



Implementation of the Concept of Trias Politica in the Government System of the Republic of Indonesia According to the 1945 Basic Act

Dede Mulyasandi ^{1*}, Ujang Badru Jaman ²

^{1,2} Law Study Program, Nusa Putra University

^{1,2} Sukabumi, West Java, Indonesia

^{1,2}(dede.mulyasandi_hk19, Ujang.badru)nusaputra.ac.id

Abstract. The division of government power aims to prevent the concentration of power in a single institution, which can lead to arbitrariness, and to ensure that all citizens receive their rights. One key concept in power sharing is the trias politica, which divides state government powers into three types: Legislative, Executive, and Judiciary. Legislative power is the authority to make laws, Executive power is the authority to enforce laws, and Judicial power is the authority to uphold laws and administer justice. In Indonesia, the trias politica concept is implemented according to the constitution, evident in the separation of legislative, executive, and judicial powers. Despite this division, achieving the goals of the Indonesian state requires cooperation among these branches to allow for mutual exercise of powers. Although regulated by the 1945 Constitution, additional regulations are necessary to limit and further define these powers to prevent arbitrariness. The research employs a statutory and conceptual approach, utilizing secondary data. This data is analyzed using qualitative normative methods, involving the examination of legal norms, doctrines, and theories. The conclusions are drawn inductively from the analyzed data.

Keywords: Implementation, Trias Politica, System of Government of the Republic of Indonesia and the 1945 Constitution

1 Introduction

A country can be said to be running well, if in that country there is a legal territory or territory, in which there is a legitimate government that is recognized and sovereign, and is given legal power to regulate its people. . Legitimate power, meaning that a sovereign government is a representation of all the people and can exercise power at the will of the people.

Power is the ability of a person or group to dominate another person or group based on authority, authority, charisma or physical strength. . In this case the government exercises power at the will of the people, meaning that everything that is carried out by the government must be solely for the welfare of its people, this is in line with the

© The Author(s) 2024

A. Armansyah and U. B. Jaman (eds.), *Proceedings of the International Conference on Law, Public Policy, and Human Rights (ICLaPH 2023)*, Advances in Social Science, Education and Humanities Research 859,

https://doi.org/10.2991/978-2-38476-279-8_17

Preamble of the 1945 Constitution of the Republic of Indonesia, besides that the people give authority to the government to govern, represent and manage government affairs.

When running the wheels of government, the government needs a "Government System". The government system is a combination of 2 (two) terms, namely "System" and "Government". The system is a whole, consisting of several parts that have a good functional relationship between the parts and the relationship to the whole, so that the relationship creates dependence between the parts which consequently if one part does not work properly will affect the whole. . Meanwhile, governance in a broad sense is all the affairs carried out by the state in carrying out people's welfare and the interests of the state itself; so it is not interpreted as a government that only carries out executive duties, but also includes other tasks including the legislature and the judiciary .

When discussing the system of government, it cannot be separated from its relation to the distribution of power and the relationship between state institutions that exercise state powers. State institutions in carrying out state powers need to be limited, so that they are not arbitrary, do not overlap in authority and there is no centralization of power in one institution, this aims to guarantee the basic rights of its citizens so that they are not treated arbitrarily by the authorities. Therefore, power must be divided or separated so that it is not abused . The division or separation of powers is often known as "Trias Politica". The concept of Trias Politica was put forward by Montesquieu (French philosopher - 1748), where Trias Politica comes from the Greek "Tri" which means three, "As" which means axis/center, and "Politica" which means power. The definition of Trias Politica is a teaching which assumes that state power consists of 3 (three) kinds of powers, namely Legislative, Executive and Judiciary. Legislative power is to make laws, Executive power is the power to implement laws, and Judicative power is the power to judge violations of laws. . The concept of Trias Politica is a normative principle that power should not be left to the same person to prevent abuse of power by those in power. .

In the constitution of the state of Indonesia, namely the 1945 Constitution of the Republic of Indonesia, it can be seen that there is a division of powers based on the types and functions of the state, namely the Legislature, Executive and Judiciary into state institutions or government institutions. It should be understood that the Indonesian state constitution has been amended. Amendment is the process of changing the provisions of a regulation, either in the form of adding, subtracting or removing certain regulations. Amendments to the 1945 Constitution of the Republic of Indonesia have been implemented 4 (four) times including:

1. The first amendment was carried out on 14 to 21 October 1999 and was determined through the MPR General Session
2. The second amendment was carried out on 7 to 18 August 2000 and was determined in the MPR Annual Session
3. The third amendment on 1 to 9 November 2001, and determined in the MPR Annual Session
4. Then the fourth Amendment was carried out from 1 to 11 August 2002 and was determined in the MPR Annual Session.

From several amendments, the 1945 Constitution continues to experience changes and the results of the 4th amendment are state institutions or government agencies in the system of government of the Republic of Indonesia consisting of 7 (seven) namely: MPR, DPR, DPD, President, BPK, MA and MK . These institutions hold their respective powers. Based on the description above, it is interesting to carry out a more in-depth study to find out more clearly about "Implementation of the Trias Politica Concept in the Government System of the Republic of Indonesia in accordance with the 1945 Constitution".

1.1 Formulation of the Problem

Based on the background of the problems above, it is necessary to describe the problems as follows:

1. How is the division of power of the government of the republic of Indonesia?
2. How is the application of the trias politica concept in the government of the republic of Indonesia?

2 Research Methods

This research process uses normative (doctrinal) legal research methods, which is carried out by examining library materials (library research). The approach used is a statutory and conceptual approach. This approach is carried out by in-depth study of laws and regulations and doctrines related to the concept of trias politica. The type of study in this study is more descriptive in nature, which aims to describe or clearly describe matters relating to the object to be studied.

The data needed in this study are secondary data in the form of primary legal materials which include the 1945 Constitution, Law Number 30 of 2014 concerning State Administration, as well as secondary legal materials in the form of books, legal journals, scientific papers, mass media which contain the implementation of government in Indonesia.

While the data collection method used is to use literature studies related to the formulation of the problem. Then the data that has been collected and processed will be analyzed using qualitative normative methods, namely discussions carried out by studying the data that has been obtained and processed based on legal norms, legal doctrines and existing legal theories. The data that has been analyzed is then concluded using the inductive method.

3 Discussion

3.1 The Division of Powers of the Government of the Republic of Indonesia

Indonesia adheres to a presidential government system, where the presidential government system is a system of government that is centered on the position of the president as head of government as well as head of state (Asshiddiqie, 1997:311). Even so, in the

Indonesian state there are other state institutions that have their respective powers. In terms of the division of powers, state institutions or government institutions can be divided into 2 (two) parts, namely :

1. Vertically, namely the division of power according to its level. The point is the division of powers between several levels of government, for example between the central government and local governments in a unitary state;
2. Horizontally, namely the distribution of power according to its function. This means that this division focuses more on the distinction between legislative, executive and judicial functions of government.

In this research, the focus is on the horizontal division of powers, namely the distribution of powers based on the nature of the tasks of different types and functions which give rise to various kinds of institutions within a country. Based on the 1945 Constitution of the Republic of Indonesia, horizontally the division of state power is carried out at the central government and regional government levels. The division of power at the central government level takes place between equal state institutions. The division of powers at the central government level underwent a shift after the amendment to the 1945 Constitution of the Republic of Indonesia (amendment). The shift in question is a shift in the classification of state power which generally consists of three types of power (legislative, executive and judicial) into six state powers,

1. Constitutive power, namely the power to amend and establish the Constitution. This power is exercised by the People's Consultative Assembly as emphasized in Article 3 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that "The People's Consultative Assembly has the authority to amend and stipulate the Constitution.
2. Executive power, namely the power to implement laws and administer the state government. This power is held by the President as confirmed in Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that the President of the Republic of Indonesia holds government power according to the Constitution.
3. Legislative power, namely the power to make laws. This power is held by the House of Representatives as emphasized in Article 20 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that "the House of Representatives holds the power to form laws".
4. Judicial power, also known as judicial power, is the power to administer justice in order to uphold law and justice. This power is held by the Supreme Court and the Constitutional Court as emphasized in Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that "Judicial power is exercised by a Supreme Court and judicial bodies under it in the general court environment, the religious court environment, military court environment, state administrative court environment, and by a Constitutional Court".
5. Examination/inspective powers, namely powers related to conducting audits on the management and responsibility of state finances. This power is exercised by the Supreme Audit Board as emphasized in Article 23 E paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that to

examine the management and responsibility for state finances, a free and independent Audit Board is held.

6. Monetary power, namely the power to determine and implement monetary policy, regulate and maintain the smooth operation of the payment system, and maintain the stability of the value of the rupiah. This power is exercised by Bank Indonesia as the central bank in Indonesia as emphasized in Article 23 D of the 1945 Constitution of the Republic of Indonesia which states that the state has a central bank whose composition, position, authority, responsibility and independence are regulated by law.

The division of government power is an attempt to prevent the concentration of power in an institution which will result in arbitrariness in a government and to guarantee that all people get their rights as citizens.

3.2 Implementation of the Trias Politica Concept in the Government System of the Republic of Indonesia According to the 1945 Constitution

The concept of Trias Politica, comes from the Greek, which means Triad Politics. According to Montesquieu, the teachings of Trias Politica said that in every state government there must be 3 (three) types of power which cannot be held by one hand alone, but each power must be separate. In essence, the concept of Trias Politica is the concept of dividing the power of state government into 3 (three) types of power, namely Legislative, Executive and Judiciary. In general, these three powers are contained in the government of a country, one of which is Indonesia. We can describe this as follows:

Legislative Power. Legislative power is the power to make laws. The power to make laws must lie within a special agency. If the drafting of laws is not placed in a particular body, then it will be possible for each group or each person to make laws for their own interests. A country that calls itself a democracy where laws and regulations must be based on people's sovereignty, then the people's representative body must be considered as the body that has the highest authority to draft laws and is called the "Legislative". With the existence of a legislature, it will give birth to a law that will become a way of life for the community and the state.

Legislative power is the power of state institutions in forming or making laws. In Indonesia this legislative power is handed over to several state institutions such as the People's Consultative Assembly (Article 3 paragraph 1 of the 1945 Constitution), the People's Representative Council (Article 20 paragraph 1 of the 1945 Constitution) and the Regional People's Representative Council.

In Indonesia, there is another regulatory function in the formation of laws involving other state institutions, this can be seen in the formation of laws with the president's right to submit draft laws to the DPR in accordance with Article 5 paragraph (1) of the 1945 Constitution, the process of forming Government Regulation by the president based on article 5 paragraph (2) of the 1945 Constitution, the process of establishing a Government Regulation in Lieu of Law (Perppu) by the president based on article 22 paragraph (1) of the 1945 Constitution. In this case, the President of the Republic of

Indonesia based on the 1945 Constitution juncto Law Number 12 of 2011 concerning Formation of Legislation, has the authority to ratify a Draft Law (RUU) to become an Act (UU).

Executive Powers. Executive power is the power to enforce laws. The power to implement laws rests with the Head of State. Of course, the head of state cannot implement all of these laws by himself. Therefore, the power of the head of state is delegated (delegated) to government/state officials who together constitute a law implementing body (the Executive Body). It is this body that is obliged to exercise executive power.

Executive power is the power of state institutions in implementing laws. Executive power is given to government institutions specifically, such as the president and vice president, ministers and heads of regions. In general, executive power is given to government institutions from the central level to the regional level. One of the executive organs in the Indonesian state is the president as the head of state and head of government. The President in realizing good and responsive government in Indonesia has discretion, where discretion is the freedom to act on his own initiative owned by the Government or state administration officials. Discretion is Decisions and/or Actions determined and/or carried out by Government Officials to address concrete problems faced in administering government in terms of laws and regulations that provide choices, do not regulate, are incomplete or unclear, and/or there is government stagnation (Article 1 paragraph 9 of Law Number 30 of 2014 concerning government administration).

This discretion is often used by the government (president) with the aim of first, facilitating the administration of government; secondly, to fill legal voids; third, providing legal certainty; fourth, overcoming government stagnation in certain circumstances for the benefit and public interest.

Judicial Power. Judicial Powers or Judicial Powers are powers that are obliged to maintain laws and have the right to provide justice to their people. The Judiciary Body is the one with the power to decide cases, impose penalties for any violations of laws that have been held and implemented. Even though judges are usually appointed by the Head of State (Executive), they have a special position and have separate rights, because judges are not ordered by the Head of State who appoints them, even judges are a body that has the right to punish the Head of State, if the Head of State violates statutory regulations. invitation.

Judicial power is the power of institutions in administering justice and enforcing laws. In Indonesia, state institutions that have judicial powers include the Constitutional Court (MK), the Supreme Court (MA) and the Judicial Commission (KY). The Constitutional Court has the authority to adjudicate at the first and final levels whose decisions are final to review laws against the constitution, decide on disputes over the authority of state institutions whose powers are granted by the constitution, decide on the dissolution of political parties and decide on disputes over election results (Article 24C 1945 Constitution). The Supreme Court has the authority to adjudicate at the cassation level, examine statutory regulations under the law and has other powers granted by law (Article 24A of the 1945 Constitution).

Judicial power is exercised by the supreme court and judicial bodies under it in the general courts, religious courts, military courts, state administrative courts and constitutional courts.

In addition to the division of powers above, in the country of Indonesia there are also laws that regulate cooperation between state institutions in administering government. So that in this case it creates dual power in a state institution. Such as the existence of the president's authority to propose laws to the DPR and the process of ratifying laws by the President.

The application of the trias politica concept in the system of government of the republic of Indonesia has been carried out in accordance with the mandate of the constitution and this can be seen by the division of legislative, executive and judicial powers. Even though the division of powers of state institutions has been carried out, in realizing the goals of the Indonesian state, cooperation between each state institution is needed so that the powers of state institutions can be exercised by other state institutions. Even though this has been regulated in the 1945 Constitution, it is necessary to have regulations that limit and regulate further in order to maintain arbitrariness in exercising power.

4 Conclusion

The division of government power is an attempt to prevent the concentration of power in an institution which will result in arbitrariness in a government and to guarantee that all people get their rights as citizens. One of the concepts of power sharing is the concept of trias politica. The concept of Trias Politica is the concept of dividing the powers of the state government into 3 (three) types of power, namely Legislative, Executive and Judiciary. Legislative power is the power to make laws. Executive power is the power to enforce laws. Judicial Powers or Judicial Powers are powers that are obliged to maintain laws and have the right to provide justice to their people.

The application of the trias politica concept in the system of government of the republic of Indonesia has been carried out in accordance with the mandate of the constitution and this can be seen by the division of legislative, executive and judicial powers. Even though the division of powers of state institutions has been carried out, in realizing the goals of the Indonesian state, cooperation between each state institution is needed so that the powers of state institutions can be exercised by other state institutions. Even though this has been regulated in the 1945 Constitution, it is necessary to have regulations that limit and regulate further in order to maintain arbitrariness in exercising power.

5 Suggestion

1. Every state institution in carrying out its functions must always be guided by the constitution and the laws that govern it
2. In order to maintain the stability of the state and prevent the concentration of power in a state institution, rules governing the limitation of the powers of state institutions are needed.

6 Authors' Contributions

Table 1. Authors' Contributions

Name	Author Position	Science	Contributions
Dede Mulyasandi	First Author	law	Collecting library data and preparing journal drafts
Ujang Badru Jaman	Last Author	law	Director and final coordinator of the journal

Acknowledgments. Praise and gratitude the authors pray to the presence of Allah SWT, because of His grace and pleasure the author can complete the preparation of the journal with the title "**Implementation of the Trias Politica Concept in the Government System of the Republic of Indonesia in Accordance with the 1945 Basic Law**". Furthermore, the author would like to thank Mr. Ujang Badru Jaman SH, MH as the supervising lecturer who has been patient and took the time, energy and thoughts in making this journal, contributed in providing guidance, attention, motivation and suggestions to the author during the process of writing this journal.

References

1. kaelan. (2010). Citizenship Education for Higher Education. Yogyakarta, Indonesia: Paradigm.
2. Kusnardi, Moh. et al. (1983). Introduction to Indonesian Constitutional Law. Jakarta, Indonesia: Center for Constitutional Law Studies, Faculty of Law, University of Indonesia and CV. Blessed Light.
3. Jimly Asshiddiqie. (2007). Principles of Post-Reform Indonesian Constitutional Law. Jakarta, Indonesia: PT Bhuana Popular Science.
4. Power. 2016. On KBBi Online. Retrieved 10 March 2022. kbbi.kemdikbud.go.id/entry/kekuasaan.
5. Safudin, E. (2020). The Politics of Indonesian Discretionary Law, An Analysis of the Distribution of Power Between the Government and the Legislature. *Journal of Islamic Research*, 14(01).
6. Zamroni, M. (2018). President's Authority to Issue Perppu (President's Authority To Issue Perppu). *Journal of Indonesian Legislation*, 12(3).
7. Yulistyowati, E., Pujiastuti, E., & Mulyani, T. (2017). The Application of the Trias Politica Concept in the Government System of the Republic of Indonesia: A Comparative Study of the 1945 Constitution Before and After the Amendment. *Journal of Socio-Cultural Dynamics*, 18(2), 328-338.

8. Adhari, A. (2019). The Ambiguity of Regulations on a State of Emergency in the Indonesian State Administration System. *Dialogia Iuridica: Journal of Business and Investment Law*, 11(1), 43-61.
9. Marlina, R. (2018). Distribution of Power in Administration in Indonesia. *Journal of Sovereign Law*, 1(1).
10. The 1945 Constitution of the Republic of Indonesia
11. Law Number 30 of 2014 Concerning Government Administration

Open Access This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

