 p-ISSN: 2548-9267 | e-ISSN : 2549-2365, Open Access at : http://unramlawreview.unram.ac.id/index.php/ulr

Conceptualization of the Expansion of the Supreme Court's Authority as a Dispute Settlement Institution for Authority of State Institutions outside the Constitution

Muhammad Fauzan
University Pembangunan Nasional "Veteran" Jakarta
2110611053@mahasiswa.upnvj.ac.id

Handar Subhandi Bakhtiar
University Pembangunan Nasional "Veteran" Jakarta
handarsubhandi@upnvj.ac.id

ABSTRACT

The authority to form state institutions outside the constitution, especially Non-Ministry Government Institutions (LPNK) rests with the President based on Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The formation of these state institutions is not limited as the regulation on the number of state ministries which limits the number of ministries to 34 (thirty four). This can create the potential for overlapping authorities and authority disputes between state institutions outside the constitution so that it requires a state institution that can resolve them. Based on this, this study will examine related 1) how to reconstruct the President's authority in forming state institutions outside the constitution; and 2) how to conceptualize the extension of the authority of the Supreme Court as a dispute resolution institution for the authority of state institutions outside the constitution. This study uses a normative juridical method with a statutory approach. The results of the study indicate that the President has the authority to form state institutions outside the constitution through his authority in submitting Draft Laws, forming Government Regulations in Lieu of Laws, and forming Presidential Regulations, in which there are no restrictions. Arrangements for the formation of state institutions outside the constitution must be limited as state ministries in Article 15 of the Law on State Ministries. Then the concept of extending the authority of the Supreme Court as an institution for resolving disputes over the authority of state institutions outside the constitution can be taken from the granting of authority through attribution through Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia, or through the amendment of the 1945 Constitution of the Republic of Indonesia. The position of the Supreme Court as a constitutional organ and institution of judicial power is independent from other powers so that it has the potential to become an institution for resolving disputes over the authority of state institutions outside the constitution.

Keywords: Disputes on the Authority of State Institutions, the President, the Supreme Court.

INTRODUCTION

Amendments to the constitution have affected Indonesia's constitutional system, one of which is the structure of existing state institutions.[1] Amendments to the Constitution of the Republic of Indonesia in 1945 were implemented 4 (four) times, namely in 1999-2002.[2]

[1]Harry Setya Nugraha, (2018), "Gagasan Amandemen Ulang Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," *Renaissance*, 3(1): 61 – 85. **See also** Yoyon M. Darusman, (2013), "Kajian Yuridis Urgensi Amandemen Kelima Undang-Undang Dasar 1945 dalam Sistem Hukum Ketatanegaraan Indonesia," *ADIL Jurnal Hukum*, 4(2): 246.

[2]Ade Fartini, (2022), "Politik Hukum: Otonomi Daerah Pasca Amandemen UUD 1945 Upaya menjaga Keseimbangan Antara Prinsip *Unity* dan *Diversity*," *PLEDOI (Jurnal Hukum dan Keadilan)*, 1(1): 2. **See also** Kristian, (2018), "Politik Hukum Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Perubahan Ketiga Pasal 24 Tentang Kekuasaan Kehakiman," *Jurnal Morality*, 4(2): 145 – 146. **See also** Nunik Nurhati et al., (2022)., "Kedaulatan Negara Indonesia: Makna

DOI: https://doi.org/10.29303/ulrev.v8i1.285

Before the reform or amendment of the Constitution of the Republic of Indonesia in 1945, the constitutional structure of Indonesia had 2 (two) terms, namely the highest state institution and the supreme state institution which are now history.[3] The current doctrine of state institutions is more about complementing or maintaining checks and balances so that the authority between state institutions is not excessive and reduces arbitrariness,[4] So, that state institutions fulfill their authority by monitoring each other with the hope of creating a balance between state institutions scattered across different branches of power.

State institutions in Indonesia are parallel and complementary so that state institutions at the constitutional level of an organ are not obliged to be accountable among other institutions at the horizontal level.[5] he supervisory task of the DPR is only to ensure that the use of the state budget and the administration of the government runs well and not as a form of government accountability to the DPR as a representative of the people, but as a form of checks and balances in the Indonesian constitutional system.[6] Likewise, the Constitutional Court's authority to review the laws does not mean that the Constitutional Court has a higher position than the DPR and the President.[7] The whole mechanism is to create checks and balances between agencies that administer the power of the state.

The President is one of the constitutional organ institutions that are fully governed in the Constitution of the Republic of Indonesia in 1945. It can even be said that the Constitution of the Republic of Indonesia in 1945 is a constitution of identify with a presidential system because of the leadership of the President's rule in it.[8] The President's authority in managing the government and his role as head of state is regulated in the Constitution of the Republic of Indonesia in 1945 so that his power in implementing state administration is to be very important and moderate. This also extends to the creation of ministries of state which are the choice of the

dan Implementasi Sebelum dan Sesudah Amandemen UUD 1945," *Amnesti: Jurnal Hukum*, 4(1): 44 – 45. **See also** Mugeni, (2015), "Pergeseran Kekuasaan Presiden dan Penguatan Kekuasaan DPR Pasca Perubahan UUD NRI 1945," *Refleksi Hukum*, 9(2): 144.

[3]Ahmad Basarah, (2014), "Kajian Teoritis Terhadap *Auxiliary State's Organ* dalam Struktur Ketatanegaraan Indonesia," *Masalah-Masalah Hukum*, 43(1): 2.

[4]Indra Rahmatullah, (2013), "Rejuvinasi Sistem *Checks and Balances* dalam Sistem Ketatanegaraan di Indonesia," *Jurnal Cita Hukum*, 1(2): 216. **See also** Andy Wiranto, (2013), "Pemakzulan dan Pelaksanaan Mekanisme *Checks and Balances* dalam Sistem Ketatanegaraan Indonesia," *Negara Hukum*, 4(1): 126. **See also** Bustamin, and Rony Jaya, (2019), "Urgensi *Checks and Balances* Ketatanegaraan Indonesia dan Islam," *Jurnal Ilmiah Syari'ah*, 18(2): 222.

[5]Ahmad Mujib Rohmat, (2016), Kedudukan dan Kewenangan Majelis Permusyawaratan Rakyat dalam Era Reformasi. *Jurnal Pembaharuan Hukum*, 3(2): 186. **See also** Sri Nur Hari Susanto, (2014), "Pergeseran Kekuasaan Lembaga Negara Pasca Amandemen UUD 1945," *Masalah-Masalah Hukum*, 43(2): 284 – 285. **See also** Odang Suparman, (2023), "Konsep Lembaga Negara Indonesia dalam Perspektif Teori Trias Politica Berdasarkan Prinsip Checks And Balances System," *AHKAM Jurnal Hukum Islam dan Humaniora*, 2(1): 67. **See also** Yanuar, M, (2020), "Lembaga Constitusional Importance Dalam Sistem Ketatanegaraan Indonesia *(Institutional Importance in the Indonesian Rigidity System*)," *Constitutionale*, 1(1): 36. **See also** Muhammad Tohir, (2018), "Pertanggungjawaban Lembaga Negara dalam Pelaksanaan Good Governance secara Yuridis dan Politis menurut Hukum," *Jurnal Hukum Tri Pantang*, 4(1): 65. **See also** Fajlurrahman Jurdi, (2017), "Format Kekuasaan Presiden dalam UUD 1945 (Relasi Horizontal dan Vertikal Kekuasaan Presiden dalam Sistem Presidensial)," *Amanna Gappa*, 25(2): 53.

[6]Putu Eva Ditayani Antari, (2020), "Implementasi Fungsi Pengawasan Dewan Perwakilan Rakyat dalam Upaya Memperkuat Sistem Presidensial di Indonesia," *Refleksi Hukum Jurnal Ilmu Hukum*, 4(2): 234 - 235. **See also** Sunarto, (2018), "Pelaksanaan Fungsi Pengawasan DPR (Perbandingan antara Era Orde Baru dan Era Reformasi)," *Intergralistik*, 29(1): 85.

[7]Article 24C Pharagraph (1) Constitution of the Republic Indonesia Year 1945. **See also** Ridwan HR, (2020), "*Hukum Administrasi Negara*," Depok: Rajagrafindo Persada, p. 102. **See also** Van Wijk, H.D., and Konijnenbelt, W. (1995), "*Hoofdstukken van Administratief Recht*," Vuga: s'Gravenhage, p. 99. **See also** Ahmad Kosasi et al., (2017), *Dinamika Hukum Administrasi Indonensia Mengenal Konstruksi Baru Hukum Administrasi Pasca Terbitnya Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan*, Bengkulu: Verga. **See also** Irfan Fachruddin, (2004), *Pengawasan Peradilan Administrasi terhadap Tindakan Pemerintah*. Bandung: Alumni, p. 35 – 36.

[8]Dinoroy Marganda Aritonang, (2010), "Penerapan SIstem Presidensil di Indonesia pasca Amandemen UUD 1945," *Mimbar Hukum*, 22(2): 392. **See also** Bilal Dewansyah and M. Adnan Yazar Zulfikar, (2016), "Reafirmasi Sistem Pemerintahan dan Model Pertanggungjawaban Presidensial dalam Perubahan UUD 1945: Penelusuran Sebab dan Konsekuensi," *PJIH*, 3(2): 302. **See also** I Gusti Ngurah Santika, (2019), "Presidensialisme Dan Problematika Mekanisme Impeachment Presiden Dan/Atau Wakil Presiden Berdasarkan UUD 1945 Pasca Perubahan (Perspektif Pergulatan Hukum Dan Politik)," *Jurnal Ilmiah Ilmu Sosial*, 5(1): 24. **See also** Abdul Rahman Kanang, (2018), "Diskursus Pembatasan Kekuasaan Presiden Dalam Sistem Presidensial Menurut UUD 1945," *Al-daulah,* 7(1): 163 – 164.

president in accordance with the provisions of Law No. 39 of 2008 and also the establishment of state institutions outside the constitution which in this case are Non-Ministerial Government Institutions. However, the President's authority prevails in the creation of state institutions, especially state institutions outside the constitution or Non-Ministerial Government Institutions (LPMK) and Institutions Unstructured so that the President's authority becomes very large.

The creation of ministries of state remains the full authority of the President in the exercise of government power. The President has full right to appoint a person who, according to him, is able to fill the position of the Minister with consideration of the President who will then assist the Ministers in the exercise of powers the government.[9] However, the creation of state ministries is limited in Article 15 of Law No. 39 of 2008 which states "The total number of Ministries as mentioned in Article 12, Article 13, and Article 14 is a maximum of 34 (thirty-four)."[10] However, this does not apply to the President's authority to create state institutions outside the constitution or Non-Ministerial Government Institutions, Non- Structural, or Structural Institutions under the Ministry of State.

As is known, Non-ministerial Government Institutions and Non-structural Institutions are a manifestation of the President's authority in the exercise of governmental power, although they are not absolute. According to the latest data edited in 2021, the number of Non-Ministerial Government Institutions is 30 (thirty) and the number of Non-structural Institutions is 77 (ninety-six).[11] This could lead to disputes over the authority of these institutions. In addition, there are actually 4 institutions that deal with human rights in Indonesia. In this case the Ministry of Law and Human Rights through the Director General of Human Rights, the National Human Rights Commission (Komnas HAM), the Indonesian Child Protection Commission (KPAI), and the National Commission on Women (Komnas Perempuan). From this it is very clear that the tug of war of authority takes place at the level of the legislature so that there are disputes about the authority of these institutions.

The context of resolving authority disputes is closely related to legal power. The justice system in Indonesia is very interesting. The doctrine that Indonesia has adhered to is that there are two highest judicial institutions consisting of the Supreme Court and the Constitutional Court.[12] Each has a different legal basis and authority. The concept of the authority of the Supreme Court is normally regulated in Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states The Supreme Court has the authority to judge at the level of cassation, to investigate on statutory regulations under laws against laws, and has other

[9]Sulkiah, (2019), "Pelaksanaan Hak Prerogatif Presiden dalam Penyusunan Kabinet Berdasarkan Pasal 17 UUD 1945 Amandemen Suatu Tinjauan Sistem Ketatanegaraan Indonesia," *NURANI HUKUM: JURNAL ILMU HUKUM*, 2(1): 46. **See also** Ni'matul Huda, (2001), "Hak Prerogatif Presiden dalam Perspektif Hukum Tata Negara Indonesia," *Jurnal Hukum*, 8(18): 4. **See also** Oksep Adhyanto, (2011),"Eksistensi Prerogatif Presiden Pasca Amandemen UUD 1945," *Jurnal FISIP UMRAH*, 2(2): 163 – 164.**See also** Yusron Munawir, (2013), "Problematik Pelaksanaan Hak Prerogatif Presiden dalam Perombakan Kabinet Indonesia Bersatu II," *Tesis*. Yogyakarta: Fakultas Hukum Universitas Islam Indonesia.

[10]Article 15 Law Number 39 Year 2008 Concerning State Ministry (Lembaran Negara Republik Indonesia tahun 2008 Nomor 166, Tambahan Lembaran Negara Nomor 166).

[11]Humas Kemensetneg, (2018), Klasifikasi Lembaga Non Struktural, *Setneg.go.id*. https://www.setneg.go.id/view/index/klasifikasi_lembaga_non_struktural. Diakses pada 7 April 2023 pukul 22:43. **See also** Kementerian Pemberdayaan Aparatur Negara Reformasi Birokrasi, (2021), Lembaga Pemerintah Pusat, *Menpan.go.id*, https://www.menpan.go.id/site/kelembagaan/lembaga-pemerintah-pusat#9-lembaga-non-struktural

[12]Saldi Isra, (2015), "Titik Singgung Wewenang Mahkamah Agung dengan Mahkamah Konstitusi," *Jurnal Hukum dan Peradilan*, 4(1): 19. **See also** Moch Arif Mirahadisaputro et al., (2022), "Analisis Yuridis Kedudukan Hukum Anak Perusahaan BUMN Terhadap Perusahaan Induk. (Studi Kasus Putusan Mahkamah Agung RI Nomor : 21 P/HUM/2017 dan Putusan Mahkamah Konstitusi RI Nomor : 01/PHPU-PRES/XVII/2019) *Juridical Analysis of the Legal Position of BUMN Subsidiaries Against the Parent Company. (Case Study of the Decision of the Supreme Court of the Republic of Indonesia Number: 21 P/HUM/2017 and the Decision of the Constitutional Court of the Republic of Indonesia Number: 01/PHPU-PRES/XVII/2019)*," *Jurnal Kolaboratif Sains*, 5(8): 573. https://doi.org/10.56338/jks.v5i8.2735. **See also** Taufik Nurohman, (2014), "Dinamika Relasi Kelembagaan Antara Komisi Yudisial dengan Mahkamah Agung dan Mahkamah Konstitusi dalam Pengawasan Hakim," *Jurnal Ilmu Politik dan Pemerintahan*, 1(4): 478.

powers given by the Constitution.[13] At the same time, the Constitutional Court is regulated in Article 24C paragraph (1) of the Constitution of the Republic of Indonesia 1945 which states "The Constitutional Court has the authority to try in the first instance and the final level that has final decisions to review laws against the Constitution to decide disputes about the authority of state institutions whose powers are given by the Constitution, decide about the dissolution of political parties, and decide disputes about the results of general elections.[14] So that the Supreme Court and the Constitutional Court always cooperate in the exercise of judicial power which is their domain with the Judicial Commission which is a supporting body or institution providing support for legal power.[15]

In the concept of resolving disputes about the authority of state institutions, the Constitutional Court has legal remedies. However, this authority is limited in nature which is only limited to resolving disputes about the authority of state institutions whose rights and authorities are regulated by virtue of the constitution. If a state institution whose authority is not provided for in the constitution requests a solution to a dispute about authority, the Constitutional Court will of course decide not to accept the request because it does not there is no limit to the institution's authority within the scope of the Constitutional Court to judge.[16] o in this case there is a legal gap regarding the resolution of disputes about the authority of state institutions whose authority is regulated outside the constitution. This is important because a large number of state institutions are extra-constitutional so that there is no possibility of a dispute over authority to require a forum for litigation if such arises dispute. For this reason, the author examines 2 problem formulations namely 1) how to reconstruct the President's authority in forming state institutions outside the constitution; and 2) how to conceptualize the extension of the authority of the Supreme Court as a dispute resolution institution for the authority of state institutions outside the constitution.

METHOD

This study is a normative juridical study with a statutory and conceptual approach. The Statute Approach is research on legal products and examines them in relation to issues that are the main topic of research.[17] In this case the researcher will examine the problem by using the 1945 Constitution of the Republic of Indonesia and Law No. 39 of 2008. The conceptual approach is an approach that uses the doctrines and theories developed in law to answer research problems. In this case, the researcher will use the theory of trias politica and the theory of authority as an analytical knife in answering the main problem topics under study.

ANALYSIS AND DISCUSSION

Reconstruction of the President's Authority in Forming State Institutions Outside the Constitution

The presidential system makes the president as the center in the administration of state government. The presidential government system is a system of government that places the

[13]See Article 24A Pharagraph (1) Constitution of Republic of Indonesia year 1945.
[14]See Article 24C Pharagraph (1) Constitution of Republic of Indonesia year 1945.
[15]Miranda Risang Ayu, (2009), "Kedudukan Komisi Independen sebagai State Auxiliary Institutions dan Relevansinya dalam Sruktur Ketatanegaraan Indonesia," *Jurnal Konstitusi*, 1(1): 54.
[16]See Article 64 Pharagraph (1) jo. Article 61 Pharagraph (1) Law Number 24 Year 2003 Regarding Constitutional Court (Lembaran Negara Republik Indonesia Tahun 2003 Nomor 98, Tambahan Lembaran Negara Republik Indonesia Nomor 4316).
[17]Bahder Johan Nasution, (2008), *Metode Penelian Ilmu Hukum*, Bandung: Mandar Maju, p. 92. **See also** Johny Ibrahim, (2005), *Teori dan Metode Penelitian Hukum Normatif*, Malang: Bayumedia, p. 249.

focus of power in the executive branch (the President),[18] so that the consequences of this system are the President's large role in the implementation of the state wheels. Saldi Isra revealed that this system also requires the President to be the head of government as well as the head of state.[19] Based on this, it is found that the President's authority is so large in the scope of government that when talking about a residual household system, the rest of the legislative and judicial authority becomes the executive authority which makes it too large even though in concept the household system is closer to the regional autonomy system.[20]

The President's authority extends to the formation of state institutions outside the constitution. Institutions outside the constitution fall under the authority of the President in forming them on the basis of the administration of government power as referred to in Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which reads that "The President of the Republic of Indonesia holds government power according to the Constitution".[21] The establishment of state institutions outside the constitution has the aim of answering the needs of the President in realizing his vision and mission and of course to carry out government functions and public services. The establishment of this institution can be done in several ways, namely submitting a Draft Law to the DPR, enacting Government Regulations in Lieu of Laws and Presidential Regulations.

Submission of draft laws by the President is carried out subject to the provisions of Article 45 paragraph (1) of Law no. 12 of 2011 in which the preparation of the draft law that came from the President and the Regional Representatives Council to the House of Representatives was first concretion into the National Legislation Program. The provisions for the formation of institutions outside the constitution that are formed through laws, it can be proposed by the DPR or the President. If by the House of Representatives, the drafting of the National Legislation Prolegs is prepared and followed up by the DPR's auxiliary organs engaged in the field of legislation in accordance with the provisions of Article 21 paragraph (1) of Law No. 15 of 2019 which reads "The preparation of the Prolegnas between the DPR and the Government is coordinated by the DPR through the DPR's fittings which specifically handle the field of legislation".[22] If by the Government, the drafting of the National Legislation Program is compiled and followed up by the minister or head of the institution in charge of legislation as referred to in Article 21 paragraph (4) of Law No. 15 of 2019 which reads "The preparation of the National Legislation Program within the Government is coordinated by the minister or the head of the institution that administers government affairs in the field of Forming Legislation".[23]

From the analysis above, it is found that the submission of draft laws to the House of Representatives is a form of a system of checks and balances between the legislative and executive powers which is based on Article 5 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which reads[24] "The President has the right to submit drafts of laws invite to the House of Representatives." The President's domain in submitting the bill also strengthens the President's position as a positive legislator in Indonesia, although conceptually

[18]Putu Eva Ditayani Antari. *Op.cit,* p. 230.

[19]Saldi Isra, (2010), *Pergeseran Fungsi Legislasi Menguatnya Model Legislasi Parlementer dalam Sistem Presidensial Indonesia*, Depok: PT. RajaGrafindo Persada, p. 39 – 41. **See also** Bachtiar Baital, (2014), "Pertanggungjawaban Penggunaan Hak Prerogatif Presiden di Bidang Yudikatif dalam Menjalin Kemerdekaan Kehakiman," *Jurnal Cita Hukum*, 1(1): 24.

[20]Said, A. R. A, (2015), "Pembagian Kewenangan Pemerintah Pusat-Pemerintah Daerah dalam Otonomi Seluas-Luasnya Menurut UUD 1945," *Fiat Justisia Jurnal Ilmu Hukum*, 9(4): 597.

[21]See Article 4 Pharagraph (1) The Constitution of the Republic of Indonesia Year 1945.

[22]See Article 21 Pharagraph (1) Law Number 15 Year 2019 Regarding Amendement of Law Number 12 Tahun 2011 Regarding The Formation of Laws (Lembaran Negara Republik Indonesia tahun 2019 Nomor 183, Tambahan Lembaran Negara Republik Indonesia Nomor 6398).

[23]See Article 21 Pharagraph (4) Law Number 15 Year 2019 Regarding Amendement of Law Number 12 Tahun 2011 Regarding The Formation of Laws (Lembaran Negara Republik Indonesia tahun 2019 Nomor 183, Tambahan Lembaran Negara Republik Indonesia Nomor 6398).

[24]See Article 5 Pharagraph (1) The Constitution of the Republic of Indonesia Year 1945.

the separation of powers is very contradictory because it is considered that the legitimacy of the President's position as head of state and head of government will be held hostage by politics.[25] The regulation of positive legislators is regulated in Article 20 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which reads "Every draft law is discussed by the House of Representatives and the President for mutual approval." Several laws contain the formation of institutions that are outside the constitution, such as Law No. 23 of 2002 which established the Indonesian Child Protection Commission, then Law no. 35 of 2009 which established the National Narcotics Agency. The institution is included in the classification of Non-Structural Institutions which carry out the function of executive power in the field of investigation of child crimes and narcotics.

In the context of a compelling crisis, the President can form an institution outside the constitution by using Government Regulations in lieu of Laws based on the provisions of Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which reads "In the event of a compelling crisis, the President has the right to stipulate regulations government in lieu of law".[26] The formation of a Government Regulation in Lieu of Law must fulfill the elements contained in that article as well as the interpretation of the Constitutional Court through the Constitutional Court Decision Number 138/PUU-VII/2009. In this decision, the Constitutional Court interpreted the phrase "compelling urgency" in Article a quo into 3 (three) parameters, namely: 1) the existence of circumstances or events, namely the urgent need to immediately resolve legal issues based on laws; 2) The required law does not yet exist, causing a legal vacuum, or the law exists but does not meet legal requirements in the a quo condition; and 3) the legal vacuum that is created cannot be filled with the formation of laws normally because it will take quite a long time while the precarious situation needs certainty to be fulfilled immediately,[27] so that from the explanation above, the formation of institutions outside the constitution in Government Regulation in lieu with Law (PERPU) must fulfill the three elements above which of course must answer the pressing urgency.

However, the formation of an institution outside the constitution in a Government Regulation in Lieu of Law must be carried out after the Government Regulation in lieu of Law has been approved by the House of Representatives at the next session. This is in accordance with the provisions of Article 22 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which reads "The government regulation must obtain the approval of the DPR in the following session," so that a government regulation in lieu of law must obtain the approval of the DPR before it can be implemented. by executives. Then in paragraph (3) explains that "If you don't get approval, then the government regulation must be revoked." This revocation provision means that if the DPR does not approve a Government Regulation in Lieu of Law issued by the President, then the Government Regulation in lieu of Law must be deemed no longer valid. In the context of the establishment of state institutions outside the constitution, if the Government

[25]Antari, P. E. D. *Loc.cit.*

[26]See Article 22 Pharagraph (1) The Constitution of the Republic of Indonesia Year 1945.

[27]See Putusan Mahkamah Konstitusi Nomor 138/PUU-VII/2009 tentang Pengujian Peraturan Pemerintah Pengganti Undang-Undang Nomor 4 Tahun 2009 tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2002 tentang Komisi Pemberantasan Tindak Pidana Korupsi. **See also** Tigor Einstein, Muhammad Ishar Helmi, and Ahmad Ramzy, (2020), "Kedudukan Peraturan Pemerintah Undang-Undang Nomor 1 Tahun 2020 Perspektif Ilmu Perundang-Undang," *SALAM; Jurnal Sosial & Budaya Syar-i*, 7(7): 598. **See also** Muhammad Syarif Nuh, (2011), "Hakekat Keadaan Darurat Negara (*State Of Emergency*) sebagai Dasar Pembentukan Peraturan Pemerintah Pengganti Undang-Undang," *Jurnal Hukum*, 18(2): 235. **See also** Ariska Ade Putra and Nailur Rahmi, (2021), "Otoritas Presiden dalam Menetapkan Peraturan Pemerintah Pengganti Undang-Undang (Tinjauan Fiqh Siyasah Dusturiyyah dan Hukum Positif)," *Jurnal Integrasi Ilmu Syari'ah*, 2(2): 71. **See also** Nulaili Rahmawati, (2015), Tinjauan Fiqh Siyasah Terhadap Ketentuan "Dalam Hal Ihwal Kegentingan Memaksa sebagai Syarat Penetapan Perpu oleh Presiden, *Tesis*, Pascasarjana. Surabaya: Universitas Islam Negeri Sunan Ampel, hlm. 8 – 9. **See also** Jimly Asshiddiqie, (2007), *Hukum Tata Negara Darurat*. Jakarta: PT. Rajawali Grafindo, p. 207.

Regulation in lieu of a law containing the institution is repealed by the DPR, then the DPR cannot be allowed to establish the institution.

Formation of institutions outside the constitution can also be done by using a presidential regulation. The implementation of the wheels of government is carried out by the President as the holder of government power in accordance with the provisions of Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which reads that "The President of the Republic of Indonesia holds government power according to the Constitution." In carrying out his authority, the President often uses Presidential Regulations as a tool to run the government. As is well known, a Presidential Regulation is a product of legislation issued and promulgated by the President as the holder of government power.[28] So, that when the President wants to form an institution through a Presidential Regulation under the pretext of exercising government power, then it is legal because it still falls within the realm of the President's authority in accordance with Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

What needs to be underlined is the substance of the presidential regulation itself. The material content of the Presidential Regulation itself is regulated in Article 13 of Law no. 12 of 2011 which reads that "The material for the contents of a Presidential Regulation contains material ordered by law, material for implementing Government Regulations, or material for carrying out the administration of government power".[29] So that in this case, the Presidential Regulation has 3 (three) types of content, namely 1) material content ordered by law; 2) material content ordered by government regulations; and 3) material content to carry out the administration of government power. In the context of establishing institutions, the President has the authority to establish institutions through a Presidential Decree with the aim of carrying out governance. This can be seen in the establishment of the National Research and Innovation Agency which was established in Presidential Regulation No. 78 Year 2021.

From the analysis above, the President has the right to establish state institutions outside the constitution using his authority, namely by 1) submitting a bill to the DPR based on Article 5 paragraph (1) of the 1945 Constitution of the Republic of Indonesia; 2) stipulate and promulgate a government regulation in lieu of law which contains state institutions outside the constitution based on Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia; and 3) issue a presidential regulation as a statute for the establishment of state institutions outside the constitution in the context of administering governmental power. In this case, the President's power in establishing state institutions outside the constitution is not limited as the formation of state ministries regulated in Article 15 of Law no. 39 of 2008 which reads that "The total number of Ministries as referred to in Article 12, Article 13, and Article 14 is at most 34 (thirty four)," so there is a need for a reconstruction of the authority of the President himself as the administrator of government power in establishing state institutions in outside the constitution.

There is no regulation regarding the provisions of the President in establishing state institutions outside the constitution, especially at the level of law. The entire establishment of these state institutions is based on Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, so according to the author, it is necessary to limit the President's power in the line of law so that the executive power is not too large to make the checks and balances in the President's authority to form the state institution outside the constitution. This is natural because establishing state institutions outside the constitution falls within the realm of the President's authority as head of government whose authority is very large which is the core of the concept of checks and balances where each state institution must be limited in terms of

[28]Ahmad Husen, (2019), "Eksistensi Peraturan Presiden dalam Sistem Peraturan Perundang-Undangan," *Lex Scientia Law Review,* 3(1): 75.

[29]See Article 13 Law Number 12 Year 2011 Regarding The Formation of Laws.

its authority so that President's authority can be controlled.[30] In addition, the reduction and limitation of the number of state institutions outside the constitution is also aimed at avoiding overlapping authorities between these institutions so that government administration becomes effective and in accordance with the President's vision and mission. Thus, the author is of the opinion that there is a need for a law that specifically regulates the formation of state institutions outside the constitution by including the President's limitations in forming them in the realm of government.

Conceptualization of Expansion of Authority of the Supreme Court as a Dispute Resolution Institution for Authority of State Institutions Outside the Constitution

H.D. Stout defines authority as a whole of rules relating to the acquisition and use of government authority by public law subjects in public law relations.[31] Authority is defined as "authority" which is also referred to as formal power. Power that comes from the power granted by law. While authority is defined as "competence" which is part of authority. In the juridical aspect, authority is the ability granted by laws and regulations with the aim of carrying out actions that give rise to legal consequences.[32]

Authority must at least consist of three components namely, influence, legal basis, and conformity.[33] The influence component is that the use of authority has the aim of being able to influence or control something which in this case focuses more on the behavior of legal subjects.[34] Then what is meant by the legal basis component is that authority or authority must have a clear legal basis, namely, in the form of statutory regulations. Then the third component, namely, conformity means that authority must have clear standards, both general and special authority standards.[35]

In theory, authority originating from laws and regulations can be obtained in three ways, namely, attribution, delegation and mandate.[36] The authority obtained by way of attribution is the authority that originates from the mandate of the law which is explicitly stated directly or clearly stated in the law or in certain articles. Based on what was stated by Henk Van Maarseveen, the constitution is "regulation van attributes" or rules of attribution so that attribution can be obtained from the constitution of a country.[37] The recipient of the attribution can then expand the field of attribution and expand the authority he has obtained as long as the laws and regulations have not changed. The attribution authority also does not create an obligation

[30]Ibnu Sina Chandranegara, (2016), Penuangan Checks and Balances kedalam Konstitusi. Jurnal Konstitusi, 13(3): 552-574.

[31]Ridwan H.R. *Op.cit*, hlm. 110.

[32]Indroharto, (2002), *Usaha Memahami Peradilan Tata Usaha Negara*, Jakarta: Pustaka Sinar Harapan, Jakarta, p. 68. **See also** Indroharto, (1994), *Asas-Asas Umum Pemerintahan yang Baik*, Bandung: Citra Aditya Bakti, p. 65.

[33]Philipus M. Hadjon, (1997), "Tentang Wewenang," *Yuridika*, 5(6): 1. **See also** I Gusti Ngurah Anom, Ni Putu Noni Suharyanti and I Wayan Eka Artajaya, (2021), "The Empowerment of Customary Villages in Bali in Preventions and Countermeasures of Narcotics Crimes Based on Local Wisdom," *International Conference Mahasaraswati Denpasar University*, Denpasar: Fakultas Hukum Universitas Mahasaraswati, p. 93. **See also** Sri Nurhari Susanto, (2020), "Metode Perolehan dan Batas-Batas Wewenang Pemerintahan," *Administrative Law & Governance Journal*, 3(3): 431.

[34]Gede Yoga Satrya Wibawa, (2020), "Urgensi Pengaturan Kewenangan Desa Adat dalam menunjang Era New Normal Kepariwisataan Budaya Bali," *Vyavahara Duta*, 15(2): 93. https://doi.org/10.25078/vd.v15i2.1811

[35]Sadjijono, (2008), *Memahami Beberapa Bab Pokok Hukum Administrasi*. Yogyakarta: Laks Bang Pressindo, p. 52.

[36]Moh. Gandara, (2020), "Kewenangan Atribusi, Delegasi dan Mandat," *Jurnal Khazanah Hukum*, 2(3): 93-94. **See also** Bagir Manan, (2000), *Wewenang Provinsi, Kabupaten, dan Kota dalam Rangka Otonomi Daerah*, Bandung: Fakultas Hukum Universitas Padjadjaran, p. 1 - 2. **See also** Van Wijk, H.D., & Konijnenbelt, W, (1995). *Hoofdstukken van Administratief Recht*, Vuga: s'Gravenhage, p. 99. **See also** Ahmad Kosasih, John Kenedi, and Imam Mahdi, (2017), *Dinamika Hukum Administrasi Indonensia Mengenal Konstruksi Baru Hukum Administrasi Pasca Terbitnya Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan*. Bengkulu: Vanda. **See also** Fachruddin, I. *Loc.cit*.

[37]Suwoto Mulyosudarmo, (1997), *Peralihan Kekuasaan: Kajian Teoritis dan Yuridis terhadap Pidato Nawaksara*. Jakarta: Gramedia Pustaka Utama. **See also** I Made Gemet Dananjaya Suta, I Gusti Agung Mas Prabandari, and Ni Luh Gede Astariyani, (2021), "Determining State's Financial Losses in Corruption: An Institutional Power and Constraint in Indonesia," *Lentera Hukum*, 8(1): 104.

to be responsible, in the sense that the recipient of the authority is not required to report the exercise of his authority. Furthermore, there is authority obtained by way of delegation. Delegation in this way can be referred to as delegation of authority and responsibility.[38] This is because a delegator will be responsible and act on his own behalf. Authority obtained by way of delegation also cannot create or expand the authority that has been given. The third source of authority, there is a mandate which is the delegation of authority from the giver of the mandate to the recipient of the mandate. A mandate occurs when a mandate giver permits his authority to be exercised by someone else on his behalf. According to van Wijk/Konijnenbelt the responsibility for a mandate remains with the giver of the mandate.[39]

The regulation of authority in Indonesian positive law is regulated in Law no. 30 of 2014. There is an expansion of the meaning of several ways of obtaining the authority above in the a quo law. Such as expanding the meaning of attribution which in Article 1 Number 22 of the Law a quo explains that "Attribution is the granting of Authority to Government Agencies and/or Officials by the 1945 Constitution of the Republic of Indonesia or the Law." So that in this case, the theoretical understanding of attribution can only be found in the line of law, in this regulation it is expanded to mean that bodies/officials can obtain their authority by attribution through the 1945 Constitution of the Republic of Indonesia or the state constitution. This is also the same as the regulation of mandated authority which in theory is only possible in the field of staffing.[40] However, in the provisions of Article 1 Number 24 of the Law a quo it is explained that the mandate can also be given to related Government Agencies and/or Officials.

From the analysis above, the authority of the Supreme Court is obtained through attribution through Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia which reads "The Supreme Court has the authority to adjudicate at the cassation level, examine statutory regulations under laws against laws, and has other powers granted by Constitution*."*[41] The attribution authority was obtained from the third amendment to the 1945 Constitution of the Republic of Indonesia in 2001 which was the authority of the People's Consultative Assembly as stipulated in Article 3 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which reads "The People's Consultative Assembly has the authority to amend and establish the Constitution."[42] so that if you want to change and add to provisions or arrangements regarding the authority of the Supreme Court, you have to go through changes to the 1945 Constitution of the Republic of Indonesia based on the authority of the MPR as the competent institution.

The Supreme Court in terms of institutional position is a constitutional organ which is an institution regulated directly in the constitution with the consequence that its position is higher than institutions regulated in lower laws or regulations.[43] The presence of the Supreme Court in the Indonesian constitutional system also created a system of checks and balances among other constitutional organs. This can be seen in Article 14 paragraph (1) of the 1945 Constitution of the Republic of Indonesia where the Supreme Court has the authority to give advice to the President regarding granting clemency and rehabilitation.[44] Procuring an extension of the

[38]Aminuddin Ilmar, (2013), *Hukum Tata Pemerintahan*, Makassar: Identitas Unhas, p. 126.
[39]*Ibid*.
[40]Yusri Munaf, (2015), *Hukum Administrasi Negara*, Pekanabaru: Marpoyan Tujuh Publishing, p. 55 – 56.
[41]See Article 24A ayat (1) the 1945 Constitution of The Republic of Indonesia.
[42]See Article 3 ayat (1) the 1945 Constitution of The Republic of Indonesia.
[43]Kelik Iswandi and Nanik Prasetyoningsih. (2020), "Kedudukan State Auxiliary organ dalam Sistem Ketatanegaraan di Indonesia," *Jurnal Penegakan Hukum dan Keadilan*, 1(2): 138. **See also** Tjokorda Gde Indraputra and I Nyoman Bagiastra, (2014), "Kedudukan Komisi Pemberantasan Korupsi Sebagai Lembaga Negara Bantu (State Auxiliary Institutions)," *Kertha Negara*, 2(5): 3. **See also** Budianto Eldist Daud Tamin, (2018), "Tinjauan Yuridis Terhadap Kedudukan Peraturan Mahkamah Agung (Perma) dalam Hierarki Peraturan Perundang-Undangan di Indonesia," *Lex Administratum*, 4(3): 112. **See also** Jimly Asshiddiqie, (2006), *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*, Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia.
[44]See Article 14 ayat (1) the 1945 Constitution of The Republic of Indonesia.

authority of the Supreme Court in adjudicating disputes over the authority of state institutions outside the constitution can also be a manifestation of checks and balances in the case of the Supreme Court to the President as a corrective measure to the President that the state institutions formed by him have disputes over authority or overlapping powers so that the President can carry out institutional reforms if deemed necessary and within the scope of the institution which is their authority. Of course, this step becomes the President's political will in running the government.

As an institution of judicial power, the Supreme Court through Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia is stated as a free and independent institution, as it reads "Judicial power is an independent power to administer justice in order to uphold law and justice."[45] According to M. Leica Marzuki in achieving constitutionalism in the constitution, it is necessary to adopt several things, namely: 1) A system of separation of powers adopted with checks and balances; 2) An independent and independent Judicial Power System, in particular empowering an independent administrative court as an administrative court in Indonesia to strengthen the color of the state under the rule of law rechtsstaats; 3) Recognition of citizens' civil and political rights; 4) Restrictions on the terms of public office in the country; 5) Give constitutional complaint authority to the Constitutional Court.[46] As a manifestation of constitutional arrangements and implementation of the separation of powers, the expansion of the powers of the Supreme Court can be the answer to the problem of disputes over the authority of state institutions outside the constitution. So that in this case the Supreme Court has the potential to become an institution for resolving disputes over the authority of state institutions outside the constitution for 2 reasons, namely First, the Supreme Court is a judicial institution that is guaranteed neutrality and is independent from other powers so that normatively the a quo does not accept intervention from other powers. Second, the consequence of this independence is that the Supreme Court examines and decides cases of disputes over authority objectively and in accordance with statutory provisions.

The realization of this expansion of authority, the authors argue, can only be done in 2 (two) ways, namely First, the amendment to the 1945 Constitution of the Republic of Indonesia by increasing the authority of the Supreme Court in resolving disputes over the authority of state institutions outside the constitution in Article 24A paragraph (1), or secondly, make changes to Law No. 14 of 1985 through the interpretation of the phrase "…..and other powers granted by law" Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia thus giving new authority to the Supreme Court at the statutory level. The addition of this authority is not against the constitution because it has been permitted by the a quo article. Thus, the Supreme Court as an institution for resolving disputes over the authority of state institutions outside the constitution can be realized.

CONCLUSION

The presidential system creates very broad consequences for the executive power in the administration of the government. This consequence extends to the President's authority in establishing state institutions outside the constitution. The President's authority is manifested through the drafting of laws, the promulgation of government regulations in lieu of laws, and the promulgation of presidential regulations. The President's authority in forming State Ministries has been limited through Article 15 of the Law on State Ministries while the formation of state institutions outside the constitution has not been limited so that it is necessary to limit the

[45]See Article 24 ayat (1) the 1945 Constitution of The Republic of Indonesia.
[46]M. Laica Marzuki, (2010), "Konstitusi dan Konstitusionalisme," *Jurnal Konstitusi*, 7(5): 5 – 6.

President's authority in forming these institutions. This limitation is carried out by establishing a law regarding state institutions outside the constitution or with other nomenclature and contains restrictions on the President's authority to form state institutions outside the constitution.

The method of obtaining authority received by the Supreme Court through Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia is attribution in accordance with the theory of authority put forward by H.D Stout and Van Wijk. The acquisition of this authority has consequences for the People's Consultative Assembly if it increases the authority of the Supreme Court itself because the MPR has the authority to amend the 1945 Constitution of the Republic of Indonesia. Non-Ministerial Government Institutions and Non-Structural Institutions. However, from the point of view of Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia so that the addition of the authority of the Supreme Court can be carried out in 2 (two) ways, namely by amending Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia or amending the Law on the Supreme Court.

BIBLIOGRAPHY

Books

Asshiddiqie, J. (2006). *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*. Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia.

Asshiddiqie, J. (2007). *Hukum Tata Negara Darurat*. Jakarta: PT. Rajawali Grafindo.

Fachruddin, I. (2004). *Pengawasan Peradilan Administrasi terhadap Tindakan Pemerintah*. Bandung: Alumni.

Ibrahim, J. (2005). *Teori dan Metode Penelitian Hukum Normatif*. Malang: Bayumedia.

Ilmar, A. (2013). *Hukum Tata Pemerintahan*. Makassar: Identitas Unhas.

Indroharto. (1994). *Asas-Asas Umum Pemerintahan yang Baik*. Bandung: Citra Aditya Bakti.

Indroharto. (2002). *Usaha Memahami Peradilan Tata Usaha Negara*. Jakarta: Pustaka Sinar Harapan.

Isra, S. (2010). *Pergeseran Fungsi Legislasi Menguatnya Model Legislasi Parlementer dalam Sistem Presidensial Indonesia*. Depok: PT. RajaGrafindo Persada.

Kosasih, A., Kenedi, J., & Mahdi, I. (2017). *Dinamika Hukum Administrasi Indonensia Mengenal Konstruksi Baru Hukum Administrasi Pasca Terbitnya Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan*. Bengkulu: Vega.

Mulyosudarmo, S. (1997). *Peralihan Kekuasaan: Kajian Teoritis dan Yuridis terhadap Pidato Nawaksara*. Jakarta: Gramedia Pustaka Utama.

Munaf, Y. (2015). *Hukum Administrasi Negara*. Pekanabaru: Marpoyan Tujuh Publishing.

Nasution, B. J. (2008). *Metode Penelian Ilmu Hukum*. Bandung: Mandar Maju.

Ridwan H.R. (2008). *Hukum Administrasi Negara*. Depok: RajaGrafindo Persada.

Sadjijono. (2008). *Memahami Beberapa Bab Pokok Hukum Administrasi*. Yogyakarta: LaksBang Pressindo.

Van Wijk, H.D., & Konijnenbelt, W. (1995). *Hoofdstukken van Administratief Recht*. Vuga: s'Gravenhage, hlm. 99.

Articles

Adhayanto, O. (2011). Eksistensi Prerogatif Presiden Pasca Amandemen UUD 1945. *Jurnal FISIP UMRAH*, 2(2): 163 – 164.

Anom, I.G.N., Suharyanti, N.P.N & Artajaya, I.W.E. (2021). The Empowerment of Customary Villages in Bali in Preventions and Countermeasures of Narcotics Crimes Based on Local Wisdom. *International Conference Mahasaraswati Denpasar University*, Denpasar: Fakultas Hukum Universitas Mahasaraswati, hlm. 93.

Antari, P. E. D. (2020). Implementasi Fungsi Pengawasan Dewan Perwakilan Rakyat dalam Upaya Memperkuat Sistem Presidensial di Indonesia. *Refleksi Hukum Jurnal Ilmu Hukum*, 4(2): 234 - 235.

Aritonang, D. M. (2010). Penerapan SIstem Presidensil di Indonesia pasca Amandemen UUD 1945. *Mimbar Hukum*, 22(2): 392.

Ayu, M. R. (2009). Kedudukan Komisi Independen sebagai State Auxiliary Institutions dan Relevansinya dalam Sruktur Ketatanegaraan Indonesia. *Jurnal Konstitusi*, 1(1): 54.

Basarah, A. (2014). Kajian Teoritis Terhadap *Auxiliary State's Organ* dalam Struktur Ketatanegaraan Indonesia. *Masalah-Masalah Hukum*, 43(1): 2.

Bustamin, & Jaya, R. (2019). Urgensi *Checks and Balances* Ketatanegaraan Indonesia dan Islam. *Jurnal Ilmiah Syari'ah*, 18(2): 222.

Chandranegara, I. S. (2016). Penuangan Checks and Balances kedalam Konstitusi. Jurnal Konstitusi, 13(3): 552-574.

Darusman, Y. M. (2013). Kajian Yuridis Urgensi Amandemen Kelima Undang-Undang Dasar 1945 dalam Sistem Hukum Ketatanegaraan Indonesia. *ADIL Jurnal Hukum*, 4(2): 246.

Dewansyah, B., & Zulfikar, A. Y. (2016). Reafirmasi Sistem Pemerintahan dan Model Pertanggungjawaban Presidensial dalam Perubahan UUD 1945: Penelusuran Sebab dan Konsekuensi. *PJIH*, 3(2): 302.

Einstein, T., Helmi, M. I., & Ramzy, A. (2020). Kedudukan Peraturan Pemerintah Undang-Undang Nomor 1 Tahun 2020 Perspektif Ilmu Perundang-Undang. *SALAM; Jurnal Sosial & Budaya Syar-i*, 7(7): 598.

Fartini, A. (2022). Politik Hukum: Otonomi Daerah Pasca Amandemen UUD 1945 Upaya menjaga Keseimbangan Antara Prinsip Unity dan Diversity. PLEDOI (Jurnal Hukum dan Keadilan), 1(1): 2.

Gandara, M. (2020). Kewenangan Atribusi, Delegasi dan Mandat. *Jurnal Khazanah Hukum*, 2(3): 93-94.

Hadjon, P.M. (1997). Tentang Wewenang. *Yuridika*, 5(6): 1

Huda, N. (2001). Hak Prerogatif Presiden dalam Perspektif Hukum Tata Negara Indonesia. *Jurnal Hukum*, 8(18): 4.

Husen, A. (2019). Eksistensi Peraturan Presiden dalam Sistem Peraturan Perundang-Undangan. *Lex Scientia Law Review,* 3(1): 75.

Indraputra, T. G., & Bagiastra, I. N. (2014). Kedudukan Komisi Pemberantasan Korupsi Sebagai Lembaga Negara Bantu (State Auxiliary Institutions). *Kertha Negara*, 2(5):

3.

Iswandi, K., & Prasetyoningsih, N. (2020). Kedudukan State Auxiliary organ dalam Sistem Ketatanegaraan di Indonesia. *Jurnal Penegakan Hukum dan Keadilan*, 1(2): 138.

Iswandi, K., & Prasetyoningsih, N. (2020). Kedudukan State Auxiliary organ dalam Sistem Ketatanegaraan di Indonesia. *Jurnal Penegakan Hukum dan Keadilan*, 1(2): 138.

Jurdi, F. (2017). Format Kekuasaan Presiden dalam UUD 1945 (Relasi Horizontal dan vertikal Kekuasaan Presiden dalam Sistem Presidensial). *Amanna Gappa*, 25(2): 53.

Kanang, A. R. (2018). Diskursus Pembatasan Kekuasaan Presiden Dalam Sistem Presidensial Menurut UUD 1945. *Al-daulah,* 7(1): 163 – 164.

Kristian. (2018). Politik Hukum Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Perubahan Ketiga Pasal 24 Tentang Kekuasaan Kehakiman. *Jurnal Morality*, 4(2).

Manan, B. (2000). *Wewenang Provinsi, Kabupaten, dan Kota dalam Rangka Otonomi Daerah*. Bandung: Fakultas Hukum Universitas Padjadjaran

Marzuki, M. L. (2010). Konstitusi dan Konstitusionalisme. *Jurnal Konstitusi*, 7(5): 5 – 6.

Mirahadisaputro, M. A., Hakim, R., Miraharsari, A., Anwari, & Dahar. (2022). Analisis Yuridis Kedudukan Hukum Anak Perusahaan BUMN Terhadap Perusahaan Induk. (Studi Kasus Putusan Mahkamah Agung RI Nomor : 21 P/HUM/2017 dan Putusan Mahkamah Konstitusi RI Nomor : 01/PHPU-PRES/XVII/2019) *Juridical Analysis of the Legal Position of BUMN Subsidiaries Against the Parent Company. (Case Study of the Decision of the Supreme Court of the Republic of Indonesia Number: 21 P/HUM/2017 and the Decision of the Constitutional Court of the Republic of Indonesia Number: 01/PHPU-PRES/XVII/2019)*. *Jurnal Kolaboratif Sains*, 5(8): 573.

Mugeni. (2015). Pergeseran Kekuasaan Presiden dan Penguatan Kekuasaan DPR Pasca Perubahan UUD NRI 1945. *Refleksi Hukum*, 9(2): 144.

Munawir, Y. (2013). Problematik Pelaksanaan Hak Prerogatif Presiden dalam Perombakan Kabinet Indonesia Bersatu II. *Tesis*. Yogyakarta: Fakultas Hukum Universitas Islam Indonesia.

Nugraha, H. S. (2018). Gagasan Amandemen Ulang Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. *Renaissance*, 3(1): 61 – 85.

Nuh, M. S. (2011). Hakekat Keadaan Darurat Negara (*State Of Emergency*) sebagai Dasar Pembentukan Peraturan Pemerintah Pengganti Undang-Undang. *Jurnal Hukum*, 18(2): 235.

Nunik Nurhati et al. (2022). Kedaulatan Negara Indonesia: Makna dan Implementasi Sebelum dan Sesudah Amandemen UUD 1945. *Amnesti: Jurnal Hukum*, 4(1): 44 – 45.

Nurohman, T. (2014). Dinamika Relasi Kelembagaan Antara Komisi Yudisial dengan Mahkamah Agung dan Mahkamah Konstitusi dalam Pengawasan Hakim. *Jurnal Ilmu Politik dan Pemerintahan*, 1(4): 478.

Putra, A. A., & Rahmi, N. (2021). Otoritas Presiden dalam Menetapkan Peraturan Pemerintah Pengganti Undang-Undang (Tinjauan Fiqh Siyasah Dusturiyyah dan Hukum Positif). *Jurnal Integrasi Ilmu Syari'ah*, 2(2): 71.

Rahmatullah, I. (2013). Rejuvinasi Sistem *Checks and Balances* dalam Sistem Ketatanegaraan

di Indonesia. *Jurnal Cita Hukum*, 1(2): 216.

Rahmawati, N. (2015). Tinjauan Fiqh Siyasah Terhadap Ketentuan "Dalam Hal Ihwal Kegentingan Memaksa sebagai Syarat Penetapan Perpu oleh Presiden. *Tesis*. Pascasarjana. Surabaya: Universitas Islam Negeri Sunan Ampel, hlm. 8 – 9.

Rohmat, A. M. (2016). Kedudukan dan Kewenangan Majelis Permusyawaratan Rakyat dalam Era Reformasi. *Jurnal Pembaharuan Hukum*, 3(2): 186.

Said, A. R. A. (2015). Pembagian Kewenangan Pemerintah Pusat-Pemerintah Daerah dalam Otonomi Seluas-Luasnya Menurut UUD 1945. *Fiat Justisia Jurnal Ilmu Hukum*, 9(4): 597.

Santika, I. G. N. (2019). Presidensialisme Dan Problematika Mekanisme Impeachment Presiden Dan/Atau Wakil Presiden Berdasarkan UUD 1945 Pasca Perubahan (Perspektif Pergulatan Hukum Dan Politik). *Jurnal Ilmiah Ilmu Sosial*, 5(1): 24.

Sulkiah. (2019). Pelaksanaan Hak Prerogatif Presiden dalam Penyusunan Kabinet Berdasarkan Pasal 17 UUD 1945 Amandemen Suatu Tinjauan Sistem Ketatanegaraan Indonesia. *NURANI HUKUM: JURNAL ILMU HUKUM*, 2(1): 46.

Sunarto. (2018). Pelaksanaan Fungsi Pengawasan DPR (Perbandingan antara Era Orde Baru dan Era Reformasi). *Intergralistik*, 29(1): 85.

Suparman, O. (2023). Konsep Lembaga Negara Indonesia dalam Perspektif Teori Trias Politica Berdasarkan Prinsip Checks And Balances System. *AHKAM Jurnal Hukum Islam dan Humaniora*, 2(1): 67.

Susanto, S. N. H. (2014). Pergeseran Kekuasaan Lembaga Negara Pasca Amandemen UUD 1945. *Masalah-Masalah Hukum*, 43(2): 284 – 285.

Susanto, S. N. H. (2020). Metode Perolehan dan Batas-Batas Wewenang Pemerintahan. *Administrative Law & Governance Journal*, 3(3): 431.

Suta, I. M. G. D., Prabandari, I. G. A. M., & Astariyani, N. L. A. (2021). Determining State's Financial Losses in Corruption: An Institutional Power and Constraint in Indonesia. *Lentera Hukum*, 8(1): 104.

Tamin, B. E. D. (2018). Tinjauan Yuridis Terhadap Kedudukan Peraturan Mahkamah Agung (Perma) dalam Hierarki Peraturan Perundang-Undangan di Indonesia. *Lex Administratum*, 4(3): 112.

Tohir, M. (2018). Pertanggungjawaban Lembaga Negara dalam Pelaksanaan Good Governance secara Yuridis dan Politis menurut Hukum. *Jurnal Hukum Tri Pantang*, 4(1): 65.

Wibawa, G.Y.S. (2020). Urgensi Pengaturan Kewenangan Desa Adat dalam menunjang Era New Normal Kepariwisataan Budaya Bali. *Vyavahara Duta*, 15(2): 93. https://doi.org/10.25078/vd.v15i2.1811

Wiyanto, A. (2013). Pemakzulan dan Pelaksanaan Mekanisme *Checks and Balances* dalam Sistem Ketatanegaraan Indonesia. *Negara Hukum*, 4(1): 126.

Yanuar, M. (2020). Lembaga Constitusional Importance Dalam Sistem Ketatanegaraan Indonesia *(Institutional Importance in the Indonesian Rigidity System*). *Constitutionale*, 1(1): 36.

Law

Putusan Mahkamah Konstitusi Nomor 138/PUU-VII/2009 tentang Pengujian Peraturan Pemerintah Pengganti Undang-Undang Nomor 4 Tahun 2009 tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2002 tentang Komisi Pemberantasan Tindak Pidana Korupsi.

Peraturan Perundang-Undangan

Undang-Undang Dasar Tahun 1945.

Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi (Lembaran Negara Republik Indonesia Tahun 2003 Nomor 98, Tambahan Lembaran Negara Republik Indonesia Nomor 4316).

Undang-Undang Nomor 39 Tahun 2008 tentang Kementerian Negara (Lembaran Negara Republik Indonesia tahun 2008 Nomor 166, Tambahan Lembaran Negara Nomor 166).

Undang-Undang Nomor 15 Tahun 2019 tentang Perubahan Atas Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan (Lembaran Negara Republik Indonesia Tahun 2019 Nomor 183, Tambahan Lembaran Negara Republik Indonesia Nomor 6398).

Websites

Humas Kemensetneg. (2018). Klasifikasi Lembaga Non Struktural. *Setneg.go.id*. https://www.setneg.go.id/view/index/klasifikasi_lembaga_non_struktural. Diakses pada 7 April 2023 pukul 22:43 WIB.

Kementerian Pemberdayaan Aparatur Negara Reformasi Birokrasi. (2021). Lembaga Pemerintah Pusat. *Menpan.go.id*. https://www.menpan.go.id/site/kelembagaan/lembaga-pemerintah-pusat#9-lembaga-non-struktural. Diakses pada 7 April pukul 20.30 WIB.