

# Strengthening the Independent State Institutions in the Form of Councils in the Constitutional System in Indonesia

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*Abstract— The problem of the existence of independent state institutions in the form of Councils such as the Presidential Advisory Council, the Board of Education and the Press Council lies in the lack of maximum authority and implementation of the authority possessed by independent state institutions in the form of councils. The research method used is normative juridical. The results showed that the philosophy of the birth of an independent state institution in the form of a council was essentially to avoid concentrating power so that it was formed to exercise its authority based on independence, not subjective, and objective, but to strengthen independent state institutions, it was necessary to reconstruct the existing norms so that its authority would be more implementative and effective. In essence, the philosophy of the existence of independent state institutions must refer to the spirit of bangsa (volkgeist), namely the Principle of Deliberation as inspired by the fourth precept of Pancasila so that its existence needs to be considered in the process of making public policy.*

*Index Terms— Council, Reconstruction, Strengthening, Authority*

## I. INTRODUCTION

Relating to the existence of state commissions (state auxiliaries Institutions) is often given the initial name of commissions or councils whose legal basis is formed by legislation under the 1945 Constitution.[1]

Independent institutions in general have the main functions, namely: First, independent institutions function to accommodate the demands of the dynamics of social, national and state life. In the process of state administration which is based on the paradigm of good governance, it requires a proportional interaction between the three government actors, namely: the government (government), the private sector (private sector), and society (society). Second, independent institutions function to make governance more effective and efficient.[2]

In categories, state organs are referred to as institutions whose authority is granted by the constitution. In this category, we can call the existence of several institutions such as Presidents, governors, regents, mayors, and regional people's councils, both for provinces and for districts The nature of being independent and free from the influence of any power is feared to make this institution absolute power within the scope of its work.[3] As a result of that indication of the absolutism of power, there is the performance of other independent institutions that are thus not so involved. In fact, the duties, functions and authorities of independent institutions are related to making ideal public policies for state officials.

Murtir Jeddawi gave the category of state organs into two categories, namely state institutions and independent state institutions. In the category of state institutions, it consists of the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, the President and Vice President, the Supreme Court, the Constitutional Court, the Judicial Commission, and the Financial Audit Agency. Meanwhile, those included in the category of independent state institutions are the General Election Commission, the National Human Rights Commission, the Indonesian National Army, the Indonesian National Police, Bank Indonesia, and the Ombudsman.[4]

Independent State Institutions take the form of Councils such as the Presidential Advisory Council, the Press Council, and the Board of Education. However, the problem lies in the independent state institutions in the form of 'councils' because of their independence, their position is sometimes ignored and less empowered. Thus, it is necessary to analyze the strengthening of the position of independent state institutions.

## II. METHOD

This type of research is normative juridical research, which deals with determining the correctness of coherence to determine whether there is a rule of law based on legal norms.[5] The research design adopted in this study is evaluative, with the aim of providing a rationale for the research findings. The researcher will evaluate the findings of the study, determining whether the hypothesis derived from the suggested legal theory is accepted or rejected.[6] This

Legal Research uses a doctrinal approach to find research results that are philosophical in nature. A deductive approach is used in drawing conclusions, which involves the conclusion of a general object in order to draw certain conclusions.[7] The research approach is with a *statute approach* by analyzing laws and regulations.[8]

### III. DISCUSSION AND ANALYSIS

#### Position of Independent State Institutions in the Form of Councils

The 1945 Constitution specified only one state institution that belonged to an auxiliary body, but outside the Constitution, an auxiliary body developed without control. According to Asimov, state commissions can be distinguished in two categories: First, independent state commissions, that is, state organs that are idealized to be independent and therefore are outside the executive, legislative, or judicial branches of power; but it has a mixed function of all three; Second, state commissions, that is, state commissions that are part of the executive branch of power, and do not have a very important role. Based on the chart above, it can be seen that the position and role of the main state institutions and state institutions that serve are permanent institutions, while the state auxiliary bodies can grow, develop, and may be removed. This depends on the situation and condition of the country. What needs to be considered is that the government in this case the President in forming a state auxiliary body must pay attention to the existing institutions.[9]

When the initial formulation of the 1945 Constitution, the LNI had not found a place for discussion in constitutional format. Even the term state institution itself has not been talked about at all.[10] Legitimacy for the establishment of newly independent state institutions received quite good sentiment after the amendment of the 1945 Constitution.[10]

The real independent does not indicate status or position but real independent is more towards the notion of nature. The change from nature to status norm (position) is measured from a positivistic legal view. The law regulating independent institutions places them as a norm of status (position) not as a trait. The essence of law in a positivistic view is actually to look at the existing legal issues (is) and the supposed law (ought). The supposed law (ought) refers to what might happen as a physical possibility. This analysis involves concentrating on the study of laws as their existence (as it is) i.e. laws enacted by the state.[11]

Indonesian constitutional law experts do not yet have the same word equivalent to refer to this institution there are those who call auxiliary state institutions, supporting state institutions, state institutions serving, independent state institutions and independent state institutions.[12]

The development of society, both economically, politically, and socially, politically, as well as the influence of globalism and localism, requires the organizational structure of the state to be more responsive to their demands and more effective

and efficient in carrying out public services and achieving the objectives of government administration. Such developments influenced the organizational structure of the state, including the forms and functions of state institutions. Then emerged state institutions as a form of *institutional experimentation* which can be in the form of *councils, commissions, committees, boards, or authorities*.[13]

Such institutions can be categorized in several degrees of Independence. Starting from institutions that become independent of other state institutions and carry out certain functions permanently (state independent agencies); only supportive (*state auxiliary* agencies), so that they are pinned to them forming their own rules (*self-regulatory* agencies); intended to perform certain supervisory functions (*independent supervisory agencies*); and agencies that perform mixed functions between regulative, administrative, supervisory, and law enforcement functions at the same time.[14]

The independence of a state institution is essential to realize and guarantee the democracy of a country.[15] If this trait does not exist, then the functions of existing institutions will be easily abused by authorized officials or governments to perpetuate power. The Presidential Advisory Council is located at the place of office of the President in the power of government of the country.[16] In fact, independent state institutions in the form of councils, have a centralized position, duties, and functions, as well as the position, duties, and functions of the Presidential Advisory Council in Law of the Republic of Indonesia Number 19 of 2006 concerning the Presidential Advisory Council are as follows:

1. Article 2 The Presidential Advisory Council is subordinate to the President and is responsible to the President.
2. Article 3 The Presidential Advisory Council is domiciled in the seat of the President.
3. Article 4 paragraph (1) The Presidential Advisory Council is in charge of providing advice and balance to the President in exercising the powers of state government. Article 4 paragraph (2) The provision of advice and consideration as referred to in paragraph (1) shall be carried out by the Presidential Advisory Council whether requested or not requested by the President. Article 4 paragraph (3) The advice and consideration referred to in paragraph (2) shall be submitted either individually or as a unit of advice and consideration of all members of the board.
4. Article 5 In carrying out its duties, the Presidential Advisory Council carries out advisory and advisory functions related to the exercise of the powers of state government.
5. Article 6 paragraph (1) In carrying out their duties and functions, members of the Presidential Advisory Council are not allowed to provide information, statements, and/or disseminate the contents of advice and considerations to any party. Article 6 paragraph (2)

In order to carry out their duties and functions, members of the Presidential Advisory Council at the request of the President may: a. attend cabinet sessions; b. attend work visits and state visits.

The role of the Board of Education as in Article 56 paragraph (2) of Law Number 20 of 2003 concerning the National Education System is "The Board of Education as an independent institution is established and plays a role in improving the quality of education services by providing consideration, direction and support for personnel, facilities and infrastructure, as well as supervision of education at the National, Provincial, and District / City levels that do not have a hierarchical relationship".

The differences between state institutions and independent state institutions in Indonesia are:

No	Aspects	State Institutions	Independent State Institutions
1	Power Interference	Has indications that there is still interference in power	Free from the interference of the ruler
2	Appointment/ Dismissal	Political mechanisms	Carrying out the mandate of the people
3	Independence	Depend	Independent (objective)
4	Supervision	Principle of Checks and Balances	Be independent and responsible to the people

The position of state institutions in the form of councils can be implemented as long as they are statutory orders. For example, the position of the Presidential Advisory Council is regulated in the Law of the Republic of Indonesia Number 19 of 2006 concerning the Presidential Advisory Council and the position of the Board of Education as regulated in Law Number 20 of 2003 concerning the National Education System.

**Design Strengthens the Authority of Independent State Institutions in the Form of Councils**

In general, state equipment in the form of *state auxiliaries* or *independent bodies* arises because; The existence of increasingly complex state tasks that require sufficient independence for their operationalization. There are efforts to empower the duties of existing state institutions through the formation of new, more specific institutions.[17]

Jimly Asshiddiqie divides Independence into *Functional Independence* which is reflected in the decision-making process, which can be:[18]

1. *Goal Independence*, which is free to determine the main goals or policies.
2. *Instrument Independence*, which is a policy instrument set by the institution itself independently.

Administrative independence, namely independence in determining administrative policies to support the two previous independences, namely:

- a. financial independence (*Financial Independent*), which is independent in determining the supporting budget.
- b. personnel independence (*Independent Personnel*), that is, independence in regulating and determining the appointment and dismissal of personnel of one's own staffing.

This opinion is supported by Zainal Arifin Mochtar who states that there are several arguments that can be found as the originator of the establishment of the state institution independent namely:[10]

1. reform of the neo-liberal approach, namely: The presence of an independent state commission in this context is present as part of a strong impetus of good governance, which criticizes the state for corruptive behavior, thereby drawing out the power of the state to the public through the establishment of an independent commission. That is, the role of neo-liberal-style reformative programs at least contributes to the process of the presence of independent state institutions. Not in the positive-negative context of that role, but at least illustrates how the concept of encouragement towards good governance is one of the patterns of reducing the role of the state with the presence of the independent state commission itself;
2. transitional obligations to support certain things, namely transitional obligations can certainly be interpreted within the framework of transitional conditions that require special things that can support transition needs;
3. the need for the acceleration of democracy, i.e. a more participatory democratic reform, has brought impetus to the presence of independent state institutions, whether in relation to certain duties formerly owned by the state and/or certain duties in conducting supervision of the state;
4. part of the image of power, i.e. the State makes new state institutions seem to be in the paradigm of ensuring that state power can still run through the will of the regime to make improvements. In fact, the improvements made are wrapped in a certain agenda, which is usually aimed at what is to be achieved;
5. reducing the task of dispute resolution institutions between the state and citizens, i.e. the State wants independent state institutions to reduce disputes between the state and citizens, where citizens will face state institutions first in their mechanisms.
6. the existence of disappointment with old institutions, i.e. This factor is the result of the high level of disillusionment with old state institutions that have existed before. That is to say one appears to be a variety of concerns against the old institutions, which worked but failed to deliver the expected results. Not to mention,



the condition of the old institutions that were considered to be full of corrupt practices, collusion and nepotism; and

7. haste in legislation, namely To carry out specifications for the management of certain things in the context of certain performance achievements. Unlike the classical state institutions (executive, judicial, and legislative) that deal with all matters, in relation to the territory of each branch, the independent state commission is closely related to one particular thing. Although it is then a mixed model, which means also working on things that characterize executive, legislative and judicial powers.

The ultimate goal of independent state institutions is in the constitution of the Republic of Indonesia in accordance with the wishes of the state objectives mandated by the constitution as implied in the preamble to the 1945 Constitution in the fourth paragraph, namely:[19]

1. protecting the entire Indonesian nation and all Indonesians;
2. advancing the general welfare;
3. educating the life of the nation; and
4. participate in carrying out a world order based on freedom, lasting peace and social justice.

Lawrence M. Friedman put forward three elements of the legal system, namely legal substance, legal structure and legal culture. The first element is the entire rule (rule) and legal principle. The second element refers to the entire organization, its institutions and officials, which includes legislative, executive, and judicial bodies with their apparatus such as government bureaucracies, courts, prosecutors, police, and the world of professions such as advocates and notaries. While the third element or element is the actual element that refers to the entire verdict or behavior related to the first element.[20]

The emergence of a new paradigm for the need for a system of national integrity in solving a problem related to the organizers of elections is urgently needed. Neither the enforcement mechanism, sanctions nor the evidentiary mechanism. The paradigm of the national integrity system is an idea that has long existed in the soul of the Indonesian nation (*volkgeist*), namely Pancasila.[21]

The design of strengthening independent state institutions in the form of councils such as presidential advisory councils and educational councils needs to be strengthened through a statutory approach, so that its existence as an independent institution that is fair, impartial, and objective can be considered its position in the process of determining public policy oriented towards the public interest. Moreover, independent state institutions that refer to the value of one of the nation souls (*volkgeist*), namely the fourth precept of Pancasila related to the principle of deliberation which is a form of kindness to be applied in solving the problems of the nation and state.

#### IV. CONCLUSION

The position of a state institution in the form of a council can be applied as long as it is an order of legislation. The design of strengthening independent state institutions in the form of councils such as presidential advisory councils and educational councils needs to be strengthened through a legislative approach because the philosophy of independent state institutions that refer to the principle of deliberation is certainly in line with the fourth precept of Pancasila as the soul of the nation (*volkgeist*).

#### Acknowledgments

The author would like to thank the publisher for being willing to accept this manuscript and providing an opportunity for this paper to be published. The author also expresses our gratitude to the Doctoral Study Program in Law, Universitas Sumatera Utara which always supports the Author to be productive, The author also expressed his gratitude to the author's supervisor, Prof. Susi Dwi Harijanti, S.H., LL.M., Ph.D., Dr. Afnila, SH., M.Hum, and Dr. T. Keizerina Devi Azwar, SH., CN., M. Hum. who sincerely always guides the Author.

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