

COMPARISON OF INDEPENDENT REGIONAL INSTITUTIONS THAT CONSULTATIVE IN THE LOCAL GOVERNMENT SYSTEM

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Abstract: *Independent regional institutions as derivatives of independent state institutions or will be studied can regional institutions be formed on the basis of regional needs and regulated in laws and regulations, so that a comparison will be made with France and the United States regarding independent regional institutions that are consultative with those that are implemented or that have not been implemented in the local government system in Indonesia. The research method used is normative juridical. The results showed that Indonesia does not yet have independent regional institutions that are consultative, compared to France and America have independent regional institutions that are consultative so that local/state governments can take appropriate policies.*

Keywords: *Consultative, Institutional, Independent, Regional.*

Introduction

Porigin 16 of the 1945 Constitution before the amendment, it was stated that the Supreme Advisory Council was established by law, namely Law No. 3 of 1967. This body is obliged to provide answers to the President's questions and make suggestions to the President. The existence of the Supreme Advisory Council as a high institution of the state, is equivalent to that of the President. The Supreme Advisory Council is a mere advisory body (consultative body).¹ Currently, after the amendment of the 1945 Constitution, the Supreme Advisory Council has been abolished and replaced with the existence of the Presidential Advisory Council. However, the consultative institution only exists at the central government level, and does not yet exist in the local government system in Indonesia.

The existence of state institutions ideally represents these three kinds of power. The number and type of state institutions in a country have no rules, but the most important thing is the form of embodiment of the three kinds of power. In reality there are state institutions that are

¹ C.S.T Kansil, *Hukum Tata Negara Republik Indonesia* (Jakarta: Bina Aksara, 1986), p. 35.

not the embodiment of all three kinds of power, but can actually be part of existing state institutions, because functionally the institutions are needed.²

Regional institutions were also formed that concerned the physical, religious, socio-economic aspects and socio-cultural characteristics adopted by the local community. Does not seem to have much influence on independent institutions given that these organizations are human-driven that function to carry out public activities. There are two important groups according to Griffin that exist in the local community, namely local *community* and *interest groups*. These two groups have a strong influence so that their abandonment can cause the pace of independent institutions' work programs to be hampered. In the system constancy. This kind of influence is not without impact. The difference in perception of what independent institutions do in society is very likely to be colored by the interests of the two groups above so that it can be so as to destroy the image of the institution in the eyes of the public. Or even very likely that even independent institutions can be formed in accordance with the wishes and goals expected by the community.³

Managing independent regional institutions that are consultative needs to be analyzed, in this study was conducted with comparisons with France, the United States, and the local government system in Indonesia which has not optimally empowered independent regional institutions to answer complex problems that exist in the regions.

Literature Review

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 apparatus such as government bureaucracies, courts, prosecutors, police, and 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.⁴

According to Solly Lubis, the reality of state life for the past three decades proved the inconsistency and deviation from the basic concept of the management system that should be, namely the 1945 Constitution. The system of government shifted from a democratic pattern to an oligarchy, protracted, so that eventually there were discrepancies or gaps, both in the field of social politics, as well as socioeconomic, socio-cultural, defense of security and public order (Hankambmas). In principle, the demand for a comprehensive reform of the nation's life

² Nitaria Angkasa Dan Tria Noviantika, Kedudukan Dewan Pertimbangan Presiden, Fu, 2, no. 2 (2020).

³ Muhammad Rosyid Ridho Irma Mangar, "Lembaga Independen Negara Dalam Ketatanegaraan Indonesia," <https://Journal.Uinsgd.Ac.Id/> (2022): 77.

⁴ Lawrence M. Friedman, *Sistem Hukum*, (Bandung: Nusa Media, 2013)

management system is what requires political policy reform and legal system reform, so that national management can be returned to a system with basic constitutional concepts.⁵

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.⁶ 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.⁷ Penelitian Hukum ini menggunakan pendekatan doktrinal untuk menemukan hasil penelitian yang bersifat filosofis.⁸ A deductive approach is used in drawing conclusions, which involves the conclusion of a general object in order to draw certain conclusions.⁹ The research approach is with *a statute approach* by analyzing laws and regulations.¹⁰

Result and Discussion

Legitimacy of Independent Local Institutions Is Consultative in the Local Government System

In its implementation, this unitary state is divided into two kinds of government systems, namely, Central and Autonomy.¹¹

1. The Unitary State with the Centralization system is a system of government directly led by the central government, while the local governments under it carry out the policies of the central government. The new order model of government under President Soeharto is an example of a centralized government system.
2. A unitary state with an Autonomy or Decentralization system is that regional heads are given the opportunity and authority to take care of government affairs in their own territory. The Malaysian state government and post-new order government in Indonesia are examples of the Autonomy model government system.

Josef Riwu Kaho as confirmed by Bambang Yudoyono gave rationality to the need to carry out decentralization of authority according to the state government system as follows:¹²

1. Decentralization to prevent the buildup of power on one side alone can eventually lead to tyranny;

⁵ Solly Lubis, "Pembangunan Hukum Nasional", makalah disampaikan dalam Seminar Pembangunan Hukum Nasional VII Penegakan Hukum dalam Era Pembangunan Berkelanjutan, Denpasar, 14-18 Juli 2003, p. 1.

⁶ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2011).

⁷ Muhaimin, *Metode Penelitian Hukum* (Majapahit: Mataram University Press, 2020).

⁸ Eka NAM Sihombing, Cynthia Hadita, *Penelitian Hukum* (Malang: Setara Press, 2022).

⁹ *Ibid.*

¹⁰ Bambang Sunggono, *Metode Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2005).

¹¹ A. Ubaedillah, *Demokrasi, Hak Asasi Manusia dan Masyarakat Madani*, ICCE UIN Syarif Hidayatullah, Jakarta Selatan: 2006, p. 34

¹² Bambang Yudoyono. *Otonomi Daerah, Desentralisasi dan Pengembangan Sumber Daya Manusia Aparatur Pemerintahan Daerah dan Anggota DPRD*. (Jakarta: Sinar Harapan, 2001), p. 20-21

2. Decentralization is seen as an act of democracy to attract people to participate in government and train themselves in exercising democratic rights;
3. Decentralization to achieve an efficient government, what is considered the main to be taken care of by the local (local) government, the management of which is left to the regions;
4. Decentralization needs to be held so that full attention can be paid to the specifics of an area such as geography, population, economy and others;
5. Decentralization is necessary because local governments can do more and directly assist and implement their regional development.

The independent nature of a state institution has an important role in the sustainability of a country. The independence of a state institution is very important to realize and guarantee the democracy of a country.¹³

Strengthening regional institutions is one of the important instruments to continue to build trust and solidity that the existence of local government as an important spearhead to realize prosperity and prosperity and ensure the integration of the nation.¹⁴

Comparison between Indonesia, France, and America

The establishment of institutions due to the existence of goals to be achieved in the state is considered unattainable only by the main institution (*Main State's Organ*). Thus, auxiliary institutions (*Auxiliary State's Organ*) were formed, which had the function of serving. State institutions or state equipment will always experience development and growth in accordance with the needs of the country. A state institution, to be able to see whether the institution is acting for and on behalf of the state or otherwise, is determined by the duties and authorities contained in the substantive rules of the institution in question. Similarly, although it factually carries out the functions of statehood, but in principle, if the duties and authorities of the organ are delegates from the original *power* holder, then the institutional relationship is more derivative. State institutions or state equipment will always experience development and growth in accordance with the needs of the country. A state institution, to be able to see whether the institution is acting for and on behalf of the state or otherwise, is determined by the duties and authorities contained in the substantive rules of the institution in question. Similarly, although it factually carries out the functions of statehood, but in principle, if the duties and authorities of the organ are delegates from the original *power* holder, then the institutional relationship is more derivative. Jimly Asshiddiqie The United States and France are examples of established democracies, which have many new state institutions. The new state institutions are not the principal state institutions that generally have to rely on one branch of power only. The

¹³ Ni'matul Huda, Imam Nasef, "Penataan Demokrasi Dan Pemilu Di Indonesia Pasca-Reformasi", (Jakarta: PT. Fajar Interpretama Mandiri, 2017), p. 53-54.

¹⁴ Sedarmayanti dkk, *Desentralisasi dan Tuntutan Kelambagaan Daerah*. (Bandung, Humaniora, 2005), p. 3.

nomenclature of the term given to the new state institutions is commonly referred to as state auxiliary *organs* or *auxiliary institutions* as supporting state institutions.¹⁵

In line with this, I Dewa Gede Atmadja stated that 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:¹⁶

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.

Protecting the entire Indonesian nation and all spilled blood means that the State through the presence of independent state institutions has an obligation to protect the Indonesian nation without any differences so that it can carry out all its rights and obligations.¹⁷ Advancing the general welfare means that the State through the presence of independent state institutions has the aim as well as the obligation to advance the general welfare in this case the welfare of the Indonesian people, especially in the economic field so that there is no social inequality, and widespread poverty in the Indonesian State.¹⁸ Educating the nation's life means that our country aims and is obliged to provide quality educational services to the Indonesian nation which in this case is reformulated in the goal of national education which in essence is not only intellectually intelligent but also morally and emotionally intelligent.¹⁹ Participating in carrying out world order based on independence, lasting peace, and social justice means that the State through an independent state is responsible for realizing world peace in other words when there is an international problem or conflict, the State must participate in resolving the conflict or dispute.²⁰

Legal accountability and honesty are the accountability of public institutions to behave honestly in working and complying with applicable legal provisions. The use of public funds must be carried out correctly and obtained authorization. Public institutions must account for the programs that have been created to the implementation of the program.²¹

¹⁵ Eki Furqon, "Kedudukan Lembaga Negara Independen Berfungsi Quasi Peradilan Dalam Sistem Ketatanegaraan Indonesia," *Nurani Hukum* 3, no. 1 (2020): 77.

¹⁶ I Dewa Gede Atmadja, *Hukum Konstitusi, Problematika Konstitusi Indonesia Sesudah Perubahan UUD 1945*, (Malang: Setara Press, 2012), p. 177.

¹⁷ Maleha Soemarsono . Negara Hukum Indonesia Ditinjau Dari Sudut Teori Tujuan Negara. *Jurnal Hukum dan Pembangunan*. Vol. 37. No. 2. (2007). h. 308 Dalam Arliman S, "Kedudukan Lembaga Negara Indonesia Untuk Mencapai Tujuan Negara Hukum."

¹⁸ Jeffry Alexander Ch. Likadja. Memaknai "Hukum Negara (Law Through State)" dalam Bingkai "Negara Hukum (Rechtstaat)". *Hasanuddin Law Review*. Vol. 1. No. 1. (2015). h. 81.

¹⁹ Haposan Siallagan. Penerapan Prinsip Negara Hukum Di Indonesia. *Sosiohumaniora*. Vol. 18. No. 2. (2016). h. 132

²⁰ Zulkarnain Ridlwan. Negara Hukum Indonesia Kebalikan Nachtwachterstaat. *Fiat Justitia Jurnal Ilmu Hukum*. Vol. 5 No. 2. (2012). h. 148.

²¹ Sugiyanto Sugiyanto, "Akuntabilitas Lembaga Kesejahteraan Sosial Di Daerah Istimewa Yogyakarta," *EMPATI: Jurnal Ilmu Kesejahteraan Sosial* 10, no. 1 (2021): 32–44.

A similar phenomenon was also discovered by Giorgio C.S Giraudi when identifying the existence of IRAs in France. Giraudi found that there were two models of IRAs formed: First, there are a number of commissions with advisory authority, and have many members (commissioners). The fundamental idea of the formation of these IRAs was the "Comission of independent sages". The commission is tasked with providing advice and proposals to parliament and the government. Second, there are also IRAs with a small number of members, usually elected by the president and parliament. In this second model, IRAs have authority that it says is "normally fully regulatory" including rulemaking, supervision, supervision, sanctions and those related to the judiciary. Not much different phenomena are also found in the concept of IRAs in Italy, for example the Commissione Nazionale per le Societa E la Borza (CONSOB) which is an independent institution in order to supervise the performance of stock exchanges. Supervisory authority includes arrangements in the field of investment and enforcement of sanctions against parties who violate these rules.²²

The opposite can be found in the United States, where independent state agencies or so-called Independent Regulatory Agencies (IRAs) are strictly regulated in legislation in a restrictive manner. This is as contained in the provisions of The Paperwork Reduction Act 44 (U.S.C. § 3502), which in point (5) states: "The term "independent regulatory agency" means the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Housing Finance Agency, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Regulatory Commission, the Securities and Exchange Commission, the Bureau of Consumer Financial Protection, the Of ice of Financial Research, Of ice of the Comptroller of the Currency, and any other similar agency designated by statute as a Federal independent regulatory agency or commission".²³

The term Indonesian state institution in the Indonesian context when compared to the United States, can be said to have no meaningful juridical justification. This is because to this day there has not been a single article in the legislation that definitively lists the term "independent state institution". When the initial formulation of the 1945 Constitution, Indonesian state institutions had not found a place for discussion in a constitutional format. Even the term state institution itself has not been talked about at all. Legitimacy for the establishment of new

²² Giorgio C.S. Giraudi, "Independent Regulatory Agencies in Italy and France, Building The Bridge between delegation and Europeanization", *Swiss Political Science Review*, Vol. 8, 2002, p. 112

²³ The Paperwork of Reduction Act of 1980". Accessed on <https://www.law.cornell.edu/uscode/text/44/3502>

independent state institutions received quite good sentiment after the amendment of the 1945 Constitution.²⁴

Copeland stated that the Independent Agencies do not belong to the IRAs group, due to the difference in the degree of independence, especially in the aspect of political independence, which characterizes the distance from the control and influence of the president. Independent Agencies tend to be more open to the influence of the president, where these institutions are formed on the basis of "to serve the pleasure of the president". However, Independent agencies also cannot be categorized as executive agencies or similar agencies of ministries and departments, as these agencies are not included in the executive power structure. Based on this view, it can be concluded that Independent agencies are basically independent government agencies, but not in the category of actual independent state institutions so that the general criteria or standards of Independent Regulatory Agencies are obtained in the context of the United States. In contrast, then other institutions that are not included in the provision or whose institutional characteristics are not entirely the same, then qualified do not fall into the category of IR. Referring to the above, one of the ideal formats of independence for LNI in Indonesia is by: first, giving the President the authority to form an independent and representative balanced Selection committee. An independent and representative selection committee can only result from a transparent and accountable formation process. For this reason, from the determination of the composition of the selection committee, it must involve community participation, including paying attention to every report and complaint of the community regarding the track record of prospective selection committee members. The best way, in this case, is that the formation of the selection committee is not initiated by the government, but by the LNI concerned with public participation. Second, the selection team selects prospective members according to the number of members needed, to then get the president's endorsement and submit it to the DPR. Third, thus the House of Representatives no longer needs to conduct a *fit and proper test* in order to choose a candidate, but directly exercises its right to agree or disagree (*right to confirm*) on the proposed candidate member, fourth, to ensure effectiveness and efficiency, rejection or disapproval accompanied by clear reasons and carried out at most once.²⁵

The comparison of independent regional institutions is consultative between Indonesia, France and America as follows:

No.	Comparison Aspects	Indonesian	France	America
1.	Nomenclature	Lembaga Daerah Independen	Comission of independent sages	Independent Regulatory Agencies (IRAs)/ <i>the Local Government Advisory</i>

²⁴ Zainal Arifin Mochtar, *Lembaga Negara Independen: Dinamika Perkembangan dan Urgensi Penataannya Kembali Pasca-Amandemen Konstitusi*, Jakarta: Rajawali Pers, 2016, p. 4-6.

²⁵ Rizki Ramadani, "Lembaga Negara Independen Di Indonesia Dalam Perspektif Konsep Independent Regulatory Agencies," *Jurnal Hukum Ius Quia Iustum* 27, no. 1 (2020).

				<i>Committee (LGAC)</i>
2.	Electoral system	Depending on local institutions and regulatory mechanisms	It is usually elected by the president and parliament.	The selection committee is not initiated by the government but must involve community participation
3.	Authority	Consultative only, audible or not	Its "normally fully regulatory" authority includes rulemaking, supervision, supervision, sanctions and those relating to the judiciary.	Ondependent committee policy-oriented advisor to locally elected and appointed officials who provide policy advice and recommendations to administrators, helping to ensure that regulations, policies, guidance, and technical assistance support and enhance the capacity of local governments to implement local government programs

Conclusion

The local government system in Indonesia does not yet have independent regional institutions that are consultative, compared to France and America have independent regional institutions that are consultative so that local/state governments can take appropriate policies. One of the key strategies to maintain credibility and trust that local governments play an important role in ensuring national integration, wealth, and prosperity is to strengthen local institutions.

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