

URGENCY OF SEPARATION OF POWERS IN STATE INSTITUTIONS TO DEFEND AGAINST CORRUPTION IN INDONESIA

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Abstract

The issue of abuse of authority is still a color of politics in every state institution, such as the ministry. Such as political member charges. There are ways for brainstorming for writers to contribute to the system as we know that Indonesia implements a system of power-sharing known as the Legislative, Executive and Judiciary. With its power distribution system, Indonesia tends to open space for corrupt behavior. The Urgency of the Separation of Power System in corruption in Indonesia aims to reduce the space that can be corrupted and to facilitate monitoring and evaluation of each performance.

Keywords: *Corruption, Separation of Power Systems, State institutions, Indonesia*

Abstrak

Isu penyalahgunaan wewenang masih menjadi warna politik di setiap lembaga negara, seperti kementerian. Seperti biaya anggota politik. Ada cara untuk brainstorming bagi penulis untuk berkontribusi pada sistem. Seperti kita ketahui bahwa Indonesia menerapkan sistem pembagian kekuasaan yang dikenal dengan Legislatif, Eksekutif dan Yudikatif. Indonesia dengan sistem distribusi kekuasaan cenderung membuka ruang perilaku korupsi. Urgensi Pemisahan Sistem Ketenagalistrikan dalam korupsi di Indonesia ditujukan untuk mengurangi ruang yang berpotensi dikorupsi dan untuk memudahkan monitoring dan evaluasi setiap kinerja.

Kata kunci: *Korupsi, Pemisahan Sistem Tenaga, Lembaga Negara, Indonesia*

A. Introduction

Based on data from the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi/KPK*), several corruption cases exist, including conflicts of interest in procurement, gratification, extortion, embezzlement in office, bribery, fraudulent acts, and abuse of authority that causes state losses. Corruption by Law No. 31 of 1999 on Corruption Eradication included in corruption is “Everyone who categorized against the law, committing to enriching themselves, profitable yourself or another person or a corporation abusing authority or opportunity or facilities that exist primarily because of a position or position that can be detrimental to the country’s finances or the country’s economy.

In political science, corruption is defined as the misuse of office and economic or political administration, whether caused by oneself or others, aimed at gaining personal gain to cause harm to the general public of the company or other individuals. There is a big concern that based on the KPK’s findings, there are 696 cases of corruption caused by the abuse of authority. Regarding the issue of abuse of authority, there is still a political color that is coloring every state institution, such as the ministry—raising thoughts for writers to contribute to the system. As we understand, Indonesia implements a system of power-

sharing known as the Legislative, Executive and Judicial Institutions.¹

According to the author's observation, Indonesia, with a power distribution system, tends to open up space for corrupt behavior. The space in the conduction many cases of corruption committed by the ministry motivated by the legislative Power behind it. Wade & Bradley use three criteria problems that can be used as an indication of the presence or absence of "separation of powers within a country", namely (a) that the same person should not be part of more than one of the three organs of government, (b) that one organ of government should not control or function by another organ, e.g. that the Judicial Review should be the executive or that the Minister should not be responsible to Parliament, (c) that the government should not exercise the functions of another, e.g. Ministhathry should not have legislative Power. Based on this background, this article discusses the urgency of the system of separation of powers in state institutions to tackle corruption in Indonesia.

B. Methods

The author conducted a study with a normative form that aims to examine legal certainty based on existing literature studies and favorable laws. The method of approach is more of a doctrinal legal research or document study. Legal materials used in the preparation of this paper are secondary, and the primary legal materials are in the form of legislation, books and the internet. The literature review is done through library research to obtain data from books and literature relating to the discussion of this paper. Regarding data processing techniques, recording and analysis of the data obtained using qualitative descriptive methods are then carried out to be constructed into a conclusion.

C. Discussion

1. The system of division of Power in Indonesia

The state is an organization that has absolute Power over everything in its territory. In law, theories develop about state power². Two world experts put forward the theory of state power which is currently much reference and studied in law. The theory of division of state power was put forward by John Locke and Montesquieu.

John Locke's theory of power distribution was outlined in his book entitled "Two Treaties of Government" in 1690. In his book, Locke separated state power into three types, namely executive Power, legislative Power, and federal Power. In his book, Locke mentions two essential human characteristics, namely working and owning property so that the state is obliged to protect these interests.

In the theory of Locke's separation of state power, legislative Power is the Power to make rules, while executive Power is the Power to implement the law, maintain the rules and try cases. Federal Power in Locke's theory is other powers which are not included in the legislative and executive powers. Foreign relations are included in the example of federal Power.

Besides John Locke, other figures argue about state power, namely Montesquieu:

1. Legislative Power, namely the Power to make or form laws. Its members are legislative members and regional representative in Indonesia.
2. Executive Power, namely the Power to implement the law. Its members are the President, Governor, Regent, District Head, and Village Head.
3. Judicial Power, namely the Power to defend the law, includes the Power to try every violation of the law. Its members are the Supreme Court, the Constitutional Court, and the Judicial Commission.

¹ Opeskin, Brian R. "Mechanisms for intergovernmental relations in federations." *International Social Science Journal* 53, no. 167 (2001): 129-138; Romadhon, Ahmad Heru, Isnin Harianti, Nabilah Royhana, and Melisa Agustina. "Dinamika Pranata Pemerintahan Desa

Adat Dalam Dimensi Hukum Tata Negara." *Jurnal Hukum Media Bhakti* 2, no. 2 (2018): 127-137.

² McIntyre, Angus. "Divisions and power in the Indonesian National Party, 1965-1966." *Indonesia* 13 (1972): 183-210.

The opinion expressed by Montesquieu is an improvement from the opinion of John Locke.³ Federal Power by Montesquieu was incorporated into executive Power, and the function of prosecuting was made into stand-alone Power. The three powers are carried out by different institutions, which are separate. Montesquieu's theory is called *Trias Politica*⁴.

2. Horizontal Distribution of Power

The horizontal division of Power is the division of Power according to the functions of individual institutions (legislative, executive and judicial)⁵. Three types of Power (legislative, executive and judicial) become six state powers, namely:

1. **Constitutive Power**, namely the Power to change and stipulate the Constitution. This Power is exercised by the People's Consultative Assembly as confirmed 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 enforce the laws and implementation of 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 the Power of government according to the Constitution.
3. **Legislative Power**, namely, the Power to form laws. This Power is held by the House of Representatives as confirmed in Article 20 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that the House of Representatives holds Power to form laws.
4. **Judicial Power** the so-called judicial Power, namely the Power to conduct justice to enforce law and justice. This Power is held by the Supreme Court and

the Constitutional Court as affirmed in Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that judicial Power is carried out by a Supreme Court and a judicial body under it in the general court, religious court environment. The military justice environment, the state administrative court environment, and by a Constitutional Court.

5. **Examination/inspective power**, namely Power relating to the conduct of audits of management and responsibilities regarding state finances. This Power is exercised by the Supreme Audit Board as stated in Article 23 E paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that to examine the management and responsibilities of state finances, a free and independent Supreme Audit Agency is held.
6. **Monetary Power**, namely the Power to establish and implement monetary policy, regulate and maintain the smoothness of the payment system, and maintain the stability of the rupiah. Bank Indonesia exercises this Power as the central bank in Indonesia, as confirmed in Article 23 D of the 1945 Constitution of the Republic of Indonesia, which states that the state has a central bank whose structure, position, authority, responsibility, and independence are regulated in law.

3. Separation of Power in tackling corruption

Division of Power is a division of Power according to its level, namely the division of Power between several levels of government. Article 18 paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that the Unitary State of the Republic of Indonesia is divided into provincial regions, and the province is divided into regencies and cities, which each province, district, and city

³ Busroh Abu Daud. *Ilmu Negara*. Jakarta: Bumi Aksara, 2015; Abu Daud Busroh. *Intisari hukum tata negara perbandingan konstitusi sembilan negara*. Bina Aksara, 1987.

⁴ Mulyono, Sutrisno Purwohadi. "Kebijakan Sinoptik Penerapan Hukum Adat Dalam Penyelenggaraan

Pemerintahan Desa." *Yustisia Jurnal Hukum* 3, no. 2 (2014).

⁵ Stover, Dana L. "The horizontal distribution of female managers within organizations." *Work and Occupations* 21, no. 4 (1994): 385-402.

has a regional government, which regulated by law.

The term corruption comes from the Latin language: corruption or *Corruptus*, which means terrible, bad, deviates from purity, insulting, or defamatory words⁶. The opinions of some experts regarding the notion of corruption are different, among others arguing that corruption is a deviation from formal duties in the official position of the government, not only executive but also legislative positions, political parties, audits, and BUMN/BUMD to private sector officials. Other opinions emphasize acts of corruption by whether a person's actions conflict with the interests of the community using a measure of whether these actions are considered corrupt by public officials. In the International World, the notion of corruption is based on the Black Law Dictionary "Corruption is done with an intent to give some advantage to inconsistent duties and the rights of others. The act of the person unlawfully and wrongly using his station or character to procure some benefits for another person, contract to duty, and the rights of others. Factors that cause corruption are:

1. Greedy nature and greed
2. Inequality Income of fellow state officials
3. Consumptive lifestyle
4. Inadequate income
5. Lack of exemplary leadership
6. The absence of a true organizational culture
7. Accountability systems in government agencies are inadequate
8. Weakness management control system
9. Weak moral

⁶ Panov, Stoyan. "Judicial anti-corruption reforms in Bulgaria and the role of the EU in Bulgaria's judiciary regulation." *Comparative Southeast European Studies* 61, no. 2 (2013): 193-218.

⁷ Maurice Punch. "Police corruption and its prevention." *European journal on criminal policy and research* 8, no. 3 (2000): 301-324; Suhandi Cahaya Surachmin. *Strategi dan Teknik Korupsi Mengetahui untuk Mencegah*. Jakarta: Sinar Grafika, 2011; Septiana, Dwiputrianti. "Memahami Strategi Pemberantasan Korupsi di Indonesia." *Jurnal Ilmu Administrasi: Media Pengembangan Ilmu dan Praktek Administrasi* 6, no. 3 (2009): 01.

10. Needs of life which urges the
11. Weak law enforcement of
12. Political factors⁷

The author is interested in discussing the factors in the occurrence of corruption in Indonesia from political factors or related to the issue of Power. Lord Acton has popularized that Power Tend to Corrupt, but absolute Power corrupts absolutely.⁸

Efforts to combat corruption cannot be separated from the elimination of the KKN regime. There used to be a dominant power in running a system of government, that is, in the hands of the executive, which has now changed. If in the past, the power structure in this country led to executive domination, now it tends to lead to legislative dominance. It is also dangerous because human resources and skilled staff mem have not supported the legislation⁹. If we do not watch out for this shift, it means only the transfer of centralization from the executive to the legislature, which also has the potential to grow corruption. Two fundamental ways to tackle corruption are to reduce the official's monopoly power within an existing political and bureaucratic structure and reform the basic structure of government.¹⁰

What exactly is the concept of separation and division of Power? Mohammad Kusnardi and Hermaily Ibrahim, (1983: 140) state that the terms separation of powers and division of Power are two terms that have different meanings.

Separation of Power means that state power is divided into several parts regarding its organs and functions. In other words, the institution of state power, which includes the

⁸ James S. Bowman, and Jonathan P. West. "Lord Acton and employment doctrines: Absolute power and the spread of at-will employment." *Journal of Business Ethics* 74, no. 2 (2007): 119-130; Robert H. Stern "Power, Corruption and Rectitude. By Arnold Rogow and Harold D. Laswell." *Buffalo Law Review* 13, no. 2 (1964): 507.

⁹ Manning, John F. "Separation of powers as ordinary interpretation." *Harv. L. Rev.* 124 (2010): 1939.

¹⁰ Zudan Arif Fakrulloh. *Hukum Indonesia dalam Berbagai Perspektif*. Jakarta: Rajawali Pers, 2014; Jimly Asshiddiqie. *Pokok-pokok hukum tata negara Indonesia pasca reformasi*. Jakarta: Bhuana Ilmu Populer, 2007.

legislative, executive, and judicial institutions, is an institution that is separated from each other and stands alone without the need for coordination and cooperation. Each institution runs its functions. An example of countries that embraces the separation mechanism of Power is the United States.

In contrast to the separation of powers mechanism, in the mechanism of power-sharing, state power is indeed divided into several parts (legislative, executive and judicial) but not separated. It brings the consequence that there may be coordination or cooperation among those parts. This distribution mechanism is carried out by many countries in the world, including Indonesia.

The mechanism of the distribution of Power in Indonesia is fully regulated in the 1945 Constitution of the Republic of Indonesia. The application of the division of Power in Indonesia consists of two parts: the division of Power horizontally and the division of Power vertically.

Horizontal division of Power is the division of Power according to the functions of individual institutions (legislative, executive, and judicial). Based on the 1945 Constitution of the Republic of Indonesia, the distribution of state power is horizontal at the level of central government and regional government.

Division of Power at the central government level occurs between similar state institutions. The division of Power at the central government level experienced a shift after the changes in the 1945 Constitution of the Republic of Indonesia. The intended shift was a shift in the classification of state power which generally consisted of three types of Power (legislative, executive, and judicial). The politics adopted by *Montesquieu* is where there is a division of Power based on the state's functions, legislative, executive, and judiciary, into state institutions in Indonesia.

The legislative body in Indonesia consists of the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, and the Regional People's Representative Council. One of the tasks is to form an Act and supervise the use of the State Expenditure Budget. At the same time, the executive consists of the

president and vice president and cabinet ministers who are in charge of holding the Power of government. Judicial Power consists of the Constitutional Court, the Supreme Court, and the Judicial Commission, which holds an independent judiciary's Power to hold a court to uphold the law and the judiciary.

At this time, the Power tends to be misused by certain individuals to harm the nation and state, one of which is the corruption case that has struck Indonesia. One of the horrendous cases was when the chairman of the Constitutional Court, Akil Mochtar, was arrested by the Corruption Eradication Commission and Hambit Bintih, the Regent of Gunung Mas in Central Kalimantan and Chairunnisa who was a member of the House of Representatives. They were arrested because they were related to a dispute over regional head elections in Gunung mas district, Central Kalimantan. The cause of corruption cases is due to the opportunity and Power in Indonesia's legislative, executive and judicial institutions.

The abuse of Power that occurs in the legislature is a large number of members of the House of Representatives use State facilities excessively. A comparative study by the House of Representatives, the reason is to measure how far the Indonesian government system works. However, it turned out that it was also used for recreation, even inviting families to conduct comparative studies. Besides, some members of the House of Representatives misuse funds for development or funds for the people, but the funds are used for their interests.

Abuse of Power also occurs in executive institutions, for example, in the West Sumatra corruption case which the executive dominates. The public policy division of the Padang city legal aid agency (LBH), Ardisal, said executive members dominated corruption cases that occurred in 2009 in West Sumatra; according to him, corruption cases carried out by the executive (government) as many as 44 cases while three from the legislature.

Next is the abuse of Power in the judicial institution. Not much different from the legislative and executive institutions, as a law enforcement agency, the judiciary is also

inseparable from the temptation of corruption that the KPK has caught many naughty judges. This can be seen from the phenomenon of buying and selling decisions that law enforcers often carry out. This proves that any white person will be tempted to use his Power for personal gain even though he is a law enforcer.

Besides, the composition of our cabinet is still filled by people from political party backgrounds. This allows corrupt behavior because the power system used is a system of power distribution which, in the end, can still create a gap in coordination between interests, ultimately increasing corrupt behavior in Indonesia.

The author is interested in his theory. Montesquieu argues that political freedom only exists in countries where state power together with related functions are not in the same person or the same body (According to Montesquieu, political liberty only exists in those states in which the power of the state, together with all the corresponding function, was not in the hands of the same person or the same body of magistrates¹¹ "Necessity pemisahan power in the state is further confirmed Montesquieu as follows:" When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty: because apprehension may arise: the same monarch or legal order laws, to execute than a technical manner. Again, there is no liberty if the judicial Power is not separated from the legislative and executive.¹²

Besides that, Maurice Duverger argues that the notion of separation of powers is one way to limit Power with other powers; the intention is to prevent the authorities from misusing their Power or acting arbitrarily¹³

Based on the above, the authors suggest that in the future, the power system in Indonesia must implement a separation system to provide clarity of authority in carrying out the functions and authorities of each of these institutions. So it is easy to monitor and evaluate each state institution's performance. Moreover, it also narrows the coordinating spaces that tend to be corrupt; as Lord Acton said, "Power tends to lead to corruption."

Behind it, all the executive, legislative and judicial institutions should be able to carry out their duties and authority well rather than use their Power for personal gain. The government must act decisively against those who abuse Power.

D. Conclusion

The system of division of Power in Indonesia is divided into three: Legislative, Executive, and Judiciary. The Separation of Power system in tackling corruption in Indonesia aims to reduce coordination spaces that can be corrupt and to facilitate monitoring and evaluation of the performance of each state institution.

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¹¹ Alan R. Brewer. *Judicial Review in Comparative Law*, Cambridge University Press, Cambridge, 1989.

¹² Charles De Montesquieu. *Montesquieu: The spirit of the laws*. Cambridge: Cambridge University Press,

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¹³ Soehino. *Negara Ilmu*. Yogyakarta: Liberty, 2000.

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