

Position of State Institutions in Indonesian Constitution

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Abstract

This research is about the position between state institutions, in this case the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, the Constitutional Court and the President as an important part of Constitutional Law. The Indonesian Constitution in this case is the 1945 Constitution of the Republic of Indonesia (before amendments and after amendments) which is divided into a Preamble and Body and is based on and based on Pancasila which is the source of Indonesian legal order. The method used in this research is normative legal research, namely research by examining library materials or secondary data which includes research on legal principles and legal systematics, research on the synchronization of legislation from a vertical and horizontal angle, which is carried out as an effort to obtain data necessary in connection with the problem. Prior to the amendment to the 1945 Constitution of the Republic of Indonesia, the highest state power was in the hands of the People's Consultative Assembly, as the incarnation of the entire Indonesian people. The President must carry out State policy according to the broad lines established by the Assembly. After the amendment to the 1945 Constitution of the Republic of Indonesia, the People's Consultative Assembly maintained its existence and was positioned as a state institution, but its position was no longer as the highest institution but as a state institution that was on an equal footing with other existing state institutions, including the Regional Representative Council. as a new institution to optimize and confirm the understanding of popular sovereignty and the Constitutional Court which gives the authority to be the guardian of the constitution. This research aims to provide an explanation of the position of state institutions in this case the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, the Constitutional Court and the President in the 1945 Constitution of the Republic of Indonesia (before amendments and after amendments).

1. Introduction

The 1945 Constitution of the Republic of Indonesia (before the amendment) regulates various kinds of state institutions from the Highest State Institutions to the Highest State Institutions. The conception of democratic state administration by these state institutions as an embodiment of the fourth principle which prioritizes the principle of representative democracy is stated in its entirety. The desire to embody the aspirations of the people in a representative system was first expressed by Bung Karno, in his speech on June 1 1945. Muhammad Yamin also expressed the need for popular principles in the conception of state administration. Likewise, Soepomo expressed his idea of an independent Indonesia based on the principle of deliberation with the term Consultative Body. This idea is based on the principle of kinship, where each family member can give their opinion.

In the Constitutional Drafting Committee meeting, Soepomo said that the "Deliberative Body" was changed to the "People's Consultative Assembly (MPR)" with the assumption that this assembly was the incarnation of the entire Indonesian people, whose members consisted of all the people's representatives, all representatives regions, and all group representatives. This conception of the MPR was finally established at the PPKI Session at the ratification of the 1945 Constitution of the Republic of Indonesia (before the amendments).

The amendment to the 1945 Constitution of the Republic of Indonesia was to optimize and strengthen the understanding of popular sovereignty and to introduce a new institution, namely the DPD. This can be seen in Article 18, Article 18A, and Article 18B of the 1945 Constitution of the Republic of Indonesia, which states that: the Regional Representative Council (DPD) is one of the representative institutions apart from other state institutions, to organize a more regional government system. prioritize government affairs according to the principles of autonomy and assistance duties.

The Constitutional Court is one of the state institutions that exercises independent judicial power to administer justice to uphold law and justice located in the capital city of the Republic of Indonesia. The position of the Constitutional Court (MK) is equivalent to state institutions whose authority and obligations are granted by other laws (MPR, DPR, DPD, President, Supreme Court (MA), Supreme Audit Agency (BPK) and Judicial Commission).¹

The president is a state institution that holds executive power. This means that the President has the power to run the government. The president has the position of head of government and also head of state.

This research aims to provide an explanation of the position of state institutions, namely the People's Consultative Assembly, People's Representative Council, Regional Representative Council, Constitutional Court and President in the 1945 Constitution of the Republic of Indonesia (before changes and after changes). It

¹ Budiardjo, Miriam. *Demokrasi di Indonesia Demokrasi Parlementer dan Demokrasi Pancasila: Kumpulan Karangan Prof. Miriam Budiardjo*. Jakarta: PT Gramedia Pustaka Utama, 1994., hlm. 23.

is hoped that this research will be useful for enriching knowledge, especially the development of knowledge in the Indonesian constitutional system.

From the explanation above, a problem formulation can be formulated as follows: What is the Position of State Institutions in the Indonesian Constitutional System (in this case the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, the Constitutional Court and the President in the 1945 Constitution of the Republic of Indonesia (before the amendment and after amendment) as an important part of Constitutional Law) ?

2. Research Methods

This research uses normative juridical methods. The process involves steps in finding a solution to a specific problem by applying principles, rules and legal theories.² The research was prepared using a statutory approach, namely by exploring relevant statutory regulations.³

Normative Juridical Research is a legal research method carried out by examining library materials or mere secondary materials (Soerdjono and Sri,⁴ 1994;⁵ Ronny, 1994;⁶ Amirudin and Zainal, 2004; Achmad, 2009⁷). This research is a Normative Juridical Research on issues relating to the position of state institutions, in this case the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, the Constitutional Court and the President in the 1945 Constitution of the Republic of Indonesia (before the amendment and after changes) as an important part of Constitutional Law.

The data analysis method is carried out by collecting data through reviewing library materials or secondary data which includes primary legal materials, secondary legal materials and tertiary legal materials, both in the form of documents and applicable laws and regulations relating to normative juridical analysis of state institutions.

To analyze the legal material that has been collected, this research uses a qualitative data analysis method, namely normative juridical which is presented descriptively, namely by describing the position of state institutions as an important part of Constitutional Law.

² Briana Batrisyia and Imam Haryanto, "Analisis Regulasi Pada Tanaman Transgenik Dalam PerlindunganVarietas Tanaman Bagi Pemulia Tanaman," Jurnal USM Law Review 6, no. 3 (2023): 931-42,<https://doi.org/http://dx.doi.org/10.26623/julr.v6i3.7433>.

³ Rafli Fadilah Muhammad and Rianda Dirkareshza, "Legalitas Penerapan Central Bank Digital Currency (CBDC) Di Indonesia," Jurnal USM Law Review 6, no. 3 (2023): 913-30, <https://doi.org/http://dx.doi.org/10.26623/julr.v6i3.7370>.

⁴ Soerdjono Seokanto dan Sri Mamudji. 1994. Penelitian Hukum Normatif Suatu Tinjauan Singkat. Jakarta: Raja Grafindo Persada.

⁵ Ronny Hanitijo Soemitro. 1994. Metodologi Penelitian Hukum dan Jurimetri. Cetakan Kelima, Jakarta: Ghalia Indonesia.

⁶ Amirudin dan Zainal Asikin. 2004. Pengantar Metode Penelitian Hukum. Jakarta: Raja Grafindo Persada.

⁷ Achmad Ali. 2009. Menguak Teori Hukum (*Legal Theory*) & Teori Peradilan (*Judicialprudence*): Termasuk Interpretasi Undang-undang (*Legispruden*- 89 Vol. XIV No.1 Th. 2015 ce). Kencana.

3. Results and Discussion

The Position of State Institutions in the Indonesian Constitutional System (in this case the People's Consultative Assembly, People's Representative Council, Regional Representative Council, Constitutional Court and President in the 1945 Constitution of the Republic of Indonesia (before changes and after changes) as an important part of Constitutional Law)

State institutions are one of the pillars and supports for the building which is usually called the state which is really needed in order to achieve the benefits and objectives of the formation of the state. The existence of state institutions, in the Big Indonesian Dictionary (KBBI, 1997), the word "institution" is interpreted, among other things. : 1) a body (organization) whose aim is to carry out a scientific investigation or carry out a business; and 2) established patterns of human behavior consisting of social interactions structured around a relevant value framework.⁸

As an office organization (*ambtenorganisatie*),⁹ or power,¹⁰ the state has the necessary equipment (*Die Staatsorgane*).¹¹ According to Bagir Manan, in terms of state administration, state institutions or state equipment are only limited to state organs which are elements of state organizations which act for and on behalf of the state,¹² which determine or shape the will of the state (*staatswil*) and which are assigned by basic law. to carry it out,¹³ so they are called state administrators.¹⁴ Meanwhile, the relationship between these institutions gives rise to constitutional relations (*staatsrechtelijk*),¹⁵ but on the other hand it can also be more administrative in nature (*administratief rechtelijk*). To find out whether an institution acts for and on behalf of the state or vice versa, continued Bagir, is determined by the duties and authority contained in the substantive regulations of the institution in question.¹⁶ Likewise, even though in fact it carries out state functions, in principle, if the duties and authority of the organ are delegated from the holder of original authority (original power), then the institutional relationship is more derivative.¹⁷

⁸ H.A.S. Natabaya, "Lembaga (tinggi) Negara Menurut UUD 1945" dalam Refly Harun, dkk (editor), *menjaga denyut Konstitusi, Refleksi Satu Tahun Mahkamah Konstitusi*, (Jakarta:Konstitusi Press, 2004), hlm. 60-61. Sebagaimana dikutip oleh Patrialis Akbar, *LembagaLembaga Negara Menurut UU NRI Tahun 1945*, (Jakarta: Sinar Grafika, 2013), h. 1

⁹ Padmo Wahjono, *Negara Republik Indonesia*, Rajawali Pers, Jakarta, 1995, hlm. 45, dan hlm. 60.

¹⁰ Sri Soemantri, M, *Ketetapan MPR(S) Sebagai Salah Satu Sumber Hukum Tata Negara*, Remadja Karya CV, Bandung, hlm. 1.

¹¹ Teuku Amir Hamzah,, dkk, *Ilmu Negara*; Kuliah-kuliah Padmo Wahjono Pada Fakultas Hukum UI Jakarta, Indo Hill Co, Jakarta, 1996, hlm. 48.

¹² Bagir Manan, *Hubungan Ketatanegaraan Mahkamah Agung dan Mahkamah Konstitusi dengan Komisi Yudisial (SuatuPertanyaan?)*, Varia Peradilan Majalah Hukum Tahun ke XXI Nomor 244, Maret, IKAHI, Jakarta, 2006, hlm. 5

¹³ Padmo Wahjono, *Negara...*, Op.Cit., hlm. 60.

¹⁴ Bagir Manan, *Hubungan Ketatanegaraan...*, Op.Cit., hlm. 4.

¹⁵ Ibid.

¹⁶ Ibid., hlm. 5.

¹⁷ Padmo Wahjono, *Negara...*, Op.Cit.

In the text of the 1945 Constitution of the Republic of Indonesia, some of the organs in question are explicitly mentioned by name, and some are only explicitly mentioned in function. There are also institutions or organs that are said to have both their name and function or authority regulated by lower regulations.¹⁸

The concept of state institutions in Dutch is usually called *staatsorgaan*. And in English, the term political institution is used for state institutions. In Indonesian, this is synonymous with state institutions, state agencies, or state organs.¹⁹ Before the changes, the term "institution" did not exist. What did exist was the term "agency". For example in Article 23 paragraph (5) for the Supreme Audit Agency.²⁰ However, both the 1945 Constitution of the Republic of Indonesia before the amendment and the 1945 Constitution of the Republic of Indonesia after the amendment do not formulate the meaning of "body" and "state institution".

In Classical Constitutional Law there are two pillars of Constitutional Law, namely state organizations and citizens. Furthermore, state organizations regulate the form of the state and the state system including the division of the state (state equipment). What is meant by state apparatus is a permanent institution that has various functions, namely: legislative function, executive function and judicial function.²¹ When state equipment (permanent state institutions) are linked to the 1945 Constitution of the Republic of Indonesia as a result of amendments, 4 powers are established, namely: First, Legislative Power, namely the People's Consultative Assembly (MPR), which is composed of: 1). House of Representatives (DPR), 2). Regional Representative Council (DPD); Second, the Power of the State Government (Executive), namely the President and Vice President, as well as Ministers; Third, Judicial Power (Judicial), includes: 1). Supreme Court (MA) and 2). Constitutional Court (MK); Fourth, Examinative (Inspective) Power, namely the Financial Audit Agency (BPK); and Fifth, Auxiliary State Institutions, namely the Judicial Commission (KY).²²

In this research the author will discuss the position of state institutions, namely the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, the Constitutional Court and the President as an important part of Constitutional Law according to the 1945 Constitution of the Republic of Indonesia (before the amendment and after changes), as follows:

¹⁸ Jimly Asshiddiqie, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*, (Jakarta: Sinar Grafika, Cet-2, 2012), h. 84.

¹⁹ Jimly Asshiddiqie, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*, (Jakarta: Sekretariat Jendral Kepaniteraan Mahkamah Konstitusi, 2006), hlm. 31. Dalam, Firmansyah Arifin, dkk, *Lembaga Negara dan Sengketa Kewenangan Antar Lembaga Negara*, (Jakarta: Konsorsium Reformasi Hukum Nasional bekerja sama dengan Mahkamah Konstitusi RI, 2005), hlm. 29, sebagaimana dikutip oleh Patrialis Akbar "Lembaga-Lembaga Negara Menurut UU NRI Tahun 1945, (Jakarta:Sinar Grafika, 2013), hlm. 2

²⁰ Patrialis Akbar "Lembaga-Lembaga Negara Menurut UU NRI Tahun 1945, (Jakarta: Sinar Grafika, 2013), hlm. 2

²¹ Titik Triwulan Tutik, *Konstruksi Hukum Tata Negara Indonesia Pasca-Amendemen UUD 1945* (Jakarta: Kencana, 2010), 175-176.

²² Titik Triwulan Tutik, *Konstruksi Hukum*. 176

1. People's Consultative Assembly (MPR)

Since it was proclaimed on August 17 1945, in its constitution (the 1945 Constitution of the Republic of Indonesia) it has been stated that the holder of state sovereignty is the MPR as the incarnation of all the Indonesian people, so that the MPR in the constitutional structure of the Republic of Indonesia is positioned as the highest state institution. . However, in the course of this nation's history, the MPR institution experienced a repositioning through the political forces of the reform era, which essentially meant that state sovereignty was returned to the people. So the position of the MPR in Indonesia's constitutional structure has undergone the following changes:

a. According to the 1945 Constitution of the Republic of Indonesia (before amendments).

In the constitutional structure of the Republic of Indonesia, the MPR has existed since the birth of this country. At the beginning of the ratification of the 1945 Constitution of the Republic of Indonesia, namely on August 18 1945, the MPR had a position as the highest state institution. As the highest state institution at that time, the MPR was established in the 1945 Constitution of the Republic of Indonesia as the holder of people's sovereignty. As the holder of popular sovereignty, the MPR has the authority to elect and appoint the President and/or Vice President for a period of 5 (five) years.

Before the changes to the 1945 Constitution at the beginning of the 1999-2002 Reformation era, the MPR was the highest state institution with enormous power. This refers to Article 1 paragraph (2) of the 1945 Constitution before the amendment, "Sovereignty is in the hands of the people, and is exercised entirely by the People's Consultative Assembly". From these provisions it is known that the implementation of popular sovereignty in Indonesia is in one hand or body, namely the MPR.²³

In that era, the MPR was placed as the highest executor of the sovereignty of the Indonesian people and had the authority to establish the Constitution and Outlines of State Policy (GBHN). On the other hand, the MPR also has the authority to appoint and dismiss the President and Vice President, this is because the President and Vice President are MPR mandates.²⁴

This is considered normal because the President is a mandate of the MPR, meaning that the MPR gives the President a mandate to run the government. If the President violates the mandate given by the people, the people can dismiss the President.

²³ Sri Soemantri, *Tentang Lembaga-lembaga Negara Menurut UUD 1945*, Alumni, Bandung, 1977, hlm. 85.

²⁴ Poltak Siringoringo dan Anton Silaban *Kewenangan Majelis Permusyawaratan Rakyat Menurut Undang- Undang Nomor 2 Tahun 2018 Tentang MPR, DPR, DPRD, DAN DPD*, Tô-râ: Volume 5 Nomor 1, April 2019, hlm. 11-19

The MPR is an institution founded by Ir. Soekarno in his speech on June 1 1945 expressed a desire to embody the aspirations of the people in the form of a representative, namely the MPR.²⁵

b. According to the 1945 Constitution of the Republic of Indonesia (after amendments).

Changes to the 1945 Constitution have caused a shift in Indonesia's constitutional system, one of which is a shift in the state's institutional paradigm. According to the 1945 Constitution of the Republic of Indonesia, all state institutions regulated in the 1945 Constitution of the Republic of Indonesia have equal positions. Changes in the position of state institutions also have consequences for the duties and authority as well as the method of filling out the membership of each state institution. The 1945 Constitution after amendments does not place the MPR as the highest state institution, but is equal or equal to other state institutions. The MPR is also no longer the full actor of popular sovereignty, and its authority is very limited.²⁶

Of the three legislative institutions, the position of the MPR is an institution that is uniquely Indonesian. According to Asshiddiqie, the existence of the MPR contains historical values which tend to be viewed irrationally in the sense that if its position as an institution is removed it could be seen as eliminating an important pillar in our constitutional system which is actually deemed to need to be preserved.

One of the objections of those who maintain the existence of the MPR is arguing that, if the MPR is abolished or is simply considered the name of a two-chamber (bicameral) parliament, then the principle of 'people led by wisdom in deliberation' will change. The principle of deliberation is reflected in the MPR institution, while the principle of representation is considered to be reflected in the DPR institution.²⁷

The categorization of the MPR as a people's representative institution, considering that the composition of the MPR members in the 1945 Constitution according to Article 2 of the 1945 Constitution after the 4th amendment is: "(1) The People's Consultative Assembly consists of members of the People's Representative Council and members of the Regional Representative Council who are elected through general elections and further regulated by law."²⁸

In terms of membership, based on the provisions of Article 2 paragraph (1) of the 1945 Constitution, the MPR consists of members of the DPR and members of the DPD who are elected through elections. If the DPR is elected through elections on a party basis, then the DPD which is the regional representative is elected through

²⁵ Samsul Wahidin, "MPR RI dari Masa ke Masa", Bina Aksara, Jakarta, 1986, hlm. 69.

²⁶ Widayati, Rekonstruksi Kelembagaan MPR dalam Prosiding Seminar Nasional Pengembangan Epistemologi Ilmu Hukum, hlm 197

²⁷ A Ubaedillah, dan Abdul Rozak, Pendidikan Kewarganegaraan (Civic education) Pancasila, Demokrasi, HAM, dan Masyarakat Madani, (Jakarta: Kencana, 2003), hlm. 106

²⁸ Jimly Asshiddiqie, Konsolidasi Naskah UUD 1945 Setelah Perubahan Keempat, PSHTN UI, Jakarta, hal. 3.

elections from the regions concerned. The expansion of MPR membership is intended so that representatives do not only consist of political elements but also regional ones, so that the MPR is truly considered the incarnation of the people.²⁹ So Article 2 paragraph (1) of the 1945 Constitution of the Republic of Indonesia positions that the MPR is a combination of DPR members and DPD members (joint session) not a combination of DPR institutions and DPD member institutions (not consisting of two chambers or not bicameral). Therefore, the position of the MPR cannot fully be said to be a joint session or a permanent body. This is the position of the MPR in the constitutional system of the Republic of Indonesia based on the 1945 Constitution of the Republic of Indonesia (after amendments).

If we look at the composition of the members of the People's Consultative Assembly (MPR), the MPR can be classified as a parliamentary institution.³⁰

Apart from that, the MPR still has the authority to make a Constitution, dismiss the president, so the People's Consultative Assembly is considered a representative democratic institution.³¹

MPR members have the following obligations: to practice Pancasila; implement the 1945 Constitution of the Republic of Indonesia and statutory regulations; maintain the integrity of the Unitary State of the Republic of Indonesia and national harmony; prioritize the interests of the state above personal, group and class interests; carry out the role as people's representatives and regional representatives.³²

2. House of Representatives (DPR)

One of the state institutions is the DPR, the DPR which is a legislative institution, which means the institution that holds the power to make laws as a system of people's representative institutions. The legislative branch of power is the branch of power that first reflects the sovereignty of the people.³³ This council must give its approval to every draft law from the government. The council has the right of initiative to enact laws.³⁴

The DPR as representatives of the people must defend the interests of the people which can provide or open up opportunities for prosperity for the people, not fight for themselves or their families, or even certain groups because DPR members come from the people too. This is in line with Jimly Asshiddiqie's statement that legislative power is the branch of power which first of all reflects the

²⁹ Ni Matul Huda, 2005, *Hukum Tata Negara Indonesia*, Raja Grafindo Persada, Jakarta, hal. 155.

³⁰ Yves Meny, Andrew Knap, *Government And Politics In Western Europe*, third edition, Oxford University Press, New York, 1998.

³¹ <http://www.australianpolitics.com/democracy/terms/parliamentarydemocracy.shtml>, diakses pada tanggal 10 Agustus 2003.

³² Nurul. *Struktur Organisasi Pemerintah Tingkat*, (Jakarta: PT RajaGrafindo, 2014), hlm. 67.

³³ Jimly Asshiddiqie, 2013, *Pengantar Ilmu Hukum Tata Negara*, Jakarta, Raja Grafindo Persada, hlm. 299.

³⁴ Patrialis akbar, 2013, *Lembaga-Lembaga Negara Menurut UUD NRI Tahun 1945*, Jakarta, Sinar Grafika, hlm. 41.

sovereignty of the people³⁵ and the highest community of the State which has the highest, most noble and sublime aims of life, the legislative form of family and village community of life.³⁶ To serve as a reference and objective for the realization of the functions, duties, authority and objectives of state administrators, including the DPR. Therefore, in each of its duties and authorities, the DPR must fight for the people. This means that it is a state apparatus that has certain duties and functions in a country.³⁷

According to B.N. Marbun quoted the opinion of Mh. Isnaeni stated that the meaning of the DPR is a state institution that functions as a channel for people's aspirations regarding the daily administration of government.³⁸

Based on the opinion above, it can be concluded that the DPR is an institution that aims to accommodate and channel the aspirations and interests of the people in the regions within the framework of forming a living order in accordance with democratic life based on Pancasila. The position of the DPR in Indonesia's constitutional structure has undergone the following changes:

a. According to the 1945 Constitution of the Republic of Indonesia (before amendments).

The President holds the power to form laws with the approval of the DPR.³⁹ The composition of the DPR is determined by law. The DPR meets at least once a year.⁴⁰ Every law requires approval from the DPR. If a draft law does not receive approval from the DPR, then the draft may not be brought forward again in the DPR session at that time.⁴¹ DPR members have the right to advance draft laws. If the draft, even though it is approved by the DPR, is not ratified by the President, then the draft may not be brought forward again in the DPR session at that time.⁴² In the event of a compelling emergency, the President has the right to enact a Perpu. This government regulation must be approved by the DPR in the following session. If approval is not obtained, the government regulation must be revoked.⁴³

This council cannot be dissolved by the President (unlike the parliamentary system). Apart from that, all members of the DPR also serve as members of the MPR.

³⁵ Jimly Asshiddiqie. Loc.Cit.

³⁶ Rapar, 2001, Filsafat Politik Plato, Aristoteles, Augustinus, Machiavelli, Jakarta, Raja Grafindo Perkasa, hlm. 171.

³⁷ H.A.S. Natabaya, 2004, Menjaga Denyut Konstitusi, Refleksi Satu Tahun Mahkamah Konstitusi, Jakarta, Konstitusi Press, hlm. 60.

³⁸ Marbun,B.N..DPR- RI Pertumbuhan Dan Cara Kerjanya.Jakarta.PT.Gramedia Pustaka Utama,1992, hlm. 55.

³⁹ Pasal 5 ayat (1) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (sebelum perubahan).

⁴⁰ Pasal 19 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (sebelum perubahan).

⁴¹ Pasal 20 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (sebelum perubahan).

⁴² Pasal 21 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (sebelum perubahan).

⁴³ Pasal 22 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (sebelum perubahan).

Therefore, the DPR can always monitor the President's actions and if the Council considers that the President is truly violating the State's policies that have been established by the Constitution or by the MPR, then the Assembly can be invited to a special session so that it can ask the President to be accountable.⁴⁴

b. Meanwhile, according to the 1945 Constitution of the Republic of Indonesia (after amendments).

The DPR is a political representation whose members are elected through elections. The DPR is a secondary organ of government while the people are primary, so that through the DPR the sovereignty of the people can be achieved as in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. "Sovereignty is in the hands of the people and is implemented according to the Constitution."⁴⁵

The President has the right to submit a Draft Law to the DPR.⁴⁶

The President can be dismissed during his term of office by the MPR on the recommendation of the DPR, either if he is proven to have committed a legal violation in the form of treason against the state, corruption, bribery, other serious criminal acts, or disgraceful acts or if he is proven to no longer fulfill the requirements to be President.⁴⁷

The amendment to this article moves the focus of national legislative power, which was originally in the hands of the president, to the DPR. The formulation of article 20 (new) reads as follows: 1) The DPR holds the power to form laws. 2) Every draft law is discussed by the DPR and the President to obtain joint approval. 3) If the draft law receives collective approval, the draft law may not be presented again in the DPR session at that time. 4) The President ratifies the draft law that has been mutually agreed to become law. 5) In the event that the draft law that has been jointly agreed upon is not ratified by the President within thirty days of the draft law becoming law and must be promulgated.⁴⁸

According to Jimly Assidique,⁴⁹ the President's participation and big role in forming laws is due to the fact that it is the government who actually knows best whether something needs to be made into law or not. Meanwhile, it cannot be denied that the government bureaucracy controls the information and expertise needed for this.

⁴⁴ Bab VII Penjelasan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (sebelum perubahan).

⁴⁵ Markus Gunawan, Buku Pintar Calon Anggota legislatif, DPR, DPRD dan DPD, visi media, Jakarta, 2008, Hlm. 42

⁴⁶ Pasal 5 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (setelah perubahan).

⁴⁷ Pasal 7A Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (setelah perubahan).

⁴⁸ Ni'matul Huda, Hukum Tata Negara Indonesia, (Jakarta: Rajawali Pers, 2014), hlm.174-175

⁴⁹ Jimly Assidique, 2006, Perkembangan Dan Konsolidasi Lembaga Negara Pasca Reformasi, Sekretariat Jendral Kepanitraan Mahkamah Konstitusi, Jakarta.

These provisions have placed the DPR in a strong position with broad authority, and resulted in a shift in power from executive heavy during the New Order, to legislative heavy in the reform era. The President's power was significantly reduced in making laws and became the power of the DPR. In fact, before the changes, the DPR only had a pseudo-legislative function, because its function was merely to be a 'rubber stamp' in making laws.⁵⁰

Thus, the People's Representative Council is an institution that represents the people and holds the power to form laws. The House of Representatives also has 3 functions, namely legislative, budgetary and supervisory functions. Forming a law is first discussed with the President to obtain mutual approval.

Furthermore, the implementation of the supervisory function is carried out through a mechanism for exercising several rights, in which the DPR as a state institution has rights, including the following. The right of interpellation is the DPR's right to ask the government for information regarding government policies that are important and strategic and have a broad impact on people's lives. The right to inquiry is the DPR's right to conduct an investigation into a particular government policy which is alleged to be in conflict with statutory regulations. The right to express an opinion is the DPR's right to express an opinion on government policy regarding extraordinary events occurring in the country accompanied by recommendations for resolution or as a follow-up to the implementation of the right of interpellation and the right of inquiry. To facilitate the tasks of DPR members, commissions were formed that work together with the government as working partners.⁵¹

Apart from that, the DPR has the right to interpellation, the right to inquiry and the right to express an opinion.⁵² Every member of the DPR has the right to ask questions, convey suggestions and opinions as well as the right to immunity.⁵³ Members of the DPR have the right to submit proposals for draft laws.⁵⁴

3. Regional Representative Council (DPD)

⁵⁰ Fajar Laksono, Subarjo; 2006, *Kontroversi Undang-Undang Tanpa Pengesahan Presiden*, Yogyakarta: UII Press, hal.7.

⁵¹ Vita Setiawati dan Gatot Ristijono, *Rapel IPS & PKn SD kelas 4,5,& 6,*(Jakarta Selatan, Cmedia:2010), hlm. 183

⁵² Menurut Richard H. Fallon, Jr., sebenarnya tidak ada pengertian yang pasti tentang *Rule of Law* ini. Richard H. Fallon, Jr., "*The Rule of Law as a Concept in Constitutional Discourse*", dalam *Columbia Law Review*, Volume 97, No. 1, 1997, hlm. 1-2.

⁵³ A.V. Dicey, *An Introduction to Study of the Law of the Constitution*, 10th edition, (London: English Language Book Society and Mac Millan, 1971), hlm. 223-224.

⁵⁴ Menurut A.W. Bradley, pengadilan mempunyai peran penting dalam tradisi Rule of Law, karena penafsiran-penafsirannya terhadap peraturan perundang-undangan akan sangat menentukan bagi keputusan-keputusan yang akan diambil dalam suatu negara. A.W. Bradley, "*The Sovereignty of Parliament-Form or Substance?*", dalam Jeffrey Jowell dan Dawn Oliver, eds., *The Changing Constitution*, 4th edition, (Oxford: Oxford University Press, 2000), hlm. 34.

DPD is a regional representative institution which has a position as a state institution.⁵⁵ Which is born from the legislative body or legislature (making laws). Another name that is often used is Assembly which prioritizes the element of "gathering" (to discuss public issues). Another name is parliament, a term that emphasizes the element of "talking" (parler) and negotiating. Another term prioritizes representation or representation of its members and is called the people's representative body or the people's representative council. However, whatever the differences in the names, it can be ascertained that this body is a symbol of a sovereign people. According to the prevailing theory, it is the people who are sovereign, this sovereign has a "will" (which Rousseau called *volonte generale* or general will). The decisions taken by this body are the authentic voice of the general will. Therefore, its decisions, whether in the nature of policies or laws, are binding on the entire community.⁵⁶ Therefore, the DPD is a high state institution in the Indonesian constitutional system whose members are representatives from each province who are elected through general elections. Before 2004, the DPD was still called a regional representative.⁵⁷

According to Entol Zaenal Muttaqien, in the book the principles of constitutional law. The Regional Representative Council is a new state institution as an accommodation measure for the representation of regional interests in national level representative bodies after the elimination of regional delegates and group delegates who were appointed as members of the MPR, its existence is intended to strengthen the unity of the Republic of Indonesia, elected directly by the people in the regions through elections, has the authority to propose and participate in discussing bills relating to regional autonomy, central and regional relations, other bills relating to regional interests.⁵⁸

Meanwhile, according to Ni'matul Huda in the Indonesian constitutional law book. The Regional Representative Council is a regional representative institution which has the position of a state institution and has the following functions: a. Submitting proposals, participating in discussions and providing considerations relating to certain areas of legislation; b. Supervision of the implementation of certain laws.⁵⁹

Based on the statement above, in accordance with the provisions of article 22D of the 1945 Constitution of the Republic of Indonesia, the DPD can: a. Submit a draft law to the DPR relating to regional autonomy. b. Participate in discussing draft laws relating to regional autonomy, and c. Supervise the implementation of certain laws.⁶⁰

⁵⁵ Eni Suharti, MD3 (UU RI No. Tahun 2014) MPR, DPR, DPD, DPRD, (Jakarta: Sinar Grafika, 2014), h. 133.

⁵⁶ Budiarjo, Miriam, *Dasar-Dasar Ilmu Politik*, (Jakarta: PT Gramedia Pustaka Utama, 2013), h. 315.

⁵⁷ Kaka Alvian Nasution, *Buku Lengkap Lembaga-Lembaga Negara* (Jogjakarta: Saufa, 2014), h. 107.

⁵⁸ Entol Zaenal Muttaqin, *Pokok-pokok Hukum ketatanegaraan*, (Serang: Lembaga Penelitian dan Pengabdian Kepada Masyarakat, 2014), h. 107.

⁵⁹ Ni'matu Huda, *Hukum Tata Negara Indonesia*, (Jakarta: RajaGrafindo Persada, 2007), h. 181.

⁶⁰ Maria Farida Indrati S. *Ilmu Perundang-undangan*, (Jakarta: Kanisius, 2013), h. 104.

So the DPD is a part that was only created after the 1945 Constitution of the Republic of Indonesia underwent changes. So far, based on Article 2 paragraph (1) of the 1945 Constitution before the amendment, regional delegates and group delegates were not directly elected by the people as regional representatives/delegates. This is not in accordance with the nature of a democratic state and does not reflect the representation of regional society, therefore, these two things are no longer included in the state administration after the 1945 Constitution was changed to the Regional Representative Council.⁶¹

4. Constitutional Court

The Constitutional Court is one of the state institutions that was born after the 1945 Constitutional Amendment as one of the actors of judicial power in Indonesia. The discourse on establishing a Constitutional Court actually existed during the discussion of the Constitution at the Investigative Body for Preparatory Efforts for Indonesian Independence (BPUPKI). Prof Moh. Yamin, as a member of BPUPKI, has expressed the opinion that the Supreme Court (formerly called Balai Agung) should be given the authority to "compare" laws, but this idea was rejected by other members, namely Prof. R. Soepomo based on two reasons, namely that the Constitution drafted at that time did not adhere to Trias Politica and at that time there were not many law graduates and they did not have experience regarding this matter.⁶²

Furthermore, Article 24 paragraph (2) stipulates that judicial power is exercised by a supreme court and subordinate judicial bodies in the general court, religious court, military court, and state administrative court and by the Constitutional Court.⁶³

Although not precisely, the Supreme Court can be described as the pinnacle of justice which is concerned with the demands of the struggle for justice for individuals or other legal subjects, whereas the Constitutional Court does not deal with individuals, but with broader public interests.

Cases tried at the Constitutional Court generally involve matters of state institutions or political institutions which involve broad public interests or relate to the examination of general and abstract legal norms, not individual matters or case after case of injustice. individually and concretely. Those that are concrete and individual in nature are at best only those relating to cases regarding the dismissal of the President and/or Vice President.

Hamilton's statement is likely to be taken into consideration by various parties in looking at the existence of judicial power in various countries which are

⁶¹ Subardjo, Dewan Perwakilan Daerah (DPD) Menurut Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 dan Penerapan Sistem Bikameral dalam Lembaga Perwakilan Indonesia, (Yogyakarta: Graha Ilmu, 2012), h. 7-8.

⁶² Jimly Assiddiqie, Pokok-pokok Hukum Tata Negara Pasca Reformasi, (Jakarta: Buana Ilmu Populer, 2007), hlm. 581.

⁶³ Jimly Assiddiqie, Cetak Biru, Membangun Mahkamah Konstitusi Sebagai Institusi Yang Modern dan Bertanggungjawab, Jakarta, 24 Desember 2004, Hlm.16.

sometimes in a position that is vulnerable to intervention and lacks the tools of power, so that in the context of term of office it certainly cannot be equated with executive institutions that use a pattern of term limits with periodization. In fact, in terms of the practice of judicial power in Indonesia, the Constitutional Court should have the same term of office as the Supreme Court, which is only comparable in terms of retirement, not periodization. This equality is based on the reason that both are the peak actors of independent judicial power based on constitutional orders. The Supreme Court is called the Court of Justice, while the Constitutional Court is nicknamed the Court of Law.⁶⁴

By following this conception, Jimly Asshiddiqie said that both the Supreme Court and the Constitutional Court can be called organs of judicial power.⁶⁵

Therefore, in essence, as the author usually mentions for the purpose of facilitating distinctions, the Supreme Court is essentially a 'court of justice', while the Constitutional Court is a 'court of law. One adjudicates injustice to achieve justice, while the second adjudicates the legal system and the justice system itself.

As an organ of judicial power that carries out judicial functions, the Constitutional Court is independent, both structurally and functionally.

In fact, the authority of the Constitutional Court in deciding disputes between state institutions (except the Supreme Court) does not mean that the Supreme Court is structurally above other institutions.

In the context of such a model system, state institutions are differentiated based on their functions and roles as regulated in the 1945 Constitution of the Republic of Indonesia. The Constitutional Court is one of the new state institutions which by the constitution is given an equal position with other institutions, without considering their qualifications. as the highest or highest state institution.

So it is completely unreasonable to say that the position of the Constitutional Court is higher than other state institutions, that is a wrong opinion. The principle of strict separation of powers between the legislative, executive and judicial branches of power by prioritizing a relationship of checks and balances between each other

Furthermore, the 1945 Constitution of the Republic of Indonesia gives authority to the Constitutional Court to be the guardian of the constitution. Guarding the constitution means upholding the constitution, which is the same as "upholding law and justice". This is because the 1945 Constitution of the Republic of Indonesia is the basic law that underlies the legal system in force in Indonesia. In this case the Constitutional Court has the position, authority and constitutional obligation to maintain or guarantee the implementation of the constitutionality of law.⁶⁶

5. President

⁶⁴ Yuliandri, dalam Hitam Putih Pengadilan Khusus, Pusat Analisis dan Layanan Informasi Sekretariat Jenderal Komisi Yudisial, Jakarta: 2013, h. 64

⁶⁵ Jimly Asshiddiqie, "Kedudukan Mahkamah Konstitusi dalam Struktur Ketatanegaraan Indonesia" di unduh dari laman <https://mkri.id/index.php?page=web.Berita&id=11779>.

⁶⁶ <https://mkri.id/index.php?page=web.Berita&id=11768>

Since the beginning of independence, the presidential institution in Indonesia has been the only state institution whose formation was not regulated by a specific law and only in the body of the constitution before the amendments to the 1945 Constitution,⁶⁷ so it is commonly referred to as the executive heavy period. . After the changes to the 1945 NRI Constitution, there were very fundamental changes related to the presidential institution, which is commonly referred to as a shift in the concept of executive power from executive heavy to legislative heavy.⁶⁸ The position of the President in the Indonesian constitutional system is as follows:

a. According to the 1945 Constitution of the Republic of Indonesia (before amendments).

The President is a native Indonesian. The President is elected by the MPR with a majority of votes. The President of the Republic of Indonesia holds governmental powers according to the Constitution. In carrying out his obligations, the President is assisted by one Vice President. The president holds office for a five-year term, after which he can be re-elected. The President holds the power to form laws with the approval of the DPR. The President determines government regulations to implement the law as it should. The President holds the highest authority over the Army, Navy and Air Force. The President with the approval of the DPR declares war, makes peace and agreements with other countries. The President declared a state of danger. The conditions and consequences of a state of danger are determined by law. The President appoints ambassadors and consuls. The President receives ambassadors from other countries. The President grants pardon, amnesty, abolition and rehabilitation. The President gives titles, decorations and other signs of honor. The President has a position under the MPR, has broad powers which can be classified into several types: 1) government administration powers; 2) power in the field of legislation, enacting PP, Perpu; 3) powers in the judicial sector, relating to the granting of pardon, amnesty, abolition and rehabilitation; and 4) power in the field of foreign relations, namely declaring war, making peace and agreements with other countries, appointing ambassadors and consuls.

b. According to the 1945 Constitution of the Republic of Indonesia (after amendments).

The president is elected directly by the people through general elections. The president holds office for five years and thereafter can be re-elected for only one term. Limiting some of the President's powers by improving the procedures for selecting and dismissing the President during his term of office and strengthening the presidential system of government. Legislative power is fully delegated to the

⁶⁷ Hanya terdapat beberapa rumusan terkait lembaga kepresidenan dalam UUD 1945, yakni pada Bab III Kekuasaan Negara yakni pada Pasal 4 Ayat (1) dan (2), Pasal 5 Ayat (1) dan (2), Pasal 6 Ayat (1) dan (2), Pasal 7, Pasal 8, Pasal 9, Pasal 10, Pasal 11, Pasal 12, Pasal 13, Pasal 14 hingga Pasal 15 Undang-undang Dasar Negara Republik Indonesia Tahun 1945. Majelis Permusyawaratan Rakyat, 2011, Undang-undang Dasar Negara Republik Indonesia Tahun 1945, Cetakan Kesepuluh, Sekretariat Jenderal Majelis Permusyawaratan Rakyat, Jakarta, hlm. 20-24.

⁶⁸ I Gede Yusa dan Bagus Hermanto (ed.), 2016, Hukum Tata Negara Pasca Perubahan UUD NRI 1945, Cetakan Pertama, Setara Press, Malang, hlm. 137

DPR. Limiting the President's term of office to a maximum of two terms. The authority to appoint ambassadors and receive ambassadors must take into account the considerations of the DPR, the authority Granting pardons, amnesties and abolitions must take into account the considerations of the DPR, improve the conditions and mechanisms for appointing presidential and vice presidential candidates to be elected directly by the people through elections, as well as regarding the dismissal of the president during his term of office.

In carrying out his authority, the President can be assisted by the Vice President and form a ministerial cabinet.

In article 6A paragraph (1) of the 1945 Constitution it is stipulated that "the President and Vice President are elected as a pair directly by the people". This provision regarding one pair shows that the positions of President and Vice President are one unit of the pair of president and vice president. Both of them are a single dual or one unified institution for the presidency.⁶⁹

Various views assess that constitutionally, the role and position of the vice president in the constitutional system of the Republic of Indonesia, both before and after the amendment, has not been clarified. The vice president is often considered the president's "spare tire". There are at least 3 (three) things that cause the role and position of the vice president to be unclear, namely: 1) the vice president's position is as an assistant to the president, 2) the vice president is not responsible to the president, and 3) constitutional traditions and practices have never existed. The vice president conveys accountability to the MPR or to the people.⁷⁰

According to Dasril Radjab, the articles adopted by the 1945 Constitution of the Republic of Indonesia (after amendments) are a presidential system, as follows: 1) The President is the head of state and also the head of government who leads the day-to-day administration of government; 2) The President is elected directly by the people, and is not responsible to parliament, neither the DPR nor the MPR; 3) The President and the DPR occupy equal positions so that the President does not have the authority to dissolve the Parliament; 4) The President appoints and dismisses ministers; 5) The President carries out his duties and authority for 5 (five) years or a fixed term of office.⁷¹

This research aims to provide an explanation of the position of state institutions, in this case the People's Consultative Assembly, People's Representative Council, Regional Representative Council, Constitutional Court and President in the 1945 Constitution of the Republic of Indonesia (before changes and after changes). It is hoped that this research will be useful for enriching knowledge, especially the development of knowledge in the Indonesian constitutional system.

4. Conclusion

⁶⁹ Jimly Asshiddiqie, *Pergumulan Peran Pemerintah Dan Parlemen Dalam Sejarah (Telaah Perbandingan Konstitusi Berbagai Negara)*, UI-PRESS, Jakarta, 2016, hlm. 129.

⁷⁰ Dhanang Alim Maksum, "Tugas dan Fungsi Wakil Presiden di Indonesia", *Lex Crimen*, Vol. IV/No. 1/Jan-Mar/2015, hlm. 123.

⁷¹ Firdaus, *op. cit.*, hlm. 60.

Based on the results of the discussion, it was concluded that: In the constitutional structure of the Republic of Indonesia, the MPR has existed since the birth of this country. At the beginning of the ratification of the 1945 Constitution of the Republic of Indonesia, namely on August 18 1945, the MPR had a position as the highest state institution. As the highest state institution at that time, the MPR was established in the 1945 Constitution of the Republic of Indonesia as the holder of people's sovereignty. In the 1945 Constitution of the Republic of Indonesia (after amendments), the MPR still maintains its existence and is positioned as a state institution, but its position is no longer as the highest body (supreme body) but as a state institution that is on an equal footing with other state institutions. The DPR is an institution that aims to accommodate and channel the aspirations and interests of the people in the regions within the framework of forming a living order in accordance with democratic life based on Pancasila. Amendments to the 1945 Constitution of the Republic of Indonesia on the form of sovereignty contained in Article 1 paragraph (2). This change is to optimize and strengthen the understanding of people's sovereignty and introduce a new institution, namely the DPD. DPD is a representative institution apart from other state institutions, to organize a regional government system that prioritizes government affairs according to the principles of autonomy and assistance duties. The Constitutional Court is one of the new state institutions which the constitution gives an equal position to other institutions, without considering any qualifications as the highest or superior state institution. In this case the Constitutional Court has the position, authority and constitutional obligation to maintain or guarantee the implementation of the constitutionality of law. Before the amendment to the 1945 Constitution of the Republic of Indonesia, the President's position was under the MPR, and had broad powers which could be classified into several types. After changes to the 1945 Constitution of the Republic of Indonesia, the President was elected directly by the people through general elections. This research aims to provide an explanation of the position of state institutions, namely the People's Consultative Assembly, People's Representative Council, Regional Representative Council, Constitutional Court and President in the 1945 Constitution of the Republic of Indonesia (before changes and after changes). It is hoped that this research will be useful for enriching knowledge, especially the development of knowledge in the Indonesian constitutional system.

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