

Power and Law in The Context of Separation of Powers: A Qualitative Study of The Relationship Between The Executive and The Judiciary

Dede Amirudin^{1*}, Christian², Samsudin Nurseha³, Abdul Musyfiq Al-aytami⁴

Universitas Bhayangkara Jaya, Jakarta, DKI Jakarta, Indonesia^{1,2,3,4}

E-mail: dedeamirudin@gmail.com^{1*}, tian311080@gmail.com², rasmusbg@gmail.com³,

Abdul.musyfiq93@gmail.com⁴

Keywords

Power, Law, Separation of Powers, Executive, Judicial.

ABSTRACT

This study aims to delve deeper into the relationship between the executive and the judiciary in the context of separation of powers. Through a qualitative study approach, this study will analyze the dynamics of power and the role of law in influencing the interaction between the two branches of government. The research will involve in-depth interviews with legal practitioners, judges, executive officers, and other relevant stakeholders to gather in-depth qualitative data. Data analysis will be carried out by taking into account theoretical perspectives and concepts related to separation of powers, political power, judicial independence, and the role of law in the government system. The results of this study conclude that a better understanding of the dynamics of power and law in the relationship between the executive and the judiciary provides valuable insights for policymakers and law enforcers in strengthening the separation of powers and improving equitable governance systems.

INTRODUCTION

Separation of powers is an important principle in democratic systems of government that aims to prevent abuse of power and maintain a balance between the branches of government. In this context, the relationship between the executive branch and the judiciary plays a crucial role in ensuring that the legal system operates fairly and effectively (Rompas, 2013).

This study aims to delve deeper into the relationship between the executive and the judiciary in the context of separation of powers. Through a qualitative study approach, this study will analyze the dynamics of power and the role of law in influencing the interaction between the two branches of government.

In many countries, the executive has the power to make political decisions and carry out public policy, while the judiciary is in charge of exercising the functions of the courts and interpreting laws (Böhringer & Boucher, 2024; Chemin, 2021; Nguenda Anya & Nzepang, 2022; Petz & Pfeffer, 2021). However, limits and monitoring mechanisms are needed so that no abuse of power threatens the principle of separation of powers.

Previous studies have highlighted issues related to executive and judicial relations, including political interference in the judicial system, power imbalances, and judicial independence. However, there is still much to understand in the finer dynamics between these two branches, especially in the context of power and the role of law (Basuki, 2011).

To address this gap, the research will conduct in-depth interviews with legal practitioners, judges, executive officers, and other pertinent stakeholders to amass qualitative data. The ensuing data analysis will integrate theoretical perspectives encompassing separation of powers, political power,

judicial independence, and the role of law within the governmental system (Berlinger, Gramlich, Walker, & Zhao, 2024; Cao, Liu, & Zhou, 2023; Dahal, 2024; Zeng, 2023).

This research aspires to make a substantive contribution to comprehending the intricate dynamics of power and law within the executive-judiciary relationship. The anticipated findings hold the potential to offer valuable insights for policymakers, law enforcement, and academics committed to fortifying the separation of powers principle and enhancing equitable governance systems.

METHODS

The analysis is deficient in examining recent or specific cases that illustrate the intricate dynamics between the executive and judiciary, resulting in gaps in understanding the practical implications of the presented theoretical framework. Furthermore, discussions concerning the symbiotic relationship between law and power could benefit from incorporating real examples or case studies to enhance clarity and application.

To address these shortcomings, the study employs qualitative methodologies, utilizing a literature review framework (Moleong, 2018). A literature review is a systematic, transparent, and replicable approach for identifying, assessing, and amalgamating research contributions and perspectives from scholars and professionals (Onwuegbuzie & Weinbaum, 2017). The initiation of crafting this literature review involves selecting a relevant topic and then exploring libraries or sources to gather pertinent information, utilizing platforms such as Google Scholar, CINAHL, Proquest, Ebsco, or National Library databases. A crucial step in this process is identifying keywords for journal searches. Subsequently, the gathered data undergoes thorough processing, analysis, and the derivation of conclusions. To enhance the practical implications of the theoretical framework, recent or specific cases will be incorporated, illustrating the complex dynamics between the executive and judiciary, thereby addressing the identified gaps and providing a more comprehensive understanding of the subject matter.

RESULTS

Dynamics of the Relationship Between the Executive and the Judiciary

After the amendment of the 1945 Constitution, the analysis fails to delve into recent or specific cases that illustrate the intricate dynamics between the executive and judiciary. This omission results in gaps within the practical implications of the theoretical framework presented. To enhance clarity and application, discussions regarding the symbiotic relationship between law and power should incorporate real-life examples or case studies. The key principles governing the interactions among state institutions include the Rule of the Constitution, the Presidential System, and the principles of Separation of Powers and Checks and Balances (Bustamin & Jaya, 2019).

Constitutional Supremacy

One of the key modifications in the 1945 Constitution involves the amendment of Article 1, paragraph (2), which declares that sovereignty resides with the people and is executed following the provisions of the 1945 Constitution. This alteration signifies a shift, indicating that the People's Consultative Assembly (MPR) no longer exclusively holds and exercises people's sovereignty; instead, it is now implemented by the regulations outlined in the fundamental law. Consequently, the People's Consultative Assembly (MPR) is no longer positioned as the foremost state institution above other high-ranking state bodies. Article 1, paragraph (2) of the amended 1945 Constitution, establishes the 1945 Constitution as the supreme legal foundation for the exercise of people's sovereignty. This implies that the exercise of people's sovereignty is distributed among all constitutional organs, each performing its respective functions and authorities following the provisions of the 1945 Constitution. Unlike the previous arrangement, where sovereignty was entirely vested in the People's Consultative Assembly

(MPR) before being delegated to high state institutions, the amended Article 1, paragraph (2) maintains that sovereignty remains with the people and is functionally distributed directly to constitutional organs (Permana & Mahameruaji, 2020).

Presidential System

Before the amendment of the 1945 Constitution, the adopted government system was not purely presidential. While the connection between the MPR acting as a parliament and an equal President (*neben*), along with a fixed presidential term, reflects aspects of a presidential system, the presence of the MPR, which elects, mandates, and has the authority to dismiss the president, indicates characteristics of a parliamentary system. The President is the MPR *mandataris* and as a consequence the President is responsible to the MPR and the MPR can dismiss the President. The next change to perfect the presidential system was to balance the legitimacy and standing between the executive and legislative institutions, in this case mainly between the DPR and the president. This is done by regulating the mechanism for electing the president and vice president carried out directly by the people and the mechanism for dismissal during the term of office as stipulated in articles 6, 6A, 7, 7A, and 8 of the 1945 Constitution. Before the amendment of the 1945 Constitution, the institutional framework in place was not based on the separation of powers but was frequently described as the distribution of power (Subarkah, Nurjaya, & Sugiri, 2021).

The President not only wields the highest executive authority but also shares legislative power with the House of Representatives. The issue of judicial power in the original 1945 Constitution was vested in the Supreme Court and other judicial bodies as per the law. However, amendments to the Constitution, particularly in Article 5 paragraph (1) and Article 20 paragraph (1), transferred the authority to formulate laws from the president to the DPR. Consequently, the primary legislative institution became the DPR, while the president assumed the role of the executive. Although the president's approval is necessary in the law-making process, their function is that of a co-legislator, akin to the DPD for specific legal matters, rather than being the principal legislator. Judicial power, as stipulated in Article 24 paragraph (2) of the 1945 Constitution, is exercised by the Supreme Court and its subordinate judicial bodies, as well as the Constitutional Court (Badaruddin, Supriadi, & Ramadhani, 2022).

The interaction among the executive power wielded by the president, legislative power held by the DPR (and, in specific instances, the DPD as a co-legislator), and judicial power executed by the Supreme Court and the Constitutional Court represents the embodiment of the checks and balances system. This system aims to maintain equilibrium in the distribution of powers, preventing the abuse of authority or gridlock between institutions. Consequently, there is always a role for another institution in the exercise of power. In the execution of legislative authority, for instance, although the DPR is designated as the legislative power holder, collaboration with co-legislators, namely the president and DPD, is essential.

Even a law provision that has received approval from the DPR and the president, subsequently enacted, can be deemed non-binding by the Constitutional Court if it contradicts the stipulations of the 1945 Constitution. Conversely, the president, in exercising governmental authority, is subject to oversight from the DPR. This supervision extends beyond post-activity scrutiny, encompassing the stages of development planning and budget allocation. The DPR holds a robust position in this context, given its special budgetary role in addition to its legislative and supervisory functions, as outlined in Article 20A of the 1945 Constitution.

In this study, the results of the analysis show that the relationship between the executive branch and the judiciary in the context of separation of powers is very complex and influenced by various factors. It was found that there are several forms of interaction between these two branches, including cooperation, conflict, and interdependence. A harmonious relationship between these two branches is essential to maintain a balance of power and a smooth decision-making process.

Political Interference in the Justice System

The analysis also revealed political interference in the judicial system. Sometimes, the executive seeks to influence court decisions to support a particular political interest or agenda. This raises concerns about the independence of the judiciary and could undermine the principle of separation of powers. The results of this study highlight the importance of strengthening the oversight mechanism of judicial independence to prevent political interference that harms the judicial system. (Zuhro, 2018)

A modern legal system must be able to form good laws, which reflect a sense of justice for all parties and are by the conditions of society. Laws are made according to predetermined procedures, and must also be understood or understood by society as a whole. The embodiment of the rule of law in the constitution outlines that judicial power is an independent power. This is stipulated in Article 24 Paragraph (1) of the 1945 Constitution which affirms that "judicial power is an independent power to administer justice to uphold law and justice". Thus, the independence of judicial power is the main prerequisite for the establishment of law and justice. (Nuraini & Ansori, 2022)

The post-1945 Amendment of the Constitution of the Republic of Indonesia maintains the independence of judicial power within the state's power structure, ensuring that it operates without interference from other branches. Judicial authority is carried out through various courts, including the Supreme Court and lower judicial bodies such as general, religious, military, administrative, and Constitutional Courts (Bintari, 2013).

Interference has the true meaning of a 3rd party who participates in the dispute of 2 (two) other parties. The word is always attached or can be said to be the language of the law of law. The main problem is that the word has legal implications for prolonged polemics, this study conveys implications in constitutional practice and judicial practice. Changes to the law as well as its discussion by the government and the DPR are more focused on the practice of implementing the government system. The term contempt of court can be found in the general explanation of point four of the fourth paragraph of Law Number 14 of 1985 concerning the Supreme Court which states "that further to be able to better ensure the creation of the best atmosphere for the administration of justice to uphold law and justice that regulates the enforcement of actions, behaviors, attitudes and/or speech that can degrade and undermine authority, dignity, and honor of the judiciary known as the contempt of court".

As a justification reason, in constitutional practice vigorously and sporadically make several changes so that the judicial power is free from interference from other powers. The political will of the government, parliament, and society is always related to the concept of the rule of law which is aspired so that judicial power is not interfered with by executive power, the legislature changes and establishes legislation in the judicial field where the analysis knife uses the theory of separation of powers where freedom and rights of citizens are protected. The meaning of freedom about the theory of separation of powers according to Aidul Fitriadi Azhari is "The purpose of separation of power (separation of power / séparation des pouvoirs / scheidung van machten) comes from the thought of Charles de Secondat, Baronde Montesquieu in his work De l'esprit des lois.

A Study of the Relationship of Law and Power

Law and power are two different things but influence each other. Law is a system of regulations that regulate human life and if violated, sanctions will be given for those who violate it. While power is the ability of a person or a group to influence the behavior of another person or group, so that the party acts according to what they want (Safriani, 2017).

Society creates rules of law whose compliance at the last level is not entirely left to the free will of individual citizens but rather applied and enforced by public authorities whose authority, and its presence are accepted by society. To find out (Susanto, 2014). whether the law works in society, what must be known is whether the law applies in society. Regarding the enactment of law in society, there are several assumptions, namely:

1. Juridically, the rule of law is established either through adherence to a higher rule (as proposed by Hans Kelsen), following a predetermined structure, or demonstrating the correlation between a condition and its consequences (J.H.A. Logemann).
2. Sociologically, the law becomes applicable when it is effectively enforced, indicating that it can be imposed by the governing authority, even if not embraced by the community's citizens. Alternatively, the rule applies when it is accepted and acknowledged by the community.
3. Philosophically, the rule of law is rooted in the ideals of law as the utmost positive value.

The implementation of law in society requires power because without power the law is only recommendable. But power also requires laws to define its boundaries (Handini, 2019). Power has a distinctive trait, namely that it tends to stimulate those who have it to be even more powerful. Therefore, power can begin for good or bad depending on how the power holder uses it, that is, the good and bad of power must always be measured by its usefulness to achieve a goal that has been determined or realized by society first. It is an essential element for the orderly life of society or even for any form of orderly organization (Ali, 2017).

Power holders have a very important role, where the realization of justice that is aspired to, among others, will depend on how power holders use their power. Therefore, besides the need for law and public legal awareness as a barrier for power holders, another thing that is no less important is honesty and high morals for the interests of society. Because no matter how well the law is held to limit the behavior of the ruler, but if the mentality and morals of the ruler are not good, in the end, the law will be trampled on. To find out the close relationship between law and power, it can be seen in two ways, namely:

1. Examining the concept of sanctions.

The existence of behavior that does not comply with the rules of law causes sanctions to be needed for the enforcement of these legal rules because sanctions are a form of violence, their use requires juridical legitimacy (legal justification) to make it legitimate violence.

2. Examining the concept of constitutional enforcement.

The establishment of a legal framework in a well-organized state is dictated by the law itself, typically outlined in the country's constitution. The implementation of the constitution, which includes ensuring proper procedures in law formation, necessitates the use of force. This implies that the law requires protection to facilitate its enforcement, specifically through the exertion of power. While law is synonymous with power, an alternate dynamic exists in the relationship between law and power. In essence, law and power are distinct entities, yet their connection is intimate and can manifest as either a dominant or reciprocal relationship. In this context, three forms illustrate the manifestation of the relationship between law and power, namely:

- a. The law is subject to power.

In essence, power not only dominates the law but frequently transforms it into a means of exercising authority. In simpler terms, power holds superiority over the law. As a result, the experts' definition of law implies that power exercises control over the legal system.

- b. Power is subject to law.

In other words, power operates within the boundaries set by laws, and these laws define the very existence of power. Within legal philosophy, the idea of subordinating power to the law is a fundamental principle in constitutional governance. This principle is articulated through the concept of the rule of law, signifying that the law stands as the highest authority governing the life of society, nation, and state. The notion of law as the supreme rule is encapsulated in Hans Kelsen's idea of the basic norm of the state, or *grund norm*.

Moreover, the rule of law also implies that the exercise of power in managing constitutional affairs and the machinery of government must adhere to legal principles. In the absence of a legal foundation, power lacks legitimacy.

- c. There is a reciprocal (symbiotic) relationship between law and power.

In this scenario, the connection between law and power is not characterized by dominance, where one prevails or serves as the determining factor over the other. Instead, the relationship is characterized as influential and functional, signifying that it is viewed in terms of specific functions that can be mutually performed. Between law and power, there exists a reciprocal relationship where each influences the other. If the law applies without any power in it, then the law becomes ineffective in carrying out its function of regulating society because the community will not obey the law because there is no authorized party to enforce the law so it can cause chaos in the conditions that exist in society. The existence of law without any power behind it makes the law barren, while the power regulated by law is for the benefit of society so that people who are objects of power do not become victims of power (Hidayat, 2022).

The Role of Law in Strengthening the Separation of Powers

The discussion also highlighted the importance of the role of law in the context of the separation of powers. Law has a critical function in ensuring that the limits of power are respected and appropriately enforced. Fair and indiscriminate law enforcement is essential in ensuring judicial independence and maintaining a balance of power between the executive and judiciary. Therefore, strengthening legal institutions and the judicial system is a priority to strengthen the separation of powers.

CONCLUSION

This research underscores the intricacies inherent in the relationship between the executive and judicial branches within the framework of the separation of powers. The dynamics between these branches involve a nuanced interplay of cooperation and conflict, yet the study unveils concerning instances of political interference that pose a threat to judicial independence. Furthermore, imbalances of power loom as potential challenges, jeopardizing the fundamental principle of the separation of powers. The pivotal role of law in this context cannot be overstated, as it serves as a crucial mechanism for restraining power and preserving equilibrium between the executive and the judiciary. The enforcement of fair and impartial laws emerges as a linchpin for fortifying the separation of powers. The study's policy recommendations advocate for the fortification of judicial independence through the establishment of a transparent and objective judge selection system. Additionally, the imperative for vigilant monitoring of political interference in the judicial system is emphasized. In conclusion, a comprehensive comprehension of power dynamics and the role of law in the executive-judiciary relationship provides invaluable insights for policymakers and law enforcement, fostering the enhancement of the separation of powers and the advancement of just and equitable systems of governance.

REFERENCES

- Ali, Yusuf Faisal. (2017). Distribusi Kekuasaan Politik Dalam Kajian Fiqh Siyâsah. *Untirta Civic Education Journal*, 2(2).
- Badaruddin, Sukri, Supriadi, Supriadi, & Ramadhani, Syaila Indah. (2022). Dinamika Kelembagaan Negara Berdasarkan Pascaamandemen Uud Nri Tahun 1945. *Qisthosia: Jurnal Syariah Dan Hukum*, 3(1), 37-47.

- Basuki, Udiyo. (2011). Struktur Ketatanegaraan: Analisis Yuridis atas Dinamika Lembaga-lembaga Negara Pasca Amandemen UUD 1945. *IN RIGHT: Jurnal Agama Dan Hak Azazi Manusia*, 1(1).
- Berlinger, Edina, Gramlich, Dieter, Walker, Thomas, & Zhao, Yunfei. (2024). Governmental responses and firm resilience during the COVID-19 pandemic: The role of culture and politics. *Economic Systems*, 101196. <https://doi.org/10.1016/J.ECOSYS.2024.101196>
- Bintari, Aninditya Eka. (2013). Mahkamah Konstitusi sebagai Negative Legislator dalam Penegakan Hukum Tata Negara. *Pandecta Research Law Journal*, 8(1).
- Böhringer, Eileen, & Boucher, Charlotte. (2024). Between impartiality and politicization: Confidence in the judiciary among political winners and losers. *Electoral Studies*, 87. <https://doi.org/10.1016/J.ELECTSTUD.2023.102714>
- Bustamin, Bustamin, & Jaya, Rony. (2019). Urgensi Checks And Balances Ketatanegaraan Indonesia Dan Islam. *JURIS (Jurnal Ilmiah Syariah)*, 18(2), 221–232.
- Cao, Guangyu, Liu, Chenran, & Zhou, Li An. (2023). Suing the government under weak rule of law: Evidence from administrative litigation reform in China. *Journal of Public Economics*, 222. <https://doi.org/10.1016/J.JPUBECO.2023.104895>
- Chemin, Matthieu. (2021). Can judiciaries constrain executive power? Evidence from judicial reforms. *Journal of Public Economics*, 199. <https://doi.org/10.1016/J.JPUBECO.2021.104428>
- Dahal, Girdhari. (2024). Nepal's experience in implementing the federal government system: Assessment of law-making by the local governments of Kaski district, Nepal. *Heliyon*, 10(4), e26250. <https://doi.org/10.1016/J.HELIYON.2024.E26250>
- Handini, Wulan Pri. (2019). Problematika Kedudukan Dewan Perwakilan Rakyat Daerah (DPRD) Diantara Kekuasaan Legislatif Dan Eksekutif. *Majalah Hukum Nasional*, 49(1), 117–149.
- Hidayat, Rahmad. (2022). Pentingnya Pengelolaan Manajemen Keuangan Pada Sekolah. *Teknologi Pendidikan. Universitas Negeri Padang*.
- Moleong, L. J. (2018). Qualitative Research Methodology. Quantitative: Metode Penelitian Kualitatif. PT. Rosdakarya Teens. DOI: <https://doi.org/10.31004/Basicedu.V6i4.3090>
- Nguenda Anya, Saturnin Bertrand, & Nzepang, Fabrice. (2022). The role of the separation of democratic powers on structural transformation in Sub-Saharan Africa. *Economic Systems*, 46(4). <https://doi.org/10.1016/J.ECOSYS.2022.101021>
- Nuraini, Nuraini, & Ansori, Mhd. (2022). Politik Hukum Kekuasaan Kehakiman di Indonesia. *Wajah Hukum*, 6(2), 426–433.
- Onwuegbuzie, Anthony J., & Weinbaum, Rebecca K. (2017). A framework for Using qualitative comparative analysis for the review of the literature. *The Qualitative Report*, 22(2), 359–372.
- Permana, Rangga Saptia Mohamad, & Mahameruaji, Jimi Narotama. (2020). Perbandingan Konsep-konsep Triumvirate Sunda dengan Trias Politica dalam Perspektif Komunikasi Politik. *Nyimak: Journal of Communication*, 4(1), 17–33.
- Petz, Cindarella, & Pfeffer, Jürgen. (2021). Configuration to conviction: Network structures of political judiciary in the Austrian Corporate State. *Social Networks*, 66, 185–201. <https://doi.org/10.1016/J.SOCNET.2021.03.001>
- Rompas, Michael Brayn. (2013). Kekuasaan Hakim Dalam Sistem Peradilan Di Indonesia. *Lex Administratum*, 1(3).
- Safriani, Andi. (2017). Telaah terhadap Hubungan Hukum dan kekuasaan. *Jurisprudentie: Jurusan Ilmu Hukum Fakultas Syariah Dan Hukum*, 4(2), 37–45.
- Subarkah, Ibnu, Nurjaya, I. Nyoman, & Sugiri, Bambang. (2021). Arah Campur Tangan Urusan Peradilan Pasal 3 Ayat (2) UU No. 48 Tahun 2009 Tentang Kekuasaan Kehakiman Sebagai Kebijakan Hukum Pidana. *Jurnal USM Law Review*, 4(2), 862–878.
- Susanto, Sri Nur Hari. (2014). Pergeseran Kekuasaan Lembaga Negara Pasca Amandemen UUD 1945. *Masalah-Masalah Hukum*, 43(2), 279–288.

Zeng, James Si. (2023). Competing with Leviathan: Law and government ownership in China's public-private partnership market. *International Review of Law and Economics*, 76. <https://doi.org/10.1016/J.IRLE.2023.106166>

Zuhro, R. Siti. (2018). Demokrasi, otonomi daerah dan pemerintahan indonesia. *Interaktif: Jurnal Ilmu-Ilmu Sosial*, 10(1), 1-41.

Copyright holder:

Dede Amirudin, Christian, Samsudin Nurseha, Abdul Musyfiq Al-aytami (2024)

First publication right:

International Journal of Social Service and Research (IJSSR)

This article is licensed under:

