

A NORMATIVE LEGAL ANALYSIS OF THE SEPARATION OF POWERS IN THE STATE BASED ON THE 1945 CONSTITUTION OF THE REPUBLIC OF INDONESIA FOLLOWING THE AMENDMENTS

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ABSTRACT

The separation of powers is a fundamental principle of Indonesia's constitutional system, as enshrined in the 1945 Constitution of the Republic of Indonesia. This study aims to conduct a normative legal analysis of the changes in the structure and mechanisms of the separation of powers before and after the amendments to the 1945 Constitution, as well as their implications for strengthening the principle of checks and balances. This study employs a normative legal methodology using legislative, historical and conceptual approaches. Legal data was collected through a literature review of primary, secondary and tertiary legal sources. The analysis of legal materials was conducted qualitatively through systematic, historical and comparative interpretation of the provisions of the 1945 Constitution before and after the amendments. The results of the research indicate that the amendments to the 1945 Constitution have restructured the separation of powers from a model of institutional supremacy to a more balanced distribution of power through the strengthening of state institutions and oversight mechanisms. The novelty of this research lies in its integrative analysis of normative changes and practical implications within Indonesia's constitutional system. This research contributes to enriching the study of constitutional law regarding the dynamics of the separation of powers within the framework of a democratic constitutional state.

ABSTRAK

Pembagian kekuasaan negara merupakan prinsip fundamental dalam sistem ketatanegaraan Indonesia yang diatur dalam Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. Penelitian ini bertujuan untuk menganalisis secara yuridis

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normatif perubahan struktur dan mekanisme pembagian kekuasaan negara sebelum dan sesudah amendemen UUD 1945, serta implikasinya terhadap penguatan prinsip checks and balances. Penelitian ini menggunakan metode hukum normatif dengan pendekatan perundang-undangan, historis, dan konseptual. Teknik pengumpulan bahan hukum dilakukan melalui studi kepustakaan terhadap bahan hukum primer, sekunder, dan tersier. Analisis bahan hukum dilakukan secara kualitatif melalui penafsiran sistematis, historis, dan komparatif terhadap ketentuan UUD 1945 sebelum dan sesudah amendemen. Hasil penelitian menunjukkan bahwa amendemen UUD 1945 telah merekonstruksi pembagian kekuasaan dari model supremasi lembaga menjadi distribusi kekuasaan yang lebih seimbang melalui penguatan lembaga negara dan mekanisme pengawasan. Kebaruan penelitian ini terletak pada analisis integratif antara perubahan normatif dan implikasi praktis dalam sistem ketatanegaraan Indonesia. Penelitian ini berkontribusi dalam memperkaya kajian hukum tata negara terkait dinamika pembagian kekuasaan dalam kerangka negara hukum demokratis.

Kata kunci:

pembagian kekuasaan negara; amendemen UUD 1945; checks and balances

INTRODUCTION

The state, as an institution of power, must have clear regulatory mechanisms to ensure that the power it holds is not misused (Alfauzi & Effendi, 2020). The history of human development shows that power which is neither limited nor subject to oversight usually leads to tyrannical rule and the suffering of the people (Ratnasyifa, 2024). Lord Acton, a 19th-century British historian, once remarked in his famous quote: “Power tends to corrupt, and absolute power corrupts absolutely.” (Wardaya, 2017). This sentence emphasises how important the separation and division of powers within a state are as an absolute prerequisite for the realisation of good and accountable governance.

The separation of powers is a fundamental concept in constitutional law, the aim of which is to prevent all power from being concentrated in a single person or institution (Pamungkas & Suputra, 2023). In his book *De l’Esprit des Lois* (1748), Montesquieu sets out the theory of the separation of powers, whereby governmental power is divided into three branches: the legislative, the executive and the judicial (Zahra et al., 2022). This theory subsequently served as the basis for various democratic countries in establishing their systems of government, including Indonesia.

As a democratic state governed by the rule of law, Indonesia regards the 1945 Constitution as its supreme law, which governs the functioning of the state, including the division of powers (Rifandanu, 2024). The 1945 Constitution was first signed on 18 August 1945 by the Indonesian Independence Preparatory Committee (PPKI). Since then, this document has undergone significant changes through four amendments carried out by the People’s Consultative Assembly (MPR) in 1999, 2000, 2001 and 2002. These amendments have had a major impact on the overall structure and system of the separation of powers within the state.

Prior to the amendments, the 1945 Constitution granted very broad powers to the executive branch, particularly to the president, which led to an imbalance in decision-making within the government during the Old Order and New Order eras (Khuluqi & Muwahid, 2023). The concentration of power in the hands of the executive during that period hampered the progress of democracy, undermined the rule of law, and created significant opportunities for corruption, collusion and nepotism (KKN) (Ismansyah & Sulisty, 2010). The 1998 reforms, which

successfully brought the New Order era to an end, marked a pivotal moment in transforming the system of government through amendments to the 1945 Constitution (Seran, 2015).

Against this background, this study identifies three main questions: (1) how was the division of state powers regulated in the 1945 Constitution before and after the amendments; (2) how is the system of checks and balances between state institutions regulated in the 1945 Constitution following the amendments; and (3) what is the impact of the division of powers in the 1945 Constitution on Indonesia's system of government.

This study aims to analyse and describe how the separation of powers is regulated in the 1945 Constitution before and after amendments, to explain the checks and balances between state institutions, and to identify their impact on the way government is conducted in Indonesia. In theoretical terms, this study contributes to the advancement of constitutional law. This research can serve as a reference for the government, academics and the general public in understanding how the Indonesian government operates.

Numerous studies have been conducted on the separation of powers in the 1945 Constitution; however, the majority of these remain descriptive in nature and have not emphasised a critical analysis of the normative implications following the amendments. Previous studies have generally limited themselves to describing changes in institutional structure without examining in depth how these changes have affected the practice of checks and balances within Indonesia's constitutional system. Furthermore, there is a gap between the normative framework of the 1945 Constitution and evolving constitutional practices, particularly in the relationship between the executive, legislative and judicial branches. This research aims to fill this gap by offering a normative legal analysis that not only explains the constitutional changes but also evaluates their practical implications. The novelty of this research lies in its integrative approach, combining normative, historical and conceptual aspects to assess the effectiveness of the post-amendment separation of powers.

METHOD

This study is a normative legal study with a descriptive-analytical research design. The approaches employed include the statutory approach, the historical approach and the conceptual approach (Soekanto, Soerjono & Mamudji, 2015). The historical approach was used to trace the development of the separation of powers before and after the amendments to the 1945 Constitution (Marzuki, 2021). Legal data was collected through a literature review of primary legal sources, namely the 1945 Constitution and related regulations; secondary legal sources, namely academic literature; and tertiary legal sources. The legal data was analysed qualitatively using systematic, historical and conceptual interpretation methods to gain a comprehensive understanding of changes to constitutional norms (Ibrahim, 2022).

The legal sources used in this study comprise three types. Primary legal sources include the 1945 Constitution of the Republic of Indonesia and its amendments, Law No. 17 of 2014 on the MPR, DPR, DPD and DPRD, and Law No. 24 of 2003 on the Constitutional Court and its amendments. Secondary legal sources include textbooks on constitutional law, academic journals, and relevant research findings. Tertiary legal sources, such as legal dictionaries and encyclopaedias, serve to aid in the understanding of primary and secondary legal sources.

The analysis carried out is descriptive and qualitative in nature; that is, it describes, categorises and interprets the legal material obtained, and then draws conclusions using both inductive and deductive reasoning to address each of the predefined questions or issues (Satory et al., 2024). The results of this analysis are presented in a structured manner, following the sequence of issues as defined.

RESULTS AND DISCUSSION

The Separation of Powers in the 1945 Constitution Prior to the Amendments

The separation of powers is a fundamental principle in the administration of the rule of law, aimed at preventing the centralisation of power within a single institution (Iswandi & Prasetyoningsih, 2020). In the context of the 1945 Constitution of the Republic of Indonesia prior to its amendments, the structure of the separation of powers exhibited distinctive characteristics that differed from the classical model of the separation of powers proposed by Montesquieu (Afandi, 2014). The 1945 Constitution, prior to amendment, did not explicitly adopt the separation of powers, but rather implemented a vertical and hierarchical system of separation of powers, with the People's Consultative Assembly (MPR) as the supreme state institution.

Normatively, the constitutional structure prior to the amendments positioned the MPR as the sole holder of the people's sovereignty. This is reflected in the provisions of Article 1(2) of the 1945 Constitution prior to the amendments, which states that sovereignty resides with the people and is exercised entirely by the MPR. Consequently, the MPR possessed very broad powers, including the authority to enact the Constitution, to elect and appoint the President and Vice-President, and to establish the Broad Outlines of State Policy (GBHN) as guidelines for the administration of government (Fitri & Sihombing, 2019). With this status, the MPR not only functioned as a legislative body but also performed constitutive and quasi-executive functions.

Within this framework, the President, as the holder of executive power under the 1945 Constitution, is in a subordinate position to the MPR. The President is elected by and is accountable to the MPR, so the relationship between the two is vertical in nature. Although formally the President holds executive power, in practice this power is heavily influenced by the political mandate granted by the MPR through the GBHN (Fitri & Fitryantica, 2025). This means that the President's scope for manoeuvre in carrying out executive functions is not entirely independent.

On the other hand, the People's Representative Council (DPR), as the legislative body, has a relatively limited role. Although the DPR shares legislative functions with the President, the mechanism for enacting laws prior to the amendments reflected the President's dominance. The President possessed strong initiative rights as well as the authority to issue government regulations in lieu of law (Perppu) (Prayitno, 2020). Furthermore, the DPR's oversight function over the government was not yet functioning effectively due to the limited constitutional instruments available at that time.

Even prior to the amendments, the judiciary had not yet demonstrated optimal independence. The Supreme Court, as the highest judicial body, was indeed recognised in the 1945 Constitution; however, the provisions regarding judicial power remained general in nature and did not provide strong guarantees for the principle of judicial independence (Margi & Khazanah, 2019). The absence of a body to review the constitutionality of laws meant that there was no mechanism for judicial review of legislative acts or executive actions that might potentially contravene the constitution.

The model of power-sharing prior to these amendments indicates that Indonesia's constitutional system at that time placed greater emphasis on the principle of an unbalanced distribution of power. The dominance of the MPR as the highest state institution created a centralised power structure, whilst other institutions were in a subordinate position (Nursari et al., 2023). This situation resulted in weak checks and balances, as there was no relationship of equal power and mutual oversight between state institutions.

Conceptually, this structure reflects the legal and political choices made at the time of the nation's founding, which emphasised stability and national integration. However, in practice, a

centralised power structure has the potential to lead to the abuse of authority due to a lack of effective oversight mechanisms. Therefore, amending the 1945 Constitution is a crucial step towards restructuring the system of separation of powers to make it more balanced and in line with the principles of a democratic state governed by the rule of law.

Thus, the division of powers in the 1945 Constitution prior to the amendments can be understood as a system that did not fully adopt the principle of the separation of powers, but rather placed the MPR at the centre of state power. This characteristic served as the starting point for constitutional reform, which subsequently led to the strengthening of the principle of checks and balances within Indonesia's system of government.

The Separation of Powers in the 1945 Constitution Following the Amendments

The amendments to the 1945 Constitution of the Republic of Indonesia between 1999 and 2002 had significant implications for the structure and mechanisms of the separation of powers within the state. These amendments fundamentally restructured Indonesia's system of government, shifting from a model of institutional supremacy towards a more balanced system of power distribution (Tobing & Silalahi, 2025). These changes were intended to strengthen the principle of a democratic state governed by the rule of law through the implementation of checks and balances between state institutions.

One of the fundamental changes lies in the repositioning of the People's Consultative Assembly (MPR). Following the amendments, the MPR no longer holds the status of the highest state institution, but rather functions as a state institution on an equal footing with other institutions. The provisions of Article 1(2) of the amended 1945 Constitution affirm that sovereignty resides with the people and is exercised in accordance with the Constitution (Wardani & Junianse, 2024). This formulation abolishes the concept of the complete delegation of sovereignty to the MPR and replaces it with the principle of constitutional sovereignty. Consequently, there is no longer any institution possessing absolute supremacy within the state structure.

In the context of executive power, the President's powers were both strengthened and restricted. The President is no longer elected by the People's Consultative Assembly (MPR), but is instead elected directly by the people through general elections (Mugeni, 2015). This strengthens the President's democratic legitimacy whilst transforming the relationship between the President and the MPR from a subordinate one to a coordinative one. On the other hand, the President's powers are limited by stricter oversight mechanisms, including those exercised by the People's Representative Council (DPR) and the judiciary (Nurhalisa, 2025).

The House of Representatives has seen a significant strengthening of its role, particularly in its legislative and oversight functions. Following the amendments, the House of Representatives shares the power to enact legislation with the President, on a more balanced footing (Junaedi & Jarnawansyah, 2025). Furthermore, the House of Representatives possesses various oversight instruments, such as the right of interpellation, the right of inquiry and the right to express an opinion (Purnamawati, 2019). The strengthening of these functions reflects efforts to establish a balance of power between the legislative and executive branches.

Significant changes have also taken place within the judiciary. Amendments to the 1945 Constitution introduced the Constitutional Court as a new institution authorised to review laws against the Constitution, adjudicate disputes over jurisdiction between state institutions, and resolve disputes over the results of general elections. The establishment of the Constitutional Court has strengthened the mechanisms of constitutional control over legislation and government actions (Arifien et al., 2025). Furthermore, the principle of judicial independence has been

reinforced through more detailed provisions concerning the Supreme Court and the courts under its jurisdiction.

From a constitutional perspective, the distribution of power following the amendments reflects a shift from a hierarchical model towards a horizontal model in which state institutions are placed on an equal footing (Susanto, 2014). Relations between state institutions are no longer characterised by subordination, but rather by mutual checks and balances. This structure reflects the application of the principle of checks and balances, which is more effective in preventing the concentration of power.

Conceptually, this change marks a significant transformation in Indonesian legal policy. The separation of powers is no longer based on the dominance of a single institution, but on a constitutionally regulated distribution of powers. This paves the way for the creation of a more transparent, accountable and democratic system of government. Thus, the separation of powers in the post-amendment 1945 Constitution reflects a systematic effort to strengthen the principle of the rule of law through institutional restructuring and the reinforcement of oversight mechanisms. This transformation serves as a vital foundation for building a system of government that is more balanced and responsive to the dynamics of modern democracy.

The Mechanism of Checks and Balances in the 1945 Constitution Following the Amendments

The amendments to the 1945 Constitution of the Republic of Indonesia have strengthened the system of checks and balances as a key instrument in preventing the concentration of power (Afandi, 2014). Research findings indicate that these constitutional changes are not merely normative in nature, but also have an impact on constitutional practice through a more balanced redistribution of powers amongst state institutions. In the relationship between the executive and legislative branches, the mechanism of checks and balances is evident in the involvement of the People's Representative Council (DPR) in the law-making process. The President is no longer the dominant actor in the legislative process, but rather shares authority equally with the DPR (Nefaldy & Situmeang, 2026). Furthermore, the DPR's oversight function is strengthened through its rights of interpellation, inquiry and expression of opinion. These instruments enable the DPR to monitor government policy more effectively. For example, the use of the right to conduct an inquiry in several political cases demonstrates that the DPR has the capacity to hold the government to account, although its effectiveness still depends on the political configuration within parliament (Ichwanuddin, 2012).

On the other hand, the President retains mechanisms to counterbalance the DPR, including a limited right of veto in the form of postponing the enactment of legislation. Furthermore, the President has the authority to introduce draft legislation and to issue government regulations in lieu of law (Perppu) under certain circumstances (Prayitno, 2020). However, these powers remain subject to the oversight of the DPR, thereby preventing any unilateral dominance. In the judicial sphere, the establishment of the Constitutional Court has become a cornerstone of the system of checks and balances. The Constitutional Court acts as the guardian of the Constitution and has the authority to review laws against the 1945 Constitution (Arifa et al., 2024). The existence of this judicial review mechanism provides a check on legislation produced by the House of Representatives and the President. One concrete example is Constitutional Court Decision No. 005/PUU-IV/2006, which reaffirms the limits of state institutions' powers within the constitutional framework (Nasution, 2022). This decision demonstrates that the Constitutional Court plays an active role in maintaining the balance of power between state institutions.

Furthermore, the mechanism of checks and balances is also reflected in the process of filling strategic public offices. The House of Representatives plays a role in approving certain candidates nominated by the President, such as Supreme Court Justices and members of independent

institutions (Bachmid & Ihsan, 2022). This process creates mutual checks and balances between the executive and legislative branches of government. On the other hand, the judiciary, through the Judicial Commission, also plays a role in safeguarding the integrity of judges, thereby strengthening internal accountability within the judicial branch (Isjayanto & Bakti, 2025).

The results of the analysis indicate that the implementation of the checks and balances mechanism has not yet been fully optimised. Political factors, such as the dominance of the governing coalition in the House of Representatives, often influence the effectiveness of the oversight function. Furthermore, there remains a tendency for a tug-of-war over powers between state institutions, which has the potential to give rise to constitutional conflicts. In this context, the role of the Constitutional Court is of paramount importance as the final interpreter of the constitution. The system of checks and balances in the post-amendment 1945 Constitution has been significantly strengthened, both in normative and institutional terms. However, its effectiveness is largely determined by constitutional practice and the commitment of political actors to consistently upholding the principles of the rule of law.

KESIMPULAN

This study demonstrates that the reconfiguration of the separation of powers in the post-amendment 1945 Constitution did not merely shift the institutional structure, but established a new paradigm of constitutionalism that places the principle of checks and balances at its core. The novelty of this research lies in the assertion that these changes are not merely institutional in nature, but also normative and functional, particularly in strengthening mechanisms for horizontal oversight between state institutions. These findings demonstrate that the distribution of power is no longer centred on a single dominant organ, but is distributed proportionally with a more measured system of mutual checks and balances. Thus, the post-amendment 1945 Constitution has adopted a model of the separation of powers that is more adaptable to the principles of the modern rule of law, whilst simultaneously correcting the weaknesses of the previous system, which tended to be executive-centric.

The implications of this research underscore the importance of consistently implementing the principle of checks and balances in constitutional practice. Strengthening the constitutional framework must be accompanied by political commitment and a legal culture that supports the independence of state institutions and public accountability. Furthermore, this research opens up scope for further study into the effectiveness of constitutional oversight mechanisms, particularly in the relationship between the Constitutional Court, the House of Representatives and the President. In practical terms, the findings of this research can serve as a reference in the formulation of legal policies aimed at strengthening the constitutional democratic system, as well as providing a basis for evaluating the potential dysfunction of checks and balances resulting from the tug-of-war between political interests.

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