

Problems of Limiting State Power From A Constitutional Perspective In Indonesia

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ABSTRACT

This study aims to analyze constitutional challenges in limiting state power in Indonesia, particularly executive dominance, institutional oversight, and the effectiveness of constitutional control mechanisms, as well as to examine the obstacles and possible solutions. The novelty of this study lies in its integrated analysis of executive dominance, Constitutional Court controversies, and constitutionalism within a single analytical framework. This research employs a normative legal method with statutory and conceptual approaches, analyzed qualitatively. The results show that the limitation of state power has not been optimally implemented, as indicated by the dominance of executive power (executive heavy), weak effectiveness of oversight, and unclear boundaries of authority among state institutions. Based on Montesquieu's theory of separation of powers, this condition reflects that the mechanism of checks and balances has not functioned ideally within Indonesia's constitutional system. Furthermore, the obstacles in limiting state power include weak integrity and independence of state institutions, vague legal norms, low constitutional awareness, and ineffective oversight mechanisms. Based on Jimly Asshiddiqie's theory of constitutionalism, this condition indicates that the function of the constitution as a limitation of power has not been optimally implemented. Therefore, it is necessary to strengthen institutions, harmonize legal norms, enhance constitutional awareness, and develop preventive oversight mechanisms to realize an effective limitation of state power in accordance with the principles of the rule of law.

Keywords: Limitation of Power, Constitution, Checks and Balances, Constitutionalism, Rule of Law

1. INTRODUCTION

The limitation of state power constitutes one of the fundamental principles of a state governed by the rule of law, aimed at preventing the abuse of power in the administration of government. Within Indonesia's constitutional system, this principle is expressly affirmed in the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the ****1945 Constitution****), which positions the Constitution as the supreme law of the land as well as the primary instrument for regulating and limiting state power. Article 1 paragraph (3) of the 1945 Constitution stipulates that Indonesia is a state based on the rule of law, thereby implying that all actions undertaken by state authorities must be conducted in accordance with the law and the principles of constitutionalism. (Asshiddiqie, 2022).

Furthermore, the limitation of state power is also reflected in the constitutional arrangements concerning the separation and distribution of powers among state institutions, as stipulated in Article 20 of the 1945 Constitution (legislative power), Article 4 paragraph (1)



(executive power), as well as Articles 24 and 24C (judicial power and the authority of the Constitutional Court). These constitutional provisions are reinforced by Law Number 48 of 2009 concerning Judicial Power (hereinafter referred to as the Judicial Power Law), which emphasizes the principle of judicial independence, and Law Number 24 of 2003 concerning the Constitutional Court (hereinafter referred to as the Constitutional Court Law), as amended, which grants authority to the Constitutional Court as the guardian of the Constitution. Accordingly, the limitation of state power is not merely a normative principle embodied in the Constitution but is also operationalized through various statutory regulations. (Huda, 2021)

From a theoretical perspective, a constitution functions not only as a formal legal document but also as a mechanism for limiting governmental power through the principle of the separation of powers, as proposed by Montesquieu, as well as the principle of checks and balances within modern constitutional systems. Furthermore, Jimly Asshiddiqie's concept of constitutionalism emphasizes that a constitution must be capable of both limiting state power and ensuring the protection of human rights. In this context, the limitation of state power is manifested through the distribution of authority among state institutions, mechanisms for judicial review of legislation, and systems of oversight over governmental actions. (MD, 2020)

Nevertheless, in the practice of constitutional governance in Indonesia, the limitation of state power continues to face various challenges. One phenomenon that has generated considerable public debate is Constitutional Court Decision Number 90/PUU-XXI/2023 concerning the eligibility requirements for presidential and vice-presidential candidates. The decision sparked controversy because it was perceived as creating opportunities for conflicts of interest and potentially undermining the principle of judicial independence within the constitutional judiciary. This situation demonstrates the ongoing challenges in maintaining the integrity of institutions that are entrusted with the role of safeguarding the Constitution. (Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, 2021).

In addition, issues concerning the limitation of state power can also be observed in the enactment of Law Number 11 of 2020 on Job Creation (hereinafter referred to as the Job Creation Law), which was subsequently subjected to constitutional review through Constitutional Court Decision Number 91/PUU-XVIII/2020. In its decision, the Constitutional Court declared the law conditionally unconstitutional on the grounds that its legislative process failed to comply with the principles of proper law-making, particularly the principles of transparency and public participation as stipulated in Law Number 12 of 2011 on the Formation of Laws and Regulations (hereinafter referred to as the Law on the Formation of Laws and Regulations). This phenomenon



indicates a tendency toward the concentration of power in the legislative process, which may undermine the principles of constitutionalism. (Faiz, 2020)

These issues demonstrate a gap between the ideal concept of limiting state power as embodied in the Constitution (*das sollen*) and its implementation in constitutional practice (*das sein*). From the perspective of the rule of law, this condition reflects the suboptimal implementation of the principles of checks and balances as well as a relatively weak constitutional culture in the exercise of state power. Furthermore, political, institutional, and legal-cultural factors significantly influence the effectiveness of power limitation in practice. (Mochtar, 2020)

Based on these considerations, this study employs Montesquieu's theory of the separation of powers to examine the structure of state power distribution and Jimly Asshiddiqe's theory of constitutionalism to assess the extent to which the Constitution functions as a limitation on governmental authority. In addition, the concept of the rule of law (*rechtsstaat*) is utilized to analyze the relationship between power and law within Indonesia's constitutional system. (Susanti, 2021)

In light of these issues, a comprehensive analysis of the problems associated with the limitation of state power from a constitutional perspective in Indonesia is necessary, including an examination of their underlying causes and possible solutions. Accordingly, the research questions addressed in this study are as follows: (1) What are the forms of problems related to the limitation of state power from a constitutional perspective in Indonesia? and (2) What obstacles exist, and what measures may be undertaken to address the problems concerning the limitation of state power in Indonesian constitutional practice?

2. RESEARCH METHOD

This study employs normative legal research, which views law as a system of norms examined through legislation, legal principles, legal doctrines, and constitutional court decisions relevant to the issues under investigation. In addition to statutory and conceptual approaches, this research also utilizes a case approach focusing on Constitutional Court Decisions Number 90/PUU-XXI/2023 and Number 91/PUU-XVIII/2020. The approaches adopted in this research include the statutory approach and the conceptual approach. The statutory approach is conducted through an examination of various legal instruments related to the limitation of state power, particularly the 1945 Constitution, the Constitutional Court Law as amended, the Judicial Power Law, and the Law on the Formation of Laws and Regulations along with its amendments. Meanwhile, the conceptual approach is employed to analyze the concepts of constitutionalism, the



rule of law, and theories concerning the limitation of state power within the framework of constitutional law.

The legal materials utilized in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include legislation and judicial decisions, particularly Constitutional Court Decision Number 90/PUU-XXI/2023 and Constitutional Court Decision Number 91/PUU-XVIII/2020. Secondary legal materials consist of legal literature, scholarly journal articles, and expert opinions relevant to the research topic. Tertiary legal materials include legal dictionaries and encyclopedias used to support conceptual understanding.

Legal materials are collected through library research, while the analysis of legal materials is conducted qualitatively through the application of legal interpretation methods, including grammatical, systematic, and teleological interpretation. The analysis is carried out using a descriptive-analytical approach to identify the problems associated with the limitation of state power and to formulate solutions consistent with the principles of constitutionalism within the Indonesian legal system. (Marzuki, 2022)

3. RESULT DAN DISCUSSION

Problems of Limiting State Power from a Constitutional Perspective in Indonesia

The limitation of state power constitutes an essential principle of a state governed by the rule of law, aimed at preventing the abuse of authority by state officials. Within Indonesia's constitutional system, this principle has been constitutionally established through mechanisms of separation of powers, checks and balances, and guarantees for the protection of human rights. Nevertheless, in practice, the implementation of limitations on state power continues to face various challenges, demonstrating a gap between constitutional norms and constitutional realities. (Kamis, *Kekuasaan Presiden Indonesia: Studi tentang Pembagian Kekuasaan antara Presiden dengan DPR dalam Sistem Pemerintahan Presidensial Indonesia*, 2020)

One of the most prominent issues is the increasing dominance of executive power in the administration of the state. In practice, the government not only functions as the executor of laws but also exercises significant influence over the legislative process and the direction of national policies. This condition reflects a tendency toward an executive-heavy system, which has the potential to disrupt the balance of power among state institutions. From a constitutional perspective, such circumstances indicate that the principle of checks and balances, as a primary instrument for limiting state power, has not been optimally implemented. (Amsari, 2022)



This issue can be observed concretely in constitutional practice, particularly through the issuance of Government Regulation in Lieu of Law (Perppu) Number 2 of 2022 concerning Job Creation. Constitutionally, the President's authority to issue a Perppu constitutes a form of discretionary power that is limited by the requirement of a "compelling emergency situation." However, in this case, the determination of such an emergency condition generated considerable debate, as it was perceived as not fully satisfying the objective criteria established in previous constitutional practice. This situation demonstrates a tendency toward the expansion of executive power through legal instruments, which may ultimately weaken the principle of limiting state power. If left unchecked, constitutional authority that is intended to be limited may evolve into a means of legitimizing governmental actions that are not subject to adequate control. (Indrayana, 2023)

Furthermore, problems are also evident in the limited effectiveness of oversight institutions in maintaining the balance of power. Normatively, Indonesia has established the Constitutional Court as the guardian of the Constitution, vested with the authority to review laws against the 1945 Constitution. However, in practice, the independence and integrity of this institution have occasionally been questioned, as illustrated by Constitutional Court Decision Number 90/PUU-XXI/2023 concerning the age requirements for presidential and vice-presidential candidates. The decision generated extensive public controversy because it was perceived as involving conflicts of interest and deviating from the principle of judicial impartiality. (Rishan, 2022) From the perspective of limiting state power, this situation indicates that constitutional control mechanisms do not always operate effectively. An institution that is intended to safeguard the Constitution may itself encounter internal challenges that weaken its supervisory function over state power. Consequently, the principle of checks and balances becomes less effective, as there is no absolute guarantee that each branch of government is subject to truly independent oversight.

Another issue concerns the lack of clarity regarding the boundaries of authority among state institutions, which often results in overlapping authority. Such ambiguity frequently originates from vague legal norms within statutory regulations, creating room for differing interpretations in their implementation. Under these circumstances, the effective limitation of state power becomes difficult to achieve because there are no clear and definitive boundaries regarding the scope of authority assigned to each state institution. Weak limitations on state power also have implications for the potential violation of human rights. When governmental authority is not clearly and effectively constrained, there is a risk that state actions may exceed their lawful limits and



adversely affect the rights of citizens. This situation contradicts constitutional principles that place the protection of human rights among the primary objectives of state governance. (Harun, 2023)

These various issues demonstrate that the limitation of state power in Indonesia has not yet functioned optimally. This condition carries significant urgency, as it directly affects the quality of the constitutional system. From a legal perspective, it undermines legal certainty due to unclear boundaries of authority and inconsistencies in legal norms. From a political perspective, it may create imbalances of power that lead to the concentration of authority within a dominant branch of government. From a social perspective, it may diminish public trust in both the government and the legal system. Accordingly, the problems surrounding the limitation of state power are not merely normative concerns but also have broader implications for democratic stability, the protection of citizens' rights, and the legitimacy of state governance. Therefore, comprehensive reforms are required to ensure that the constitutional principle of limiting state power can be effectively realized in Indonesia's constitutional practice. (Safa'at, 2021)

Based on Montesquieu's theory of the separation of powers, the division of governmental authority is intended to prevent the concentration of power through a system of checks and balances. However, in practice, an imbalance has emerged, characterized by executive dominance (executive heavy) and the less-than-optimal functioning of judicial oversight. The use of Perppu as an instrument that expands executive discretion, together with the controversy surrounding Constitutional Court Decision Number 90/PUU-XXI/2023, demonstrates that the checks-and-balances mechanism has not operated ideally, thereby creating opportunities for potential abuses of authority. (Suroso, 2021)

Based on the foregoing analysis, it can be concluded that the limitation of state power from a constitutional perspective in Indonesia has not yet functioned optimally. This is evidenced by the tendency toward executive dominance, the limited effectiveness of oversight institutions, and the lack of clarity regarding the boundaries of authority among state institutions, all of which contribute to an imbalance of power. From the perspective of the theory of separation of powers, these conditions indicate that the mechanism of checks and balances has not been implemented ideally within Indonesia's constitutional system. (Zoelva, 2020) Therefore, efforts are needed to strengthen oversight mechanisms, clarify the distribution of authority among state institutions, and enhance the integrity of public officials. Such measures are necessary to ensure that the constitutional principle of limiting state power can be effectively realized, thereby promoting legal certainty, protecting human rights, and strengthening the quality of democracy in Indonesia.



Obstacles and Efforts to Address the Limitation of State Power in Indonesia

The limitation of state power within Indonesia's constitutional practice faces not only normative challenges but also various obstacles that hinder its effective implementation. These obstacles are structural, cultural, and normative in nature, and they are interconnected in ways that affect the quality of the application of constitutional principles in state governance. The principal obstacles include the following:

1. Weak Integrity and Independence of State Institutions

The weak integrity and independence of state institutions constitute one of the primary obstacles to the effective limitation of state power. Normatively, every state institution is required to exercise its authority professionally and free from external interference. However, in practice, political interests and conflicts of interest continue to influence institutional decision-making, thereby undermining institutional independence. As a consequence, oversight functions are not performed optimally, creating opportunities for abuses of power and rendering the checks-and-balances mechanism less effective. (Harijanti, 2020)

2. Ambiguity of Legal Norms in Statutory Regulations

Ambiguities concerning the distribution of authority among state institutions often give rise to multiple interpretations in constitutional practice. Such uncertainty frequently results in overlapping authority, which may lead to institutional conflicts. Under these circumstances, the boundaries of governmental power become unclear, creating opportunities for the unconstitutional expansion of authority. (Permana, 2023)

3. Weak Legal Culture and Constitutional Awareness

An underdeveloped legal culture also constitutes a significant obstacle to the limitation of state power. There remains a tendency to exercise authority in a pragmatic manner without due regard for constitutional principles. This condition indicates that constitutional awareness has not yet been fully internalized, either among state officials or within society as a whole. (Nurbaningsih, 2022)

4. Ineffective and Predominantly Reactive Oversight Mechanisms

Although various oversight institutions have been established, supervision in practice is often reactive in nature, occurring only after violations have already taken place. The absence of effective preventive oversight mechanisms limits the ability to detect and prevent potential abuses of power at an early stage. Consequently, the effectiveness of power-control mechanisms within a rule-of-law state is significantly reduced. (Siregar, 2023)



According to Jimly Asshiddiqie's theory of constitutionalism, the limitation of state power should not be understood merely as the structural separation of powers. Rather, it also emphasizes the importance of limiting governmental authority through legal mechanisms, strengthening institutions, and ensuring the protection of human rights. From this perspective, the Constitution functions as the primary instrument for controlling power and preventing its misuse.

Nevertheless, the weak integrity of state institutions, the ambiguity of legal norms, and the ineffectiveness of oversight mechanisms indicate that the principles of constitutionalism have not yet been fully implemented within Indonesia's constitutional practice. This condition reflects a gap between constitutional norms and the realities of state administration, resulting in a checks-and-balances system that has not functioned optimally. Consequently, opportunities for the abuse of power remain open and may lead to the concentration of authority within a particular branch of government, contrary to the principles of the rule of law (*rechtsstaat*) and constitutional supremacy. (Djatmiati, 2021)

To address these obstacles, several strategic measures should be undertaken, including: (Anggono, 2022)

1. Strengthening the independence and integrity of state institutions through institutional reform and the effective enforcement of ethical standards;
2. Harmonizing and clarifying legal norms within statutory regulations to prevent multiple interpretations and overlapping authority;
3. Enhancing constitutional awareness through continuous legal and civic education; and strengthening oversight mechanisms that are not only repressive in nature but also preventive and systematic.

Accordingly, the implementation of constitutionalism should not remain confined to the normative level but must be realized in the actual practice of state governance. Such implementation requires a firm commitment to constitutional supremacy, governmental accountability, and the protection of human rights.

Based on the foregoing discussion, it can be concluded that the limitation of state power in Indonesia continues to face various obstacles arising from institutional, normative, and cultural factors. These obstacles demonstrate that the principles of constitutionalism have not yet been effectively implemented in constitutional practice. Therefore, comprehensive efforts are required, including strengthening the integrity of state institutions, clarifying legal norms, enhancing constitutional awareness, and improving the effectiveness of oversight mechanisms.



Such measures are crucial to ensuring that the limitation of state power operates in accordance with the principles of the rule of law and constitutional supremacy.

4. CONCLUSION

First, the limitation of state power in Indonesia has not yet functioned optimally, as evidenced by the dominance of executive power, weak oversight mechanisms, and the lack of clarity regarding the distribution of authority among state institutions. These conditions have resulted in the weakening of the checks-and-balances mechanism, legal uncertainty, and the potential for violations of human rights. From the perspective of Montesquieu's theory of the separation of powers, this situation demonstrates that an ideal balance of power has not yet been fully achieved within Indonesia's constitutional system.

Second, the obstacles to the effective limitation of state power include weak institutional integrity, ambiguous legal norms, low levels of constitutional awareness, and ineffective oversight mechanisms. Accordingly, efforts are needed to strengthen state institutions, harmonize legal regulations, enhance constitutional awareness, and develop preventive oversight mechanisms. Based on Jimly Asshiddiqie's theory of constitutionalism, these measures are essential for establishing an effective system of power limitation that is consistent with the principles of the rule of law and constitutional supremacy.

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