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THE SEPARATION OF POWERS AND PRINCIPLES OF STATE POLICY

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ABSTRACT | 摘要 | RESUMEN

This article examines the main points of state policy, which is more popularly known as the Outlines of State Policy (GBHN), but in fact, the two meanings are very different. Referring to the Decree of the People's Consultative Assembly of the Republic of Indonesia Number IV/MPR/2014 concerning the Recommendation of the People's Consultative Assembly of the Republic of Indonesia for the 2009-2014 Term of Office, specifically in Point 10, it is written to reformulate the national development planning system with the GBHN as the model. Although the GBHN was rejected, it became a reference. Before the reform, the GBHN in state administration made the People's Consultative Assembly (MPR) the highest state institution. After the reform, it tends to follow the theory of separation of powers as the highest center for carrying out national life. This article employs Hans-Georg Gadamer's hermeneutical interpretation method. The principles of state policy must be understood in the context of the separation of powers, as this determines the application of power. This separation continues on the principle of sharing and checking. Separation of powers is not synonymous with Democracy, but it is the origin of the state, allowing the formation of power to continue the state's existence.

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1. INTRODUCTION

The concept of being a state in classical teachings is the gathering of one person with another because of the same desire. Such a state is an ideal form because humans, as a large group, will prioritize their group to achieve their goals. In fact, the influence of this large group does not control what will be achieved in the state. Groups come at various levels, such as education, cooperative skills, and understanding of the law. Socrates said that state knowledge does not need to be first but based on what is experienced. The meaning of 'first' can be exemplified; for example, you don't need to be a doctor to know the function of medicine because besides being a doctor, you can also know if there is pain in your body.[1] This original thinking will straighten out the meaning of having a state, even though Socrates' current point of view must be supported by modern state administration so that a country can run well.

One of the supporting highlights is returning to the basic principles of state policy. The main points of these state policy terms are more popularly known as the Outlines of State Policy (GBHN), but the two are very different. Referring to the Decree of the People's Consultative Assembly of the Republic of Indonesia Number IV/MPR/2014 concerning the Recommendation of the People's Consultative Assembly of the Republic of Indonesia for the 2009-2014 Term of Office (MPR IV/2014 Decree, specifically in Point 10 it is written 'to reformulate the national development planning system with the GBHN model as the area. A central government's main reason is to maintain unity. State integrity is one of the reasons the central government continues to dominate the implementation of government affairs by putting aside roles and rights local government to get involved directly and independently to manage and fight for interests.[2]

From this, although the GBHN was rejected, its modeling became a reference. The GBHN in state administration before the reform made the People's Consultative Assembly (MPR) the highest state institution, and after the reform, it tends to be the theory of separation of powers as the highest center in carrying out national life. Then, in 2019, the Decree of the People's Consultative Assembly of Republic of Indonesia Number VIII/MPR/2019 concerning the Recommendation of People's Consultative Assembly for the 2014-2019 term (MPR VIII/2019 Decision), where in Article 2 it states that "regarding the recommendation of Article 1 letter a, MPR.RI term of office 2019-2024 needs to deepen the results of the study of the MPR.RI for the 2014-2019 term regarding the substance and legal form of the Principles of State Policy, including building a political consensus that allows for the stipulation of MPR Stipulations,

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provided that there are views from the Golkar Party Faction, the Democratic Party Faction and the Prosperous Justice Party faction that PPKN is also possible to be formed in the Law".

Researchers in this paper use the term main points of state policy to make it easier to differentiate and adjust to the MPR VIII/2019 Decree. Basically, when there are principles of state policy, the limitation of state power becomes unequal due to the limited separation of powers. Separation of powers will shift to a centralized limitation of power, meaning that state institutions are only complementary to the way that power is exercised. The powers in question are executive power, legislative power and judicial power.

Finding the right separation of powers in Indonesia at this time is very important because, referring to the 1945 Constitution of the Republic of Indonesia (hereinafter the 1945 Constitution of the Republic of Indonesia), there is no normative clarity regarding the separation of powers. When this continues while the main principles of the state continue to gain space to become part of Indonesia, constitutional problems will increasingly arise. Separation of powers must be conceptualized first; then, one can determine whether or not the main points of state policy are important. The novelty offered in this paper is that the main points of state policy can support the separation of powers when the state returns to the concept of God's Sovereignty, which originates from the ideas of John Locke and Montesquieu.

In supporting the originality of the research, the researcher uses four comparisons. First, the position of the president as the highest executive leader will be one of the most important discussions as an object of constitutional regulation. Although constitutionally, the president does not have the authority to play a direct role, politically, the president has considerable influence.[3] The comparison with the researcher is that it is not centered on the president but the executive power that supervises it because the executive is not only the president. The second comparison is that the GBHN is very relevant to current conditions, which are experiencing development disorientation. The skeptical attitude of some people will return to the presidential election system indirectly if the GBHN is reinstated, in fact it has no relevance and correlation with the general election system because the GBHN is determined in the MPR.[4] The comparison with researchers, namely the determination of the GBHN, does not have a correlation with the general election system, but the results of the general election are a formality. The third comparison is that the GBHN reformulation has a role as an instrument for governance, which also optimizes good management and the synergy of development programs between the central and regional governments.[5] Comparison with researchers cannot be used as a reference because governance is different from the separation of powers. The researcher's argument uses the third comparison because of teleology in

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formulating the GBHN. The fourth comparison is that returning to the GBHN will threaten democracy and the rule of law in Indonesia. The basis of democracy is the opportunity for people to make choices and decisions for themselves.[6] Comparison with researchers, namely GBHN, is not a destructive threat but rather leads to repeated paradigm changes, meaning that paradigm cycles are deliberately created. Based on this background, the researcher takes a legal philosophical statement, namely if the separation of powers is appropriate in Indonesia when the principles of state policy are enforced. This statement will lead to a discussion that focuses on two things: the current separation of powers in Indonesia and the creation of a separation of powers when the principles of state policy are implemented in accordance with MPR VIII/2019 Decree.

2. RESEARCH METHODS

This research specifically focuses on the separation of powers that originates in the interpretation of law supported by a statutory approach so that the appropriate separation of powers in Indonesia will be known when the principles of state policy are implemented invitation. This is preceded by a normative juridical study, which will provide sound conclusions through descriptive analysis.[7] This article uses various primary and secondary legal sources, such as laws and regulations, legal texts, books, and journals.[8] This study employs data from a literature-based search that were thoroughly examined further. This study uses Hans Georg Gadamer's legal interpretation method because reading and understanding a text basically also involves carrying out a dialogue and building a synthesis between the world of the text, the world of the author, and the world of the reader. The world of the text, the world of the author, and the world of the reader must be considered in every understanding, where each has its own context so that if you understand one without considering the other, your understanding of the text becomes dry and poor.[9].

3. RESULTS AND DISCUSSION

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Current State of Law in Indonesia

Understanding the rule of law must see the true meaning of the rule of law, which is often associated with the law itself. In Indonesia, adherence to the rule of law is actually part of political science. In historical studies, the rule of law first appeared in Germany in 1813, which was investigated by Robert von Mohl and Carl Theodor Welcker. They are the classic theorists of the rule of law. The modern rule of law is approached closely with other legal political ideas such as constitutionalism, separation of powers, and pluralism. This is closely related to democracy, namely the control of the people over the state apparatus and exists in constitutional democracy as well as in liberal democracy, including: law and democracy. The democratic system has always been challenging and debatable,[7] not only in the Islamic and Western world but also on the internal side of Islam. El Fadl's argues that there are at least three groups related to this democratic discourse: the secular, the rejectionist, and the reform group.[10] A state is considered to guarantee the rule of law when citizens have the right to own it. This right is seen as a social property inherent in every individual. Another explanation relates to the rejection of democracy in which democratic freedoms actually exist but are limited.

The proper implementation of democracy requires an understanding and appreciation of the values of the Pancasila philosophy. The correct implementation of Indonesian Democracy is the practice of Pancasila through government politics. Emphasizing people's sovereignty, because Indonesian Democracy rejects the intention to manipulate people's power. Emphasizing the form of deliberation for consensus because this form is more oriented to the interests of the general public and not individuals.[11] Emphasizing the Socialization of Indonesian Democracy through the steps and mechanisms of political and governmental life.

According to Aulia A. Rachman, four main reasons became the reference point for state founders choosing a presidential system of government: 1) Indonesia needed strong, stable and effective leadership to ensure the continued existence of the Indonesian state which was to be proclaimed. The nation's founding fathers believed that a strong and effective model of state leadership could only be created by choosing a presidential system where the president not only functions as the head of state but also the head of government. 2) Due to theoretical reasons, namely reasons related to the ideals of the state (staatsidee), especially the ideals of an integralistic state during the discussion of the 1945 Constitution (hereinafter the 1945 Constitution) in the Meeting of the Investigative Body for Preparatory Efforts for Indonesian Independence (hereinafter BPUPKI). The presidential system of government is believed to be very

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compatible with the concept of an integrated state. 3) At the beginning of independence, the president was given full power to carry out the powers of the DPR, MPR and DPA. The choice of a presidential system is considered appropriate in carrying out this extraordinary authority. In addition, with a presidential system, the president can act more quickly to overcome state problems during the transition period. 4) It is a symbol of resistance to all forms of colonialism because the parliamentary system is considered a product of colonialism by the founding fathers of the state. Adolf Merkl saw the hierarchy of legal systems in the state as a process of abstraction. The higher the level of the rule of law, the more general and abstract it is; conversely, the lower it is, the more concrete it is; or if you look upside down from top to bottom, it is known as the concretization theory of law which has been adopted by Hans Kelsen who sees law as a pyramidal structure. Law unfolds in a gradual process from the highest legal norms, which are the most abstract, general legal norms, merely establishing lower norms, down to the lowest legal norms, which are fully individualized, concrete and executive/implementation. Between these two poles, each norm not only establishes law, but also implements and takes part in the process of concretizing law. Changes to higher legal norms will have an impact on changes to lower legal norms. If the higher legal norms are repealed and abolished, the lower legal norms will also be revoked and abolished.

J Dawson and Hanley say that freedom is another form of liberalism in which there is a shared attitude toward the norms of political equality, individual freedom, civil tolerance, and the rule of law. Basically, the main problem the group of scholars identified is polarization among the country's leaders. This polarization becomes evident through the decline of public discourse in which the leaders of competing nations no longer recognize the legitimacy of their opponents. When the leaders of nations change their aim from beating their opponents in the democratic game to destroying them.

Another group of scholars identified what happened as participation declined. Labeled by some 'post-democratic' (this implies a decline in civic and political engagement.[12] In some cases, the decline in participation is due to disenfranchisement, while in others, it is related to the weakness of the popular component of organized politics, particularly political parties. In particular, the rule of law is needed to provide alienation of citizens' trust in guaranteed private property rights or innovation. At this level, the rule of law also creates a judiciary that can enforce individual relationships with other individuals.[13] What is explained actually confirms that the rule of law is part of The Rule of Law and cannot be separated from political and economic elements. Article 33, paragraph (4), of the 1945 Constitution of Republic Indonesia stipulates that the national economy is organized based on economic democracy with the

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principles of togetherness, fair efficiency, sustainability, environmental insight, and independence, and by maintaining a balanced development and national economic unity. Thus, the national economy will require restrictions within a country. Restrictions will serve as a safeguard in the absence of the principles of state policy.[14] In the context of Indonesia, the rule of law state, as contained in Article 1, paragraph (3), of the 1945 Constitution of the Republic of Indonesia, is characterized by the Pancasila state law. The definition of a Pancasila rule of law state is always associated with the meaning of all the precepts, but this definition must be separated from the rule of law itself. A rule of law that leads to written rules will contradict the flexible nature of Pancasila. The Pancasila legal state will make laws that are in accordance with Pancasila, so that the laws formed in a constitutional state do not conflict with Pancasila. In addition, there is an exclusive goal of practicing an orderly state life, making a country peaceful, prosperous and conducive, so that the lives of its people are maintained, and harmony, equilibrium and harmony can be achieved, which makes state rules constitutionally in terms of individuals and common interests. Human socialization has consequences; namely, people must obey rules because humans are intelligent creatures and can control other creatures. Ni Komang Ayu Triana Dewi, Anak Agung Sagung Laksmi Dewi, and I Made Minggu Widyantara, "Kajian Viktimologi Terhadap Perlindungan Korban Balas Dendam Pornografi (Revenge Porn)," Jurnal Konstruksi Hukum 3, no. 1 (2022), https://doi.org/10.22225/jkh.3.1.4465.217-221. Then, based on Pancasila, it should not be contradictory when it is associated with ideology because Pancasila incorporates divine elements in it. Pancasila is a source of law in a material sense, which not only animates, but must even be implemented and reflected by and in every Indonesian legal regulation. There are different things in the discussion of Pancasila in laws and regulations, especially the Law of the Republic of Indonesia Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 Concerning the Formation of Legislation (hereinafter Law 13/2022) only found in the writing examples Bill. Unlike the Law of the Republic of Indonesia Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislation (hereinafter Law 15/2019) section of the Explanation, the affirmation of the national legal system is the law that applies in Indonesia. Producing elements that mutually support each other so that they can overcome problems that arise in the life of the nation and state based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Another comparison refers to the Law of Republic Indonesia Number 12 of 2011 concerning the Establishment of Legislation (hereinafter Law 12/2011) that Pancasila is the source of all sources of state law. This means that this issue is important because Pancasila is not contained in its essence in this law.

Thus, any legal regulations that conflict with Pancasila may not apply normatively. However, if there is a deviation from the application, a judicial review can be submitted to the Constitutional Court or the Supreme Court. In forming the legal order, a country certainly has the sources that cause the birth of new laws. According to Satjipto Raharjo, at least two categories are the main sources in the formation of law in a country, namely legal and social sources. Legal sources are sources that are recognized by the law itself, which in turn will give birth to a law directly.[16]

Principles of State Policy and Legal Implications

At the meeting of the Indonesian Chancellor's Forum (FRI), the Xth Campus Convention and the meeting of the Indonesian Association for the Development of Social Sciences at Sebelas Maret University in January 2014, there was a recommendation to return to the GBHN and encourage the MPR to amend the 1945 Constitution of Republic of Indonesia which included the authority of the MPR to determine the GBHN. Where FRI states:

The Indonesian Chancellor's Forum strengthens efforts to restore people's sovereignty in national development planning through the authority of the People's Consultative Assembly (MPR) to compile and establish the Outlines of State Policy (GBHN) based on Pancasila values and strengthen nationalism and encourage synchronization of roles between institutions both elements people's representative institutions, ministries and other institutions so that integration of planning and budgeting for national development with a people's and participatory dimension is built.[17] Describing the state from a legal perspective requires a universal understanding because a rule of law is a model area entirely based on law. The question arises whether everything under the law will be better. One of the explanations given by Leo H Kahane is that the rule of law can support criminal acts by legalizing firearms. The rule of law also depends on the philosophical basis on which it is formed. Another understanding is that the rule of law originates from its leaders.[18]. In this sense, when a leader is absolute, there is a blurring of the definition of a rule of law state. For example, in the Philippine democracy led by Ferdinand Emmanuel Edralin Marcos Sr., democracy cannot rely on political development because the existence of a political and economic oligarchy with central and regional power will limit and offset the influence of these oligarchic groups. Kisno Hadi, "Perbandingan Penegakan Demokrasi Di Indonesia Pasca-Rezim Suharto Dan Filipina Pasca-Rezim Marcos," Insignia: Journal of International Relations 6, no. 1 (2019), https://doi.org/10.20884/1.ins.2019.6.1.1246.

The rule of law can also be interpreted as glorifying legal justice, the purpose of which is to provide a positive response and protect society. This can be seen in Jean Jacques Rousseau's thought that there is a transfer of rights to leaders. This surrender is not a form of natural coercion but a surrender due to society's inability to fulfill what is desired. The concept of surrender means the willingness to achieve group goals. At the beginning of his life, man is good, and his life is happy. But in its development, when the number of people increased, and humans with their minds began to demand personal rights, conflicts of interest, violence and even war began. Therefore, humans must make agreements so that the original state is maintained. The agreement (social contract) was born from the common will of citizens to restore and maintain that original state.Romanus Piter and . Valentinus, "Konsep Kebebasan Menurut Jean-Jacques Rousseau Dan Relevansinya Bagi Demokrasi Indonesia Saat Ini (Sebuah Kajian Filosofis - Kritis)," Forum 50, no. 1 (2021), https://doi.org/10.35312/forum.v50i1.364. Such a context indirectly raises the very large role of the state but the state does not necessarily show itself. The state vaguely makes its existence to direct society according to its will. The principles of state policy are not always normalized in writing but verbally.

For example, Niccolo Machiavelli rejected meekness in the state and directed victory by violence. His discourse at the ontological level indicates that the state acts specifically with thoughts. The boundaries of thinking cannot be limited by thing A; it must be solved by thing A because thing A can be solved by thing B or by something that is not thought, according to Niccolo Machiavelli, at the level of concentrating, stated that in this way, no single law can limit. Contingency needs are things that cannot be anticipated by any legal theory, but contingency is needed because there is no way to solve a problem in the fastest way. Stefano Pippa, "Void for a Subject: Althusser's Machiavelli and the Concept of 'Political Interpellation,'" Rethinking Marxism 31, no. 3 (2019), https://doi.org/10.1080/08935696.2019.1626145.

Oral principles of state policy are retroactive in conveying their ideas. Oral form will obscure the essence of the main points of state policy, which are actually the characteristics of written norms. This is found in the thoughts of Socrates, who only spoke because of his inability to put ideas into action. The inability to put ideas into action is not due to stupidity because there is opportunity for anyone to be what they are. Socrates said that the idea of a state is a wise one. From the perspective of state science, Socrates' thoughts are often dualistic due to their inability or simply being good at rhetoric. The country that Socrates wanted was led by a philosopher figure because he presumed himself to be the leader. In other words, it wouldn't really be wisdom if it didn't put aside mistakes that have been made. In ordinary state life,

Socrates stated that incompetence is the result that anyone will see from oneself. Socrates taught that thinking is a good thing, but if it is related to the existence of the current state, how is the accountability of one's ideas?

In 2022, the main points of state policy will be the main thing in giving meaning to the separation of powers. Separation of powers will be difficult to implement through changes to the 1945 Constitution of the Republic of Indonesia due to political dynamics. Bambang Soesatyo said that the MPR pursued the main points of state policy as constitutional conventions. Conventions exist as legal references that grow in the practice of administering the state to complement, improve, and enliven statutory legal principles or constitutional customary law.[22] Referring to Article 28J of the 1945 Constitution of the Republic of Indonesia, it is stated that in exercising their rights and freedoms, everyone is obliged to comply with the restrictions determined by law with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to fulfill fair demands in accordance with moral considerations, religious values, security, and public order in a democratic society. Freedom in the constitution is freedom that not only depends on one's own needs but also pays attention to anyone. The state, in such a context, also becomes orderly because of the principles of state policy, which have similar names. If the main points of the country's direction are also drawn towards Socrates, then they are not part of democracy.[23]

Democracy at the beginning was a decline because of the rejection of arbitrary forms of government from groups that prioritized wealth. Then, the current and early democracies have a very big difference. Democracy in modern countries is according to the wishes of the people because of ignorance of its meaning. As an example of the understanding of state institutions, which means access to democracy even though it refers to countries based on the ideology of communism, it is also found in state institutions. In China, there is high fragmentation both horizontally and vertically. Examining the many ways in which political legal institutions are shaped and constrained by one another and by other institutions (eg parties) requires spatial and interactional analysis of their interrelationships. China's political-legal system consists of five main institutions: the police, the judiciary, the courts, the judicial bureau, and the party's politico-legal committee.[24] This means that law and politics are not identical twins. Terms such as "rule of law" and "policing" or "law and order" regimes describe two contrasting images of the relationship between law and politics: one with a strong, independent judiciary and an all-powerful coercive state apparatus. However, these two ideal-typical images are often mixed up in empirical cases, including the case of China. Since the People's Republic of China (PRC) was founded in 1949, politics and law have been

closely bound together under the administrative umbrella of the "political-legal system." Thus, what is meant as a state institution also appears in China, and it invalidates the assumption that state institutions are the outer point of democracy. The main points of state policy should not become absolute restrictions or references because both will actually originate from it.

Another legal implication is returning the state to a form of government that is not in accordance with the power of power after the amendment of the 1945 Constitution to the 1945 Constitution of the Republic of Indonesia. At present, it tends to strengthen the legislature, which should be contrary to the principles of state policy because it is synonymous with executive power.

The Actual Separation of Powers in Indonesia from the Perspective of John Locke

John Locke, a British political figure, said that the separation of powers prevents God's sovereignty in a country. It is impossible to know the sincerity of the state in acting when God's sovereignty is a choice. An action can be based on the desire of the leader, which is actually not God's will, but he acts on behalf of God in acting. God, who is envisioned as an entity full of perfection, will obscure its meaning so that people only see the form of God rather than a leader. In John Locke's thought, God made humans legal subjects who could waive rights and not relinquish obligations. Relinquishing rights means having confidence in the state for itself while not being able to relinquish obligations, namely the existence of a strong doctrine that one is in a country because of the goodness of that country. There is a relinquishment of rights that are limited by natural law because of their eternal nature, and when they are not obeyed, natural law has its own power.

Separation of powers will be the last part of the state when the leader is unable to solve his state problems. Separation of powers is seen as a solution to the problem and not a solution. Separation of powers aimed at prevention towards God's sovereignty is another way, namely by the principles of state policy.[25] Limits written in the principles of state policies are adjusted to the factual conditions of the country. The legal objective achieved is legal justice, which has a meaning refraction. Legal justice is based on what is desired and purely according to God's teachings in the context of the Scriptures. This means that there must be a similar interpretation of the Scriptures so that legal justice can really be achieved. Religious diversity within a country cannot solve the problem unless there are restrictions that separate religion from the state. The principles of state policy, although issued by the state, involve community participation. When there is a contribution from the community, there will be two mindsets

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that are unified so that the separation of powers also has a strong relationship with the community and leaders. Separation of powers must be given meaning not to solve problems but to reconstruct its true meaning. Separation of powers will provide justice because, for now, no country implements a pure separation of powers. Separation of powers is only a formality, but within it, there are still characteristics of the state that can be sourced from ideology or the will of the people. Therefore, in the statutory context, the national legal politic gives room or authority for the institutions forming the law to change the regulations.[26] The will of the people who are part of public participation in a democratic government order requires that any process carried out by the state is transparent. The principle of a democratic state that is interpreted in society is always synonymous with originating from the people, by the people, and for the people. However, when there is a change in the form of government, the change will become difficult due to banalization. The presence of the principles of state direction will provide direction according to the needs of the state. For this reason, in every implementation of government and regional development, the community is expected to be involved and participate in order to fulfill the principle of government, which is from the people by the people and for the people.

Berdi Gencer said that John Locke's separation of powers was the transfer of power from someone acting in the name of God to legislative power.[27]

This opinion will make the separation of powers just a formality. According to the researcher, when there is a transfer, individual power will be divided into three parts: executive power, legislative power, and judicial power. The division will also damage the ontology of the separation of powers because when there is a division of powers, the mix of powers within it will become strong. With the hope that there will be mutual balance and supervision, the division of portions is different. This will equate to the difficulty of determining the leader's relationship with God when leading a country.

Separation, according to John Locke, is the principal policy of the state, but the perpetrators are not the state but are divided into legislative power, executive power and federative power. There is a rejection of John Locke's version of the separation of powers because it eliminates the characteristics of common law, the main of which is that the judge's decision is a stare decision. Another identification is that executive power is an absolute right, namely a prerogative where state conflicts are reached, such as wars with peace, league feuds with alliances, individuals and communities so that this executive is referred to as federative power. Law, in this view, is not a set of rules or laws but a framework of practical reasoning that is practiced, and this framework is a form of social order. Rules and norms may be formulated, but

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no such formulation is conclusively authoritative; each is susceptible to challenge and revision during reasoned argument and dispute in the context of public forensics.[28]

This natural federative situation will make the state alienate all rights from society. Each individual will be part of it with the hope that his life will be protected by the state. Federative is a state power that is external in nature because it only designs or predicts what will happen to the country. Tight supervision and control from the state will make it easier to achieve what is desired in the federation.[29]

Separation of powers based on John Locke's thinking must be combined with Indonesia's civil law characteristics. Doing combinations, namely setting slowly because sudden changes in a country will have a bad impact. Gradually, the weaknesses and strengths of common law will be introduced so that input from the community will be obtained. One of the characteristics of common law is that a stare decision will be replaced by a judge with a statutory mouthpiece, even though there is no prohibition for judges to describe their thoughts in a decision. This means that the principles of state policy will be the cause of a balance in the application of civil law, which originates from the ideas of John Locke. Such an assumption arises because the interpretation of civil law is a text that cannot escape its context and contextualization.

Since the beginning of the modern discourse on hermeneutics, it has been inseparable from the interpretation and explanation of legal texts and the relation of hermeneutics as the science of norms. From the perspective of law as a normative science, interpretation and explanation, which are the two sides of hermeneutics, play an important role, both in drafting new laws and in processing legal materials into legal decisions to deal with factual legal cases. Therefore, hermeneutics in normative law means the interpretation of the articles and verses of a law that are enacted and related to the grammatical language of the text, its history and its use in practical life in accordance with the developments of the era. This is also according to the philosophy of science, which can also be used as a translation of a branch of traditional philosophy, namely epistemology, which is one of the components of the philosophy of science, because it discusses the issue of sources of knowledge and truth and logic. The object of research and/or subject matter in the philosophy of science, in general, is a philosophical school that underlies science and is rational, so the discussion must include the three main components of the philosophy of science: ontology, epistemology and axiology.[30]

From the explanation above, if John Locke's separation of powers is implemented in Indonesia, a conflict of interest will become the main thing among the three powers because of the uncertainty over

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who has the right to exercise it. The legislature can become federative in favor of the opposite behavior. The concept of mixing will eliminate the teachings of the actual state system because it will eliminate the origin of the state, including the abolition of God's sovereignty. God's sovereignty for the modern state concept is a symbol, but this will damage the original meaning of God's sovereignty. God's sovereignty must be an integral part of the state. God's Sovereignty will fill the main points of the state policy because the contents do not reject God's entity. Philosophically, abolition will not necessarily damage the Indonesian nation at the ideological level, but when ideology cannot be maintained, the nation will change its form of government.

The Actual Separation of Powers in Indonesia from a Montesquieu Perspective

Charles Louis de Secondat, Baron de La Brede et de Montesquieu, was a French philosopher born on January 18, 1689, famous for his separation of powers. For some legal students, the separation of powers only originates from Montesquieu's teachings because of their attachment to civil law, which is adhered to by Indonesia. In his teachings, which originated in France with the civil law wing, the separation of powers strengthens the judicial position.

The strengthening of judicial power to replace federative power shows that a country does not only need a constitution but a judge-oriented power. The meaning of judicial power shows that it strongly influences overcoming legal problems. The rule of law tends to be an unruly horse. This opinion of Ivor Jennings further says that law and order are the characteristics of a civilized country; the political expression of each ruler shows what he wants so that the solution is wisdom.[31]

Ivor Jennings' words, which are actually absolute from common law, want to cast civil law into doubt. This means that only with jurisprudence can the law work properly.

But looking far back, Montesquieu described separation of powers as political freedom because it liberated society from arbitrary power. Communities that are not involved in the three domains of power will not be harmed, but the state will fulfill their rights, especially their constitutional rights. These treatments will be good again because in Montesquiei's separation of powers, there is a written limit, namely a constitution that is not based on a king or queen but a just rule.

In the state government, there are three powers where the first, legislative power, acts as the making of laws and regulations (applicability, amendment and repeal).[32] Compared with Article 5, paragraph

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(1) of the 1945 Constitution of the Republic of Indonesia, a conflict arises because the president, as the executive power, participates in the realm of statutory regulations. Such mistakes will reduce legislature power, but in Indonesia, it reflects the principle of checks and balances. This means that the separation of powers must refer to the actual needs of the state.

Another article, namely Article 20 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, actually conforms to the teachings of pure separation of powers. The power to form the law referred to here, when linked to Article 5, paragraph (1) of the 1945 Constitution of the Republic of Indonesia, will cause legal problems due to conflicting articles. Another example in Article 20, paragraph (4) of the 1945 Constitution of the Republic of Indonesia is the participation of the executive power in giving approval. Such a pattern will give a different meaning to the separation of powers in Indonesia from the perspective of legislative power.

This legislative power will provide confirmation that he cannot become the highest authority in the state but still has a position equal to executive power and judicial power. The influence of the principles of state policy will limit the absolute power of the legislature.

The second power is the executive, which comes from international influence and national law. Researchers divide international influence into the form of international law or international customs, the main goal of which is self-determination. Referring to the 1966 Covenant on Civil and Political Rights and the 1966 Covenant on Economic, Social and Cultural Rights agreed that a nation determines its destiny through internal self-determination.[33]

This goal is carried out so that the nation gains recognition in political, economic, social and cultural status as an element of a sovereign state. Executive power, in this case, is the president's ability to submit to and reject international law because of his status as the highest in the presidential system of government. As for international customs, not all of them are included in Indonesia's legal system. International custom refers to the sinderesis norm which actually also exists in Indonesia. The president has become a special legal subject in the executive power along with the vice president. The connection between the main points of state policy and executive power is the president's ability to carry out a more valid separation of powers because in practice, God's entity still exists in the separation of powers.

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The third power is the judiciary, where the power comes from the judge. Judges have an important role in a country because of special reasons for imposing sanctions, which affect the legal system's implementation. Starting from the common law, there is a dispute between two people, corporations, or between the state and the individual system. This legal system developed not because of the Roman legal system's derivation but because of common law judges who only focused on the subject being tried. In the illustration of property rights disputes, the essence of property rights is an abstract idea, but who is entitled to property rights is the judge's task to resolve it. Legal facts are the main task of a judge in common law, and there is justification from the jury. The judge must be placed in a situation that has never happened before so that his independence is seen. Judges must be free from the power of the people and the legislature. This means that when a judge makes an error in making a decision, the corrective treatment is not carried out by the power above him but by the judge himself. When a more powerful party corrects a decision, the party in power at the time of making a mistake is not supervised. Then, God's position in Montesquieu's perspective is that God has a relationship with the universe as creator and maintainer; the laws He creates are the laws He keeps; He acts according to those rules because He knows them; He knows them because He made them; He made them because they have a connection with his wisdom and strength. This dialectic makes civil law only a forced modification of the common law, namely changing federative power to judicial power.

Wolf's thinking may help solve problems with the main points of state policy. He emphasized that hermeneutics must have two sides, understanding (or verstehenden) and explanation (or erklarenden), then divided the hermeneutic method into three levels of hermeneutics, namely interpretatio grammatica, historica, and philosophica. The purpose of the grammatical step relates to all the things in which understanding language can lead to the purpose of interpretation. The purpose of the historical step is to pay attention not only to the facts of the author's life in order to bring factual knowledge from the author's life. Historical facts are important to know history's physical and geographical characteristics as much as possible. As for the purpose of the philosophical step of interpretation, a logical or contra test is used for the other two levels. According to Dilthey, explanation (or erklaren) is used to describe or explain a phenomenon, according to the law of causation. This understanding uses an open hermeneutic circle influenced by history and social humanity to change meaning according to time and the relationships involved.[34]

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As intelligent beings, humans can have laws that they have made, but they also have some that they haven't made yet. Humans before them, it is possible; therefore, they have possible relations and, consequently, possible laws. Before laws were made, there were possible relations of justice. To say that nothing is just or unjust but what is prescribed or prohibited by certain laws is to say that until a circle has been drawn, things are not equal.[31] This sentence will provide an understanding that the separation of powers does not require the main principles of the state because humans, as legal subjects, are aware of their position. The separation of powers is the realm of God which is manifested in the form of sovereignty. The meaning does not require meaning that it can work, but when principles of state policy enter into separation of powers, the implementation will be in accordance with rule of law.

When referring to the 1945 Constitution of the Republic of Indonesia, the separation of powers results in a mixture of executive, legislative, and judicial power. For example, the existence of the authority of the president who has the right to submit bills to the House of Representatives (DPR). If the constitution does not provide firmness, it will not give rise to a good hierarchy where laws and regulations must be appropriate from the highest to the lowest level. Besides that, you cannot change the 1945 Constitution of the Republic of Indonesia with the argument that there is a mix of powers to lead to a pure separation of powers because this will experience a setback.

The principles of state policy are also related to the rule of law, which means obedience to existing regulations, which are opposed to arbitrary government actions. The rule of law varies depending on the leader of a country, which affects the level of compliance. Society will comply when the rule of law can become an acknowledgment of the existence of a legitimacy gap between written law and socially understood law.[35] Such an idea will prevent the rule of law from becoming a derivative of God's sovereignty because of the intervention of the leader of the rule of law. This will provide a different view for the community because it creates dualism regarding what must be obeyed. Is society obedient to the norms of law or to God.

As it is seen that world is formed by the movement of matter, and without intelligence there is always movement. Its movement pattern must have unchanging laws. The separation of powers will not stop being stronger or weaker, but will be helped by the main points of state policy.

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4. CONCLUSION

The principles of state policy must be understood in the context of the separation of powers whether it is used because this will determine the application of power so that separation continues on the principle of sharing and checking. Separation of powers is not synonymous with democracy; it leads to the origin of the state so that the formation of its power will continue the state's existence. In Indonesia, when you want to review the main points of state policy, there must be neutrality in power where restrictions arise from the country's main principles, not acting as a separation of powers. There is no need to emphasize the separation of powers because pure separation of powers is no longer the teleology of the Indonesian state. Apart from that, the separation of powers is followed by the distribution of powers according to the state's and society's wishes. This means that restrictions are needed, namely the existence of the principles of state policy, which are still sourced from God's sovereignty even though the contents are philosophically will the original state.

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ABOUT THIS ARTICLE

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LA SEPARACIÓN DE PODERES Y LOS PRINCIPIOS DE LA POLÍTICA DE ESTADO

RESUMEN

Este artículo examina los puntos principales de la política de estado, conocida popularmente como los Lineamientos de la Política de Estado (LPE), aunque en realidad sus significados son muy diferentes. En referencia al Decreto de la Asamblea Consultiva Popular de la República de Indonesia número IV/MPR/2014 sobre la Recomendación de la Asamblea Consultiva Popular de la República de Indonesia para el período 2009-2014, en su punto 10 se propone reformular el sistema nacional de planificación del desarrollo tomando como modelo los LPE. Si bien fueron rechazados, se convirtieron en una referencia. Antes de la reforma, los LPE en la administración estatal convertían a la Asamblea Consultiva Popular (ACP) en la máxima institución estatal. Tras la reforma, tienden a seguir la teoría de la separación de poderes como el centro supremo para la vida nacional. Este artículo emplea el método de interpretación hermenéutica de Hans-Georg Gadamer. Los principios de la política de Estado deben entenderse en el contexto de la separación de poderes, ya que esta determina su aplicación. Esta separación se basa en el principio de reparto y control. La separación de poderes no es sinónimo de democracia, pero es el origen del Estado, permitiendo la formación del poder para la continuidad de su existencia.

Palabras clave: GBHN, interpretación del derecho, principios de la política de Estado, separación de poderes, política de Estado.

权力分立与国家政策原则

摘要

本文探讨国家政策的要点，即更通俗的说法—国家政策大纲（GBHN），但实际上，两者含义截然不同。参考印度尼西亚共和国人民协商会议第IV/MPR/2014号法令《关于印度尼西亚共和国人民协商会议2009-2014年任期建议》，其中第10点明确提出以GBHN为范本，重新制定国家发展规划体系。GBHN虽然被否决，但却成为一种参考。改革前，国家行政管理中的GBHN将人民协商会议（MPR）确立为最高国家机构。改革后，GBHN更倾向于遵循权力分立理论，将其作为开展国家生活的最高中心。本文运用汉斯-格奥尔格· 伽达默尔的诠释学解释方法。国家政策的原则必须在权力分立的背景下理解，因为这决定了权力的运用。这种分立遵循分享与制约的原则。权力分立并非民主的同义词，但它是国家的起源，它使权力的形成得以延续，从而延续国家的存在。

关键词：GBHN、法律解释、国家政策原则、权力分立、国家政策。

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