

REVIEW ARTICLE

POWER AND AUTHORITY IN THE STATE ADMINISTRATION SYSTEM: COMPARING THE NETHERLANDS AND INDONESIA

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CITED AS

Suryajiyoso, S. (2021). Power and Authority in the State Administration System: Comparing the Netherlands and Indonesia. *Journal of Law and Legal Reform*, 2(3), 411-420. <https://doi.org/10.15294/jllr.v2i2.46615>

Submitted: January 21, 2021

Revised: April 7, 2021

Accepted: May 22, 2021

ABSTRACT

The state is an organization that includes territory, a number of people, and has sovereign power. Every country has a political system, namely a pattern of mechanisms or the exercise of power. While power is the right and authority and responsibility to manage certain tasks. The management of a country is what is called the constitutional system. The constitutional system is studied in political science. In Indonesia, the regulation of the constitutional system is regulated in the 1945 Constitution, Laws or Government Regulations in Lieu of Laws, Government Regulations, Presidential Regulations, and Regional Regulations. The government of the Netherlands adheres to a constitutional monarchy system, where the government is established under a constitutional system that recognizes the king (or emperor) as the head of state. Modern constitutional monarchies usually use the concept of trias politica or triad politics. This means that the king is only the symbolic chairman of the executive branch. If a king has full governmental power, he is called absolute monarchy. Because the Dutch state adheres to a constitutional monarchy government system, this governmental process has an impact, namely that sometimes it comes from the king himself

because he is afraid of being coup d'etat or sometimes the constitutional process takes effect because of the people's revolution against the king.

Keywords: *State Administration; State Regulation; Constitution*

INTRODUCTION

The state is an organization that includes territory, a number of people, and has sovereign power. Every country has a political system, namely a pattern of mechanisms or the exercise of power (Lubis, 1992). While power is the right and authority and responsibility to manage certain tasks. The management of a country is what is called the constitutional system. The constitutional system is studied in political science. According to Miriam Budiardjo (1972), politics is a variety of activities in a country which involve the process of determining the goals of that country and implementing these goals. For this reason, in a country there are general policies (public policies) concerning the arrangement and distribution or allocation of power and existing resources (Syafie & Azikin, 2007).

In Indonesia, the regulation of the constitutional system is regulated in the 1945 Constitution, Laws or Government Regulations in Lieu of Laws, Government Regulations, Presidential Regulations, and Regional Regulations. Meanwhile, the powers of power lie at the national level down to the lowest community groups which include the MPR, DPR, President and Vice President, Ministers, MA, MK, BPK, DPA, Governors, Regents/Mayors, to the level of village heads (Syafie & Azikin, 2007, p. 45).

These powerful institutions function as representatives of the votes and hands of the people, because Indonesia adheres to a democratic system. In a democratic system, the owner of the highest power in the state is the people. Power is even idealized to be held together with the people. On this basis, we consider that the constitutional system is very important to understand, so we will compare the state administration system of the Netherlands with the Unitary State of the Republic of Indonesia (Prasetyo, 2021; Amiruddin, 2017; Zulfairi, Jalil, & Gani, 2019).

Therefore, this paper is intended to analyze two main points, *first* is concerning the form of the Dutch state administration (Constitution, Superstructure and Government System), and *second* will analyze the Dutch State Administration Comparison with the Indonesia's State Administration.

THE STATE ADMINISTRATION OF THE NETHERLANDS AND REPUBLIC OF INDONESIA

A. The Netherlands Constitution

The constitution was unknown in the Netherlands in the Middle Ages. The ruler has full power and does not need to conform to the law. Some time later, certain people obtained the rights granted by the authorities, but it was not until the 18th century that everyone without exception had rights and that every state institution was obliged to carry out its duties in accordance with applicable law. This was established in the Constitution in the Netherlands in 1798. The "*Constitution of the Kingdom of the Netherlands*" which is still in effect today was drafted in 1815.

The constitution is not as easy to change as other regulations. However, significant changes to the Constitution have occurred in the Netherlands. In 1848 King William II agreed to amend the Constitution which stated that the power of the monarchy was reduced and the power of the people was greater. This change was so dramatic that the "Constitution of 1848", drafted by constitutional jurist Thorbecke, is considered to be the beginning of the birth of democracy in the Netherlands. However, it was not until 1917 that the right to vote in elections was expanded to include all men, while women were granted passive rights for the first time. In 1922, the active right to vote for women was finally established in the Constitution, even though it had been proposed since 1919 (Syafie & Azikin, 2007).

The constitution that applies in the Netherlands is the 1848 Constitution, drafted by constitutional jurist Thorbecke, the Dutch constitution focuses on the power of the people. Changes to the constitution of the Dutch kingdom occurred several times, namely in 1814, 1848, and 1972. The issue of changing the constitution of the kingdom is regulated in Chapter (*Hoofdstak*) XIII and consists of 6 articles, namely article 193 (210 old) to article 198 (215 old). The method taken in order to change this is by doubling the number of members of the parliamentary general statent. The decision regarding the amendment or addition is valid if a number of votes equal to two-thirds of those who are present are approved, however in the *Dutch Grondwet* (constitution) in 1815 the above procedure is made heavier, namely fulfilling the quorum which is at least half of the members of the session. the general statent is added by one (Law 1814 article 144). Thus, amendments to the constitution are valid if attended by at least half the number of members of the general statent who have been doubled plus one.

B. Suprastructuter of the Netherlands

1. Executive Power

According to the Dutch Constitution, executive power rests with the King/Queen. Because the King/Queen is inviolable (*onschendbaar*), the power of the Government is placed in the hands of the cabinet headed by the Prime Minister and his ministers who are responsible to parliament. Ministers resign the day before elections which are held every four years. The King / Queen only acts on the advice of *Raad van Staten* (Council of State), can also seek advice from the speaker of the parliament, the chairperson of the faction in parliament, the chairperson of the party, and non-political circles. The Prime Minister is appointed by the King/Queen and the Ministers are appointed by the King/Queen on the recommendation of the Prime Minister.

The Provincial Government consists of three organs, namely: Provinciale Staten (Provincial Representative Council). Members of the Provinciale Staten are elected directly by the people of the province for a period of four years. The provinciale staten has the authority to make regional regulations and has oversight power over lower government units whose implementation is left to the Gedeputeerde Staten and the commissions. Provinciale staten headed by a governor. This governor is not concurrently a member.

Gedeputeerde Staten (Provinciale Board of Directors) Gedeputeerde Staten members are elected by Provinciale Staten. The Gedenputeerde Staten is the governing and daily executive body of the provincial government. Gedeputeerde Staten has the obligation to implement the decisions of Gedeputeerde Staten and supervise Gemeente (Municipalities). Thus the budget/finance of Gemeente and others must be approved by Gedeputeerde Staten.

Commissaris der Koning/Koningin (Governor) Commissaris der Koning/Koningin was appointed by the King/Queen and became Chairman of the Gedeputeerde Staten. The Gemeente (Municipal City) government has 3 organs: Gemeenteraad (Municipal Council of Associates), elected by residents who live in the city, both natives and residents of foreign nationals. Gemeenteraad has the authority to make local regulations.

College van Burgemeester en Wethouders (mayors and administrators of municipalities), is a collegial collaboration between the mayor and the city council. This body is an agency that organizes day-to-day governance. This body has the authority to, among other things: implement board decisions, decide disputes arising from implementing board decisions, announce and invite council decisions.

2. Legislative Power

In the Dutch legislative power, the King/Queen appoints a representative to exercise the legislative power. The representative appointed is a member of the

Tweede Kamer (Lower House). They have the right of initiative to submit a bill. Their function is almost the same as the legislative function in Indonesia.

A Bill, after Tweede Kamer's approval, must be submitted to the Eerste Kamer (Upper House) for approval. Because he does not have the right to amend a bill, Eerste Kamer can only approve or reject it. Bills can also be submitted by the Minister. Bills that have been approved come into effect and are promulgated in a state sheet (*staatsblad*).

3. Judicial Power

Judicial power has a position that is independent of the other two powers. The King/Queen only has the authority to appoint members of the judiciary. In the Netherlands there are four levels of the judiciary, namely: Canton, Rechtbank, Gerechtshof, Hoge Raad. The members of the Hoge Raad are appointed by the King/Queen of the candidates submitted by Tweede Kamer.

C. Form and System of the Netherlands Government

1. Form of The Netherlands Government

The Netherlands is a unitary state. A unitary state is a sovereign state that is organized as a single unit, in which the central government is the highest and the subnational units only exercise the powers that are chosen by the central government to delegate. The unitary form of government is adopted by many countries in the world.

The Queen is the Head of State which symbolizes Dutch unity. The Queen is bound by the constitution and functions more ceremonially, but also has several powers which are a continuation of the tradition of the House of Orange.

2. System of The Netherlands Government

The Dutch Government System is a constitutional monarchy. A constitutional monarchy is a type of monarchy established under a constitutional system that recognizes the king (or emperor) as the head of state. Modern constitutional monarchies usually use the concept of trias politica, or triad politics. This means that the king is only the symbolic chairman of the executive branch.

The Netherlands is a constitutional monarchy. The Queen is the Head of State which symbolizes Dutch unity. The Queen is bound by the constitution and functions more ceremonially, but also has several powers which are a continuation of the tradition of the House of Orange. Queen in this case appoints the formatuur which will form the Council of Ministers after the general election.

The state government basically consists of three main institutions, namely; Queen, Council of Ministers, and Parliament (States General). The council of ministers plans and implements government policies. The Queen, together with the Council of Ministers, is known as the Crown. The Government of the Kingdom

of the Netherlands is parliamentary. The parliamentary system of government is a system of government in which the parliament has an important role in government. In this case the parliament has the authority to appoint the prime minister. Parliaments can also overthrow the government by issuing a motion of no confidence.

D. State Administration of Republic of Indonesia

1. Contitution System of Republic of Indonesia

The Indonesian constitution clearly states that the State of Indonesia is a State of Law (*Rechtstaats*). According to Friedrich Julius Stahl's thinking, one of the elements possessed by a rule of law is the fulfillment of basic human rights (basic rights/fundamental rights). Indonesia which incidentally is a country of law (Tutik, 2008). The rule of law means that every citizen must obey and obey the law as a means of "*problem solving*" in society (Rahardjo, 1991). The law in a country of law must be in command if this country is to live in an orderly manner and is guaranteed the protection of the rights of every citizen. In order to keep abreast of developments and fulfillment of basic human rights, a constitution must have a dynamic aspect and be able to capture the phenomenon of historical change, so that it can make it a living constitution.

The constitution as the main basic law and a representative result of the will of all the people, must be carried out seriously in every aspect of the life of the nation and state. Therefore, the principle that arises is that every action, deed, and or rule of all authorities delegated by the constitution must not conflict with basic rights and the constitution itself. In other words, the constitution must take precedence, and the intent or will of the people must take precedence over its representatives.

The Constitutional Court which is now institutionalized in one of the structures of legal institutions in Indonesia originated from the fact of the 1998 national reform, and then this has opened up opportunities for fundamental changes to the 1945 Constitution of the Republic of Indonesia (we will later call the 1945 Indonesian Constitution) sanctified by the New Order government not to be revised (Safa'at, 2010; Toonen, 1990).

After the reformation era, the Indonesian constitution has undergone changes in a series of four stages, namely in 1999, 2000, 2001, and 2002 (UUD RI 1945). One of the changes to the 1945 Indonesian Constitution is that new principles have been adopted in the state administration system, including the principle of separation of powers and "*checks and balances*" as a substitute for the parliamentary supremacy system.

In Article 24C as a result of the third amendment to the 1945 Constitution of the Republic of Indonesia, the idea of establishing a Constitutional Court is included in our country's constitution as a new constitutional organ which is equal in position to other constitutional organs. The function of the Constitutional

Court has been institutionalized based on Law Number 24 of 2003 concerning the Constitutional Court ([Law No. 24, 2003](#)), since August 13, 2003. Amendments made by the People's Consultative Assembly (MPR) in 2001 as formulated in the provisions of article 24 paragraph (21) article 24c and article 7b of the 1945 Constitution resulting from the third amendment which was passed on November 9, 2001.

This is validated by the provision of Article 24C paragraph (6) of the 1945 Indonesian Constitution which stipulates: "*The appointment and dismissal of Constitutional Justices, procedural law and other provisions concerning the Constitutional Court shall be regulated by law.*" Therefore, before the Constitutional Court was properly established, the Law on the Constitutional Court was promulgated and promulgated on August 13, 2003 in the State Gazette of the Republic of Indonesia Year 2003 Number 98 and Supplement to the State Gazette of the Republic of Indonesia Number 4316 ([Safa'at, 2010](#)).

The establishment of the Constitutional Court has been carried out by the process of recruiting prospective judges according to the procedures stipulated in Article 18 paragraph (1) of Law Number 24 of 2003, which reads "*Constitutional justices are submitted for each 3 (three) persons by the Supreme Court, 3 (three) persons by the DPR, and 3 (three) persons by the President, to be stipulated by a Presidential Decree*" ([Mahfud, 2010](#)).

The Constitutional Court was formally established with the existence of Law Number 24 of 2003 and after the inauguration and swearing of the oath on August 16, 2003, the transitional authority of the Supreme Court which was assigned the duties of article III of the Transitional Rules of the 1945 Indonesian Constitution, to carry out all the powers of the Constitutional Court has ended.

For this reason, the authority of the constitutional court will be discussed as a tool to carry out its role as guardian of the constitution as regulated in the 1945 Indonesian Constitution by observing its existence in the legal system in Indonesia.

2. System of Republic of Indonesia Government

Indonesia has experienced several changes in the government system. Indonesia has adopted a parliamentary cabinet system in 1945-1949. Then in the period 1949-1950, Indonesia adopted a quasi parliamentary system of government. In 1950-1959, Indonesia still adhered to a parliamentary system of government with a liberal democracy that was still quasi-liberal in nature. Meanwhile, in 1959-1966, Indonesia adopted a government system in a guided democracy.

Changes in the government system did not stop there. Because there were differences in the implementation of the government system according to the 1945 Constitution before the 1945 Constitution was amended and after the 1945 Constitution was amended in 1999-2002. The following are the differences in the

government system before the amendment occurred and after the amendment occurred in the 1945 Constitution.

The MPR received the highest power from the people. The president as the head of government administration, the DPR acts as a legislator, the BPK acts as a financial auditing institution, the DPA functions as a provider of advice/considerations to the president/government, the Supreme Court acts as a court institution and examiners rules issued by the government. Legislative power is more dominant. The president cannot dissolve the DPR, the people directly elect the president and vice president, the MPR does not play the role of the highest institution anymore. MPR members consist of all DPR members plus DPD members who are directly elected by the people. (Mahfud, 2009).

In the presidential system of government adopted in Indonesia, the influence of the people on political policies is less of a concern (Mahfud, 2019, p. 78). In addition, the people's supervision of the government is also less influential because basically there is a tendency for too strong the authority and concentration of power in the hands of the president. In addition, there are too frequent changes of officials in the cabinet because the president has the prerogative to do so.

COMPARISON OF STATE ADMINISTRATION SYSTEM BETWEEN THE NETHERLANDS WITH THE REPUBLIC OF INDONESIA

Broadly speaking, the comparison between the Dutch state administration and the Republic of Indonesia is as follows:

Differences	Indonesia	The Netherlands
Constitution	1945 Contitution	1848 Contitution
Suprastructure	Executive: President and Vice President Legislative: DPR, DPD	Executive: Queen Legislative: Tweede Kamer (Majelis Rendah) Eerste Kamer (Majelis Tinggi)
	Judicial: MA (Supreme Court), MK (Constitutional Court)	Judicial: Canton Rechtbank Gerechtschhof Hoge Raad

	Examinative: BPK, KPK State Aid Agencies: Komisi Yudisial	
Government System	Presidential (Multiparty Democracy)	Parliamentary Constitutional Monarchy
Form of State	Republic	Monarchy
Head of Government	President	Prime Minister
Head of State	President	King / Queen

CONCLUSION

The government of the Netherlands adheres to a constitutional monarchy system, where the government is established under a constitutional system that recognizes the king (or emperor) as the head of state. Modern constitutional monarchies usually use the concept of trias politica or triad politics. This means that the king is only the symbolic chairman of the executive branch. If a king has full governmental power, he is called absolute monarchy or absolute monarchy. Because the Dutch state adheres to a constitutional monarchy government system, this governmental process has an impact, namely that sometimes it comes from the king himself because he is afraid of being coup d'etat or sometimes the constitutional process takes effect because of the people's revolution against the king. Meanwhile, the Indonesian Constitution clearly states that the State of Indonesia is a State of Law (*Rechtstaats*). Indonesia which incidentally is a country of law. The rule of law means that every citizen must obey and obey the law as a means of "problem solving" in society. The law in a country of law must be in command if this country is to live in an orderly manner and is guaranteed the protection of the rights of every citizen. In the presidential system of government adopted in Indonesia, the influence of the people on political policies is less of a concern. In addition, the people's oversight of the government is also less influential because basically there is a tendency for too strong authority and the concentration of power in the hands of the president.

REFERENCES

- Amiruddin, M. (2017). Perbandingan Pelaksanaan Euthanasia di Negara Yang Menganut Sistem Hukum Eropa Kontinental Dan Sistem Hukum Anglo Saxon. *Jurisprudentie: Jurusan Ilmu Hukum Fakultas Syariah dan Hukum*, 4(1), 83-102.
- Effendi, A., Poernomo, F., & Ranuh, I. S. (2016). *Teori Hukum*. Jakarta: Sinar Grafika.
- Lubis, M. S. (1992). *Hukum Tata Negara*. Bandung: Mandar Maju.
- Mahfud, M. D. (2009). *Politik Hukum di Indonesia*. Jakarta: Rajawali Pers.
- Mahfud, M. D. (2010). *Membangun Politik Hukum Menegakkan Konstitusi*. Jakarta: Rajawalia Pers.
- Prasetyo, A. (2021). Studi Perbandingan Kewenangan Pengawasan Lembaga Peradilan Antara Komisi Yudisial Republik Indonesia Dengan Komisi Yudisial Belanda. *Thesis*. Medan: Universitas Muhammadiyah Sumatera Utara.
- Rahardjo, S. (1991). *Ilmu Hukum*. Bandung: Citra Aditya Bakti.
- Rahardjo, S. (2003). *Sisi Lain Dari Hukum di Indonesia*. Jakarta: Kompas.
- Republic of Indonesia. (1945). *Undang-undang Dasar Tahun 1945 Amandemen IV*
- Safa'at, M. A. (2010). *Parlemen Bikameral: Studi Perbandingan di Amerika Serikat, Perancis, Belanda, Inggris, Austria, dan Indonesia*. Malang: Universitas Brawijaya Press.
- Syafiie, I. K., & Azikin, A. (2007). *Perbandingan Pemerintahan*. Bandung: PT. Refika Aditama.
- Toonen, T. A. (1990). The unitary state as a system of co-governance: The case of the Netherlands. *Public Administration*, 68(3), 281-296.
- Tutik, T. T. (2008). *Konstruksi HTN Indonesia Pasca Amandemen UUD 1945*. Jakarta: Kencana.
- Zulfajri, Z., Jalil, H., & Gani, I. A. (2019). Pemilihan Kepala Daerah di Indonesia dan Perbandingannya dengan AS, Belanda, dan India. *Kanun Jurnal Ilmu Hukum*, 21(3), 377-396.