

## The Role Of The Legislature, In Maintaining The Balance Of Power In The Constitutional Legal System

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### ABSTRACT

One of the most important parts of the constitutional legal system is that each state entity has an equal amount of power. In a democratic government, this balance of power is kept in large part by the legislature. But many things can affect how well the legislature does its job and how it keeps the balance of power in the constitutional law system. The goal of this study is to look at how the government keeps the balance of power in a constitutional legal system. This study uses a normative legal method to look at the role of the legislature in making sure that other state institutions have the same amount of power. The study's results show that the legislature's job is to keep the balance of power in the constitutional legal system. This is done by making laws, keeping an eye on things, asking questions, and giving views. But there are things that make it hard for the legislature to do its job, like the system and process of checks and balances in the Constitution as it was changed in 1945. In theory, having the Constitution of 1945 is no longer enough to make it a constitutional document that can bridge and protect all of the state's democratic processes. So, work needs to be done to improve the legislature's institutional role in keeping the balance of power in the constitutional judicial system.

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### INTRODUCTION

The 1945 Constitution before amendments were made gave large or dominant powers to the executive (President). As a result, it gave birth to an authoritarian government, so that the 1945 Constitution is known as executive heavy, such as the experiences of the two reigns of President Soekarno (1959-1967) and President Soeharto (19672 -1998) (Nugraha, 2018). This will always happen again, if there is no balanced oversight between state institutions, namely the executive, legislative and judicial. For this reason, control must be carried out by the same limited authority between institutions. Control is necessary to maintain balance, prevent domination and abuse of authority. If not, domination will occur, suppressing other powers, and tends to be abused (Susilo & Roesli, 2018).

The executive heavy 1945 Constitution which was practiced during the reigns of President Soekarno (1959-1967) and President Soeharto (19674 -1998) resulted in the legislative and judicial organs not being able to balance the domination of executive power. With the 1945 Constitution which was executive heavy during Soekarno's reign, the President dominated power as evidenced by the disassembly of cabinets, leaders of the highest and highest state institutions were given ministerial status as assistants to the President, which meant the legislature was under executive power and control (Yusa & Hermanto, 2017. during the Soeharto government, which was determined to "implement the 1945 Constitution purely and consistently", which in reality was no

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better than the government of President Soekarno. The governmental practices of the two periods of government demonstrated the domination of the President's power which was so strong that constitutional practices did not create or create traditions: supervision and balance between state institutions, especially supervision between the legislature and the executive as mandated by the constitution (Ibrahim, 2022).

According to Robuwan (2018), the amendments that were made to the Constitution in 1945 appear to have altered the power and authority as well as the pattern of relations between high state institutions, between holders of Legislative, Executive, and Judiciary powers, so that they are equal and control one another in accordance with the principle of checks and balances. This was done in order to ensure that the government operates in accordance with the checks and balances principle. The DPR, DPD, President, Supreme Court, and Constitutional Court, as well as the Judicial Commission, are all involved in this type of connection because it involves high-level state entities. The government will be stable, and it will be able to function in an effective and efficient manner in order to accomplish the objectives of the state as specified in the constitution, provided that a system of checks and balances is put into place. Additionally, it is believed that the system of checks and balances will prevent persons who are now occupying positions of state power from abusing the power that they have been given. (Adiwilaga et al, 2018).

Changes were made to the institution of the MPR as well as its authority as a result of an amendment that was made to the 1945 Constitution. The Indonesian constitutional system has undergone a significant transformation as a result of this amendment. The previous system, which was vertically hierarchical and based on the idea that the MPR is supreme, has been replaced with a horizontally functional structure that is based on the principles of mutual balancing and mutual oversight amongst state organs. (Dewi, 2017). In addition, there have been adjustments made to the powers held by the President and the People's Representative Council (DPR), most notably with regard to the authority to formulate new legal guidelines. Article 5 and Article 20 of the Constitution of 1945 were amended, marking the beginning of a move from an executive heavy to a legislative heavy balance of power in the government. The ability to draft legislation, which had previously been vested in the President, was transferred to the DPR as a direct result of amendments made to these provisions. (Yani, 2018).

Because of the amendment that was made to the Constitution in 1945, there has been a change in the substance of the Constitution in terms of empowering the Legislative Institution, which in this case is the DPR, in terms of maintaining the power balance. (Benyal, 2020). Previously, the DPR was responsible for vetting proposed laws before they were passed into law, but with this initial amendment, the President assumed responsibility for doing so. To put it another way, the People's Representative Council is the body that has the authority to draft legislation. With and as a result of these changes, the position of the DPR becomes powerful. This strength is not limited to the enactment of legislation; rather, it also plays a role in the appointment of state officials, as well as in the granting of amnesty and abolition (Ulya, 2016).

In addition to this, the DPR serves in a supervisory capacity. It is important to note the significance of the DPR's supervisory function in this context because, ultimately, the DPR has the authority to propose to the MPR, after first submitting a request to the Constitutional Court to investigate, try, and decide on the opinion of the DPR, that the President and/or Vice President has violated the law, as specified in Article 7 A of the 1945 Constitution, which could lead to the

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removal of the President and/or Vice President from office. This article of the Constitution was added in (Golap, 2017).

When reform opened the door for amendments to the 1945 Constitution, what was quite prominent was the voice of a balance of powers through a system of checks and balances between the legislature, executive and judiciary. In a system of checks and balances, the President as chief executive has an equal position, but controls each other with the Parliament as the holder of legislative power. In accordance with presidential principles, the President cannot dissolve Parliament, and vice versa Parliament also cannot overthrow the President (Bustamin & Jaya, 2019). Parliament can only demand the dismissal of the President if the President is proven to have violated the law; even then it is usually limited by the constitution only to certain types of criminal acts, whereas in a parliamentary system of government, Parliament can easily drop the cabinet only for political reasons, namely through a mechanism commonly known as a "no-confidence motion" (vote of censure) against cabinet performance and on government policies (beleid). Habits in this parliamentary government system cannot be used as a reference in a presidential system that Indonesia wants to develop (Chandranegara, 2016).

In the people-sovereign, law-based Indonesian constitutional system that administers state government in accordance with the constitution, the supervisory system must be in accordance with the Constitution. With the distribution of power and supervision in the practice of administering the state, state power can be regulated, limited, and controlled so that the abuse of power by state administrators (who occupy positions in state institutions) can be prevented and dealt with to the greatest extent possible. The amendment to the Constitution of 1945 pledges to strengthen the system of checks and balances among state institutions. (Mulyani, 2016 ). In the Indonesian constitutional system, the DPR's oversight of the executive or government is one method to maintain a power balance. In the past, the government's accountability for instituting clean and responsible governance was not met due to the abuse of power resulting from the DPR's ineffective oversight function. (Novianti, 2013).

This study will investigate the role of the legislature in maintaining the balance of power within the constitutional legal system, based on the above description. This research is important because it can provide a greater understanding of the significance of the legislature's role in the constitutional legal system's power balance. This study's findings can also provide appropriate recommendations and suggestions for enhancing the performance and function of the legislature in maintaining the constitutional legal system's balance of power. It is anticipated that this research will contribute positively to the future development of a better constitutional law system.

## METHODS

This study makes use of normative legal research, which is a type of research that examines laws that are conceptualized as norms or rules that apply in society. This type of research employs the doctrinal monology method, which departs from principles as teachings that guide behavior (Soekanto, 2007). Normative legal research investigates laws that are conceptualized as such because they apply in society. written positive legal norms formed by statutory-making institutions (the Basic Law), codification, laws, government regulations and written laws formed by judicial institutions (judge made law), as well as written legal norms made by competent parties (contracts, legal documents, legal reports, legal records, and draft laws), which is the reference for everyone's

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behavior, while the applicable legal norms are in the form of written positive legal norms formed by statutory-making institutions (the Basic Law), therefore, this normative legal writing is also (Diantha, 2016).

## RESULTS AND DISCUSSION

### 1. Power-sharing Theory

The division of powers in a rule of law is an attempt to limit the power of the government. Based on the division of powers, state institutions will carry out their duties and powers in accordance with the provisions of the constitution, thereby becoming clear on the boundaries of their duties and authorities. The history of the division of state power stems from the idea of dividing state power into various organs so that it is not concentrated in the hands of a monarchy.

The idea of separation of powers, among others, was put forward by Montesquieu (1689-1755) who stated that for a democratic state to be established, it was necessary to separate state power into legislative, executive and judicial organs (Conway, 2011). In contrast to John Locke, who proposed that the power of a country be divided between different state organs so that the government does not act arbitrarily. This power is divided into legislative, executive and federative powers, namely the power to conduct diplomatic relations with other countries (Gencer, 2010).

In his work *L'Esprit des Lois*, published in 1748, Montesquieu expanded upon John Locke's theories. (*The Spirit of the Law*). Given the tyrannical nature of the Bourbon kings, Montesquieu was motivated to create a system of government in which people's rights were more or less protected. This led to the development of the *Trias Politica* concept. The three pillars of Montesquieu's theory of government are the Legislative, the Executive, and the Judicial. (Montesquiedeu, 1989). He argues that there has to be a clear delineation between the functions and modalities of these three forms of authority. Montesquieu, himself a former judge, stressed the importance of judicial independence because it is in the court system that the protection and preservation of individual liberties and human rights depend. According to him, the legislative branch is responsible for lawmaking, the executive branch is in charge of enforcing laws (with an emphasis on foreign policy), and the judiciary branch decides whether or not laws have been broken. (Montesquiedeu, 1989).

Theorizing and thinking about how power and states are structured has progressed quickly throughout history. According to Jimly Asshiddiqie (2011), this is because of the complex dynamics of the wave of influence between globalism and localism, which has led to a wide range of organizational and governmental institutions. This is due to the demands of real conditions and needs, including social, economic, political, and cultural factors. shape and form. In order to ensure the quality of public services, the state experiments with different types of government to see which ones work best. Councils, commissions, committees, boards, and authority are all names for the same types of organizations. (Saleh, 2019).

Bureaucratic, centralized, and concentrated power structures can no longer be relied upon to meet the needs of today's increasingly complex and intricate developments. Among the repercussions is the separation of powers traditionally associated with the administration, legislature, and judiciary into their own autonomous branches. This allows for the creation of a new type of state institution that performs both new and old roles, with each part being either fully or partially autonomous (independent bodies). (Aris, 2018). Several authorities place such

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autonomous organizations within the purview of the executive branch. Meny and Knapp remark that there are academics who view it as a distinct fourth department of government. (1993). Crince le Roy (1981) argues that beyond the three powers of the state identified by Montesquieu, there exists a set of capabilities known as the fourth powers that are rarely accounted for by constitutional scholars. That's why there's friction between what the books say and what people really do.

Regulatory and monitoring functions in the United States are typically delegated to independent agencies, which are sometimes referred to as the headless fourth department of government. Since it is now impossible to argue that each of the three institutions solely handles one of the three duties of power, Montesquieu's Trias Politica is obsolete. The existing state of affairs demonstrates that there can be no separation between the branches of authority, and that all three are equal and control one another in accordance with the notion of checks and balances.

Check and balance is supervision and balance where in the principle of government the branches of government power are separated, to prevent actions by other branches of power that violate laws and regulations and the constitution, checks and balances are needed in the Indonesian government. Checks and balances are mutual controls, maintaining a balance between state institutions or what we usually call the branches of state power. In a modern rule of law (rechtsstaat), the function of laws and regulations is not only to give shape to the values and norms norms that apply and live in society, and laws are not just a product of the state's function in the field of regulation (Sunarto, 2016).

But more than that, the law is one of the instruments to regulate and direct people's lives towards the expected ideals. Given the importance and strategic importance of laws in the life of the state, each country will try to make ideal laws through the formation process starting from the process of proposing, discussing, approving, to enacting and ratifying which is carried out with the principle of checks and balances between state institutions in accordance with position and authority.

Taking into account the description as mentioned above, it is clear that the theory of the division of powers is one of the bases or foundations for studying the pattern of power sharing between the DPR and the President, because this relationship is one description of the existence of a balance of power in the state.

## 2. The Role of the Legislature in Maintaining the Balance of Power

As one of the highest state institutions in the legislative field within the government structure of the Republic of Indonesia, the DPR RI plays a crucial function. This is intended to maintain a political balance in the administration of the state government. Prior to the onset of the reform era, the DPR was still a long way from fighting for the people's best interests. The People's Representative Council has three functions, namely the legislative function, the oversight function, and the budgetary function, but these three functions do not operate optimally. Among the most notable is the function of creating laws. During the Soeharto administration, very few laws were enacted, most of which originated from the President's proposals, and the House of Representatives served only to debate proposed laws submitted by the President.

Apart from this factor, this condition occurred because the 1945 Constitution before the amendment did not provide a clear provision that legislative power should be in the hands of the

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People's Representative Council, as stipulated in Article 5 paragraph (1) which states "The President holds the power to make laws enact with the approval of the People's Representative Council." The provisions of Article 20 paragraph (1) state "Members of the DPR have the right to advance bills." However, the right of initiative to advance bills is only an addition to the main authority possessed by the DPR, when compared to the main authority to form laws which belongs to the President. This provision shows an unequal position between the President and the House of Representatives in the legislative field.

This imbalance is becoming more and more apparent in the matter of the establishment of a Government Regulation in Lieu of Law (PERPU), as stipulated in Article 22 paragraph (1) of the 1945 Constitution, which states that "In the event of a compelling crisis, the President has the right to issue a Government Regulation in lieu of a law." When it comes to a law that was proposed by the People's Representative Council, the same rule applies: even if the bill is passed by the People's Representative Council, the draft cannot be brought up again in the session of the People's Representative Council that is taking place at that time if the measure has not been ratified by the President. This rule applies even if the bill is approved by the People's Representative Council. This is in compliance with the provisions outlined in paragraph 2 of Article 21 of the Constitution that was ratified in 1945. Even further, when it comes to the formulation of laws and regulations that are referred to as Policy guidelines, they are believed to be in the hands of the President. This, in practice, reflects his authority when issuing an independent Presidential Decree., in the sense that it is not in the framework of implementing the law. In point of fact, in practice, many different kinds of presidential decrees have a tendency to be autonomous. These decrees tend to regulate issues that occasionally ought to be regulated under legislation. As can be seen from the examples that have been provided thus far, the President holds a position in the legislative process that is substantially more powerful than that of the House of Representatives.

The necessity for modifications to the Constitution that was established in 1945 is a requirement that is shared by the people of Indonesia. In addition, these requests were satisfied in a comprehensive, gradual, and methodical manner by the addition of four amendments to the Constitution that was ratified in 1945. The 1999 MPR mm session was the occasion of the first amendment to the Constitution of 1945. As a direct result of this session, the first amendment to the Constitution of 1945 was ratified. After that, it was then followed by a second amendment during the MPR annual session in the year 2000, the third amendment during the MPR annual session in the year 2001, and the fourth amendment during the MPR annual session in the year 2002.

In the first alteration, the altered substance consists of two components. The first provides authority to the People's Representative Council, while the second restricts the President's authority. Originally, the President had the authority to enact laws with the consent of the DPR; however, the first amendment reversed this power. This means that the House of Representatives has the authority to enact legislation (Article 20 paragraph (1)), while the President has the authority to submit proposed legislation to the DPR (Article 5 paragraph (1)). Through these modifications, the DPR's position is bolstered, as it is no longer limited to enacting laws, but also plays a role in appointing state officials, granting amnesty and abolition, and even in the assignment of ambassadors to other nations, where it must be taken into account. With this first amendment, the

President "must" examine the views of the National People's Congress (Provisions of Article 13 paragraphs (2) and (3)).

In an endeavor to strengthen the position of the DPR, it was determined in the second amendment that the DPR has a supervisory function, as stated in Article 20 paragraph 1: "The DPR has legislative, budgetary, and supervisory functions." The content is a constitutional provision that was originally governed by regulations under the Constitution of 1945; some of the provisions are even governed by the Rules of Procedure of the House of Representatives. In accordance with Article 20A paragraph (1) of the 1945 Constitution, the People's Representative Council can propose to the MPR, after submitting a request to the Constitutional Court to examine, try, and decide on the DPR's opinion that the President and/or The Vice President has committed a violation of law as stipulated in Article 7A WD 1945, which may result in the dismissal of the President and/or The Vice President.

The DPR makes the recommendation to the MPR to dismiss the President and/or Vice President by first submitting a request to the Constitutional Court to investigate, try, and decide on the opinion of the DPR that the President and/or Vice President has violated the law in the form of betrayal of the state, corruption, bribery, criminal acts of other weight, or that the President and/or Vice President no longer fulfill the requirements as President and/or Vice President. Within the framework of the DPR carrying out its job of providing oversight, the DPR has arrived at the conclusion that either the President or the Vice President has broken the law.

The right to interpellation, the right to inquiry, and the ability to voice opinions are all rights that are afforded to the DPR in the course of the DPR's performance of its duties. In addition to the rights that are governed in other articles of the Constitution from 1945, the DPR also has the right to submit recommendations for bills. These rights are in addition to the rights that each member of the DPR has, including the right to ask questions, the right to submit suggestions and opinions, and the right to immunity. The rights held by the DPR, such as the right to interpellation, the right to inquiry, the right to voice ideas, and the right to propose laws, are all components of the process that maintains the delicate balance of power between the executive branch, the legislative branch, and the judicial branch.

With the right of interpellation, the DPR has the authority to ask questions about the performance of the government and ministers related to public policy. Meanwhile, with the right of inquiry, the DPR can conduct an investigation into an issue deemed important and strategic for the national interest.

The right to express opinions provides an opportunity for the DPR to issue an opinion or an official stance on a policy or event that is currently taking place. Meanwhile, the right to propose bills allows the DPR to play its role as a legislator, by submitting bills that are considered important for enactment. Thus, the rights possessed by the DPR aim to ensure a balance of power between the legislature and the executive branch. The DPR as the representative of the people has the responsibility to oversee the government's performance, voice the aspirations and interests of the people, and make policies that are in favor of the people.

However, in exercising these rights, the DPR must also uphold the principle of checks and balances, namely ensuring that policies and actions taken by the government do not violate the rights and interests of the people. Thus, the balance of power among state institutions can be properly maintained, and the state's goal of achieving public welfare can be achieved.

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## CONCLUSION

Prior to the amendment to the 1945 Constitution, the division of powers was vertical in nature with more power in the hands of the executive or executive heavy. After the amendment to the 1945 Constitution, formally there were provisions governing the Supervision and balance of power between the DPR and the President. The division of powers in a rule of law is an attempt to limit the power of the government. Based on the division of powers, state institutions will carry out their duties and powers in accordance with the provisions of the constitution, thereby becoming clear on the boundaries of their duties and authorities. The history of the division of state power stems from the idea of dividing state power into various organs so that it is not concentrated in the hands of a monarchy. As a form of power sharing, an amendment was made to the 1945 Constitution which in its points emphasized the role and position of the DPR RI so that there was a balance of power. The Amendment to the 1945 Constitution emphasizes the function of the DPR as the main actor in making laws, carrying out the supervisory function of the running of the government which at its peak can propose the dismissal of the president and or vice president if the president or vice president has violated the law or law by being regulated by law. existing mechanisms. Finally, in strengthening checks and balances, the DPR is also given the right of interpellation, inquiry and the right to express opinions so that the DPR can determine its attitude towards all policies taken by the government.

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