6 (six) state institutions.

b. Political, Legal Establishment Some State Institutions That Do Not Regulated In the 1945 Indonesian Constitution

Presenting the politics of law in the administration of the state is more directed to resolve the country's problems and not create new problems. It should exist in the legal political existence of the state institutions that are not regulated in the 1945 Indonesian Constitution. not government became overlap and there is a dispute with the state institutions set forth in the 1945 Indonesian Constitution.

Political law is "a statement of political will of the authorities towards the country where the law was about to be designed, implemented and enforced". Exactly it a statement, that "politics is a political law directs an activity / process of law. Political law, also used for the formation of the law ". There is another who believes that the legal politics is "the basic policy of state officials who are, have been and will apply to achieve our national goals and to achieve national goals".

The following discussion of the politics of the legal establishment of state institutions that are not regulated in the 1945 Indonesian Constitution particularly the establishment of five (5) basic state institution with the legal existence of Law. Within the meaning of the Act only established to oversee state institutions are not the laws governing one thing and one substance of the Act was set up or call a glimpse of the state institutions.

1. The establishment of the Corruption Eradication Commission Law Politics

As is known, the Commission has established that before there was a state institution that has the authority to handle the eradication of corruption. The state agency is the National Police and the AGO, which is 2 (two) main state institutions. If forming the Commission, the legal political formation should be based on both the main state institutions, so that the position of the Commission as an institution supporting countries.

As for the legal political formation the Corruption Eradication Commission was set up to deal with corruption cases. Whereas handling of corruption during this time has been carried out by the National Police and the Attorney General, but he considered not optimal, thus forming a special state institution, the Commission is independent and free from the influence of any. Besides political law of the formation of the Commission is to increase public confidence in the government in the fight against corruption as well as to improve the eradication of corruption in a professional, intensive, effective, efficient and sustainable.

The Corruption Eradication Commission legal political establishment clearly spontaneous and partial regardless of state institutions set forth in the 1945 Indonesian Constitution.

2. Establishment Law Politics The Deposit Insurance Agency

The Deposit Insurance Agency formation against a background of political law, that guarantee customer deposits banks are expected to maintain public confidence in the banking industry and to minimize the risk of burdening the state budget or that pose a risk of moral hazard guarantee bank customer deposits. Organizers guarantor bank customer deposits in question is The Deposit Insurance Agency. The Deposit Insurance Agency has two (2) function, which guarantees bank customer deposits and the resolution of failed banks or handling.

Other legal political The Deposit Insurance Agency was formed, that The Deposit Insurance Agency was formed to undertake remedial actions or handling a bank experiencing financial difficulties within the framework of the mechanism of action of integrated, efficient and effective way to create resilience of Indonesia's financial sector. Therefore, The Deposit Insurance Agency should be independent, transparent and accountable in carrying out its duties and authorities. The Deposit Insurance Agency legal political establishment regardless, that has been there and it should be optimal-clicking the presence of the Minister of Finance, Bank Indonesia and the Banking Supervisory Authority.

3. Establishment Law Politics of Indonesian Ombudsman

Indonesian Ombudsman is formed with political law, that the organizers of the state and every citizen is obliged to serve in order to meet the rights and basic needs. Service to every citizen who carried the state apparatus is an integral part of efforts to achieve good governance, clean and efficient way to increase welfare and create justice and legal certainty.

Besides political law Indonesian Ombudsman formation, also explained that the implementation of state characterized by the practice of mal-administration and corruption, so it must be to reform the bureaucracy. During that internal supervision by the government itself did not satisfy the citizens, then with the aspirations, in order to realize a good state administrators, clean and efficient formed as a state institution in charge of external monitoring of the state apparatus, the Indonesian Ombudsman.

The Indonesian Ombudsman legal political formation should first be seen and evaluated lawyer-optimal-an already existing internal control, so it does not spontaneously and partially formed Indonesian Ombudsman.

4. Establishment Law Politics of the Financial Services Authority

The Financial Services Authority was formed with political law, that economic development programs should be carried out regularly, fair, transparent and accountable by referring to the principles of economic democracy. In order to achieve this, needs to be supported by good governance in the financial system both in terms of financial systems grow in a sustainable and stable and capable of protecting the interests of the community as well as the overall activities of financial services.

In addition, in order to support the financial services sector needs to be oversight institutions have the regulatory authority and the supervisory authority of the financial services sector industry. Such institution is the Financial Services Authority which must be formed by having good governance and is able to coordinate with other state institutions.

The Financial Services Authority legal political establishment regardless of the presence of the Minister of Finance and Bank Indonesia. Understanding the legal political formation of the four state agencies that are not regulated in the 1945 Indonesian Constitution, that the establishment of state institutions are partial and spontaneous in the sense of a sudden without regard to the existence of state institutions regulated in the 1945 Indonesian Constitution. In addition, not only established agencies countries without regard to how it should be arrangement of state institutions in the constitutional system of the Republic of Indonesia, so it does not establish actual governmental process.

c. Structuring the existence of the State Institutions that Non-The 1945 Indonesian Constitution.

1. Phasing Setup existence of the State Institutions that non-the 1945 Indonesian Constitution, such as:
 - a. Giving the correct form and proper to state institutions that are not regulated in the 1945 Indonesian Constitution;
 - b. The use of legislation is right and proper, and certainly for the legal basis for the existence of state institutions that are not regulated in the 1945 Indonesian Constitution;
 - c. Maintaining some state institutions that are not regulated in the 1945 Indonesian Constitution by giving the correct form and proper as well as the use of this type of legislation is right and proper for the legal basis of the existence of the state institutions that are not regulated in the 1945 Indonesian Constitution;
 - d. Merger and amalgamation of state institutions that are not regulated in the 1945 Indonesian Constitution and then giving the correct form and proper as well as the use of this type of legislation is right and proper for the legal basis for the existence of state institutions that are not regulated in the 1945 Indonesia Constitution;
 - e. Some state agencies are not regulated in the 1945 Indonesian Constitution became part of several major state agencies or some of the state ministries;
 - f. The dissolution of state institutions that are not regulated in the 1945 Indonesian Constitution;
 - g. Naming the state institutions that are not regulated in the 1945 Indonesian Constitution as a state institution after the third staging supporters overdone.
2. Some Things To Structuring Considerations In Existence of State Institutions that Do Not Regulated In the 1945 Indonesian Constitution.

Proposed arrangement of the existence of the state institutions that are not regulated in the 1945 Indonesian Constitution should be realized by the government. Basic considerations in addition to placing the position of state institutions that are not regulated in the 1945 Indonesian Constitution, also giving form and the legal basis for the existence of the state institutions are true and correct.

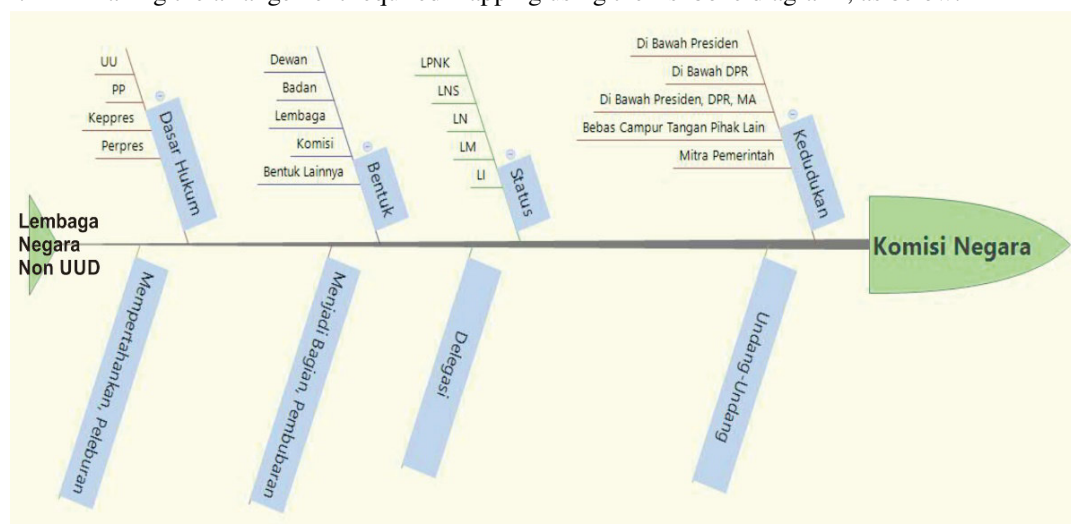
Strengthening the paragraph above statement is clear evidence does not understand the state based on the theory of Stateless and also do not understand the theory of organs of state officials and state institutions, especially Jellinek opinion on the definition of state institutions. Aggravated again the possibility of the state apparatus, also did not understand the Authority Theory. One tangible proof in the Indonesian constitutional practice is incoordination and disharmony between the National Police and the Corruption Eradication Commission.

Police constitutionally is the main state agency or state agency that directly, so it should support the Commission as a state institution or state agencies that are not directly. Means the existence of the Corruption Eradication Commission should depend on Police and the consequences of juridical authority of the Commission is the delegation of authority of the police.

The results of the research also has determined to make the arrangement, in addition based on the comparison with Malaysia and the US states also supported by the analysis of some theories. Being consistent and there is legal certainty, if the state institutions that are not regulated in the 1945 Indonesian Constitution is not directly organ. Thus it would be effective and efficient implementation of state and government.

Some things to be taken into consideration in structuring the existence of the state institutions that are not regulated in the 1945 Indonesian Constitution is as follows:

- a. Must have been implemented, that authority in a country is not focused on the legislative, the executive and judicial powers, but already in quasi among the three powers, or even more than three (3) kinds of these powers;
- b. Based on a letter. above, it is possible the development of state institutions as executors of state power;
- c. State agencies indeed stems from the Constitution / Constitution of a country, so that with respect to the letter a. and b. above, it is possible the existence of the state institutions should not be in the Constitution / Constitution;
- d. Realization letter c. The above could happen, given the role of state agencies in terms of structure and functions and operating funds of state institutions did not come from the state budget¹;
- e. The formation of state institutions that are not regulated in the 1945 Indonesian Constitution, should not be determined in the 1945 Indonesian Constitution. Given NRI provisions in the 1945 Indonesian Constitution should be implemented, while its existence is not necessarily effective in the administration of the state, for example Presidential Advisory Council². In addition there are state institutions in the state administration system currently needed, but its formation was not specified in the 1945 Indonesian Constitution, as an example of a state institution in question is the Financial Services Authority³;
- f. In making the arrangement required mapping using the fishbone diagram⁴, as below:



¹ Muchamad Ali Safaat in *MKPD Lecturing: Lembaga Negara*, Law Post Graduate Program Faculty of Law Brawijaya University, March, 31, 2016

² *Ibid.*

³ *Ibid.*

⁴ Hutchinson, Terry, *Researching and Writing in Law*, (Sydney : Thomson Lawbook Co, Second Edition, 2006), page 129.

E. Summary

Various forms and the legal basis for setting the state institutions that are not regulated in the 1945 Indonesian Constitution because there is no legislation governing the shape of state institutions that are not regulated in the 1945 Indonesian Constitution. It is also caused, because there are no laws which sets one type of legislation as the legal basis for the existence of state institutions that are not regulated in the 1945 Indonesian Constitution. No politics behind the diversity of legal forms and legal basis for setting the state institutions that are not regulated in the 1945 Indonesian Constitution.

Structuring the existence of the state institutions that are not regulated in the 1945 Constitution on the constitutional system of the Republic of Indonesia by:

- a. To evaluate;
- b. Giving form and legal basis of the right and proper;
- c. Maintaining state institutions;
- d. Doing smelting against state institutions;
- e. Some state agencies to be part of the constitutional state agency / ministry of state;
- f. Doing dissolution of the state institutions; and
- g. Naming of state institutions as supporting state institutions.

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