

## COMPARISON OF THE TRIASSIC LEGAL SYSTEM OF INDONESIA WITH THE FRENCH STATE

Afifulloh, Sudarsono, Shinta Hadiyantina  
Universitas Brawijaya  
Email: Afifulloh@student.ub.ac.id

### **Abstract**

*State law in Constitutional Law, there is an object of regulation in which the system of the Triassic Concept of Politica, which is a normative principle that powers should not be handed over to the same person in order to prevent abuse of power by the ruling party. Polotical triad offers a concept of state life by separating powers that are expected to be separated from each other in equal positions, so that they can control each other and balance each other (checks and balances), besides that the hope is that it can limit power so that there is no concentration of power on one hand which will later give birth to arbitrariness. The State of Indonesia with the State of France as a State of law (Civil Law), has similarities and differences in the application of the concept of Polotical triad. Similarities and differences in the application of the Polotical triad concept are material in comparing the systems applied in the Polotical triad concept. Comparison with the concept of Polotical triad between the State of Indonesia and the State of France, based on the 1945 Constitution of the Republic of Indonesia as the Constitution of the State of Indonesia and the Constitution of Ocktober 4, 1958 as the Constitution of the State of France.*

**Keywords:** Comparison, Polotical triad, Indonesia, France.

### **Introduction**

The definition of constitutional law includes various definitions and depends on how it is viewed against constitutional law itself. The term constitutional law in the Indonesian library is state law which is a translation of the term Dutch (Staatsrecht), in English (*Constitutional Law*), French (*Droit Constitutionnelle*), German (*Verfassungsrecht*) and Constitutional Law or Constitutional Law in Indonesia.

Meanwhile, if referring to the Dutch literature, the term constitutional law (Staatsrecht) has two meanings, namely constitutional law in a broad sense is constitutional law in a broad sense consisting of constitutional law in the narrow sense coupled with state administrative law (*Staatsrecht In Rumiere Zin*). While constitutional law in a narrow sense is the constitutional law of a particular country that applies at a certain time or the positive constitutional law of a country (*Staatsrecht In Engere Zin*). In general, literature in England using the term (*Constitutional Law*) shows the same meaning as constitutional law, based on the reason that in constitutional law the elements of the constitution are more prominent. Constitutional Law (staatsrecht) has two kinds of meanings, namely as a science of constitutional law (staatsrecht-swetenschap) and as positive constitutional law (positive *staatsrecht*).<sup>1</sup>

Constitutional law as a discipline whose object of study is a system of decision-making within the state, as structured in positive constitutional law. The context of constitutional law as positive constitutional law (*positief staatsrecht*) has a variety of sources of law, including:<sup>2</sup>

- a. Written law
- b. Unwritten law
- c. Jurisprudence
- d. Influential expert opinion.

JH. A Logemann argues that constitutional law is a structure that regulates the organization of the state, in other words, constitutional law in this case is a set of legal rules regarding positions or collections of positions within a state and regarding the legal environment of a state. Agreeing with Logemann, Scholten said that constitutional law is the law that governs the organization of the state. The state is seen as an organization, in that organization the relationship between state

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<sup>1</sup> Jimly Asshiddiqie, 2006, "*Introduction to Constitutional Law Volume I*", Jakarta: Secretary General of the Constitutional Court of the Republic of Indonesia, p. 16

<sup>2</sup> Hyang Imam Kinasih Gusti, Imawan Sugiharto, Imam Asmarudin, 2022, "Comparison of Indonesian and French State Government Systems", Pekalongan: PT. Nasya Expanding Management, p. 11

institutions is regulated and contains the rule of law regarding the rights and obligations of each state institution or state body.<sup>3</sup>

Several constitutional law experts in Indonesia also expressed their opinions or views on the definition of constitutional law including:

- a. Kusumadi Pudjosewojo who argues that constitutional law governing the form of state (unitary or federal) and form of government (kingdom or republic) which shows the superior and subordinate legal society and its levels (*berarchie*) which further affirms the territory and environment of the people of the legal poeple, and finally shows the tools of equipment that hold the power of the ruler of the legal community, along with the composition, authority, the degree of balance from and between the equipment.<sup>4</sup>
- b. Muh. Kusnardi and Harmaily Ibrahim who said that constitutional law is a set of legal regulations that govern the organization of a state, the relationship between the equipment of the state in vertical and horizontal lines and the position of citizens and their human rights.<sup>5</sup>

In a legal state in Constitutional Law, there is an object of regulation in which regarding the system The Polotical triad concept is a normative principle that powers should not be handed over to the same person in order to prevent abuse of power by the ruling party. This means that the Triassic Political concept offers a concept of state life by separating powers that are expected to be separated from each other in equal positions, so that they can control and balance each other (*checks and balances*), besides that the hope is that it can limit power so that there is no concentration of power on one hand which will later give birth to arbitrariness. In essence, the teachings of the <sup>6</sup> Polotical triad contain that each

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<sup>3</sup> *Ibid.*,

<sup>4</sup> Teuku Saiful Bahri Johan, 2018, "*Constitutional Law and State Administrative Law at the Level of Indonesian Constitutional Reform*", Yogyakarta: DEEPUBLISH, p. 7

<sup>5</sup> Fatmawati Chairuddin "*General Understanding and Sources of Constitutional Law*", pp. 1.8-1.9

<sup>6</sup> M. Shamsuddin, "*Islamic Political Review of the Triassic Theory of Politica*", Vol. 9 No.1 January-June 2018, p. 46

state government must have 3 (three) types of power, namely the Legislative, Executive and Judicial, as follows:<sup>7</sup>

- a. Legislative Power is the power to make laws. The power to make laws must be vested in a special body for it. If the drafting of the law is not placed in a particular body, it will be possible for each class or each person to enter into a law for his or her own benefit. A country that calls itself a democracy whose laws and regulations must be based on the sovereignty of the people, then the people's representative body which must be considered as the body that has the highest power to draft laws and called the "Legislature".
- b. Executive *Power* is the power to carry out legislation. The power to carry out legislation is held by the Head of State. The Head of State certainly cannot by himself carry out all these laws. Therefore, the power of the head of State is devolved (delegated) to government officials/States who together constitute an implementing body of the law (Executive Agency). It is this body that is obliged to exercise executive power.
- c. Judicial Power is a power that is obliged to maintain laws and has the right to give justice to its people. The Judicial Body is the one with the power to decide cases, punishing any violation of the law that has been held and carried out.

So from the explanation above regarding the Political triad in the constitutional law system, it is very interesting to compare the legal system. The definition of comparative law was formulated by A.E. Orucu in his book "*Method and Object of Comparative Law*", namely comparative law: "comparative law is a legal discipline that aims to find similarities and differences and also find close relationships between legal systems, see the comparison of legal institutions and concepts and try to determine a solution to certain problems in legal systems it is referred to, with purposes such as legal renewal, unification, etc.". Therefore, the

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<sup>7</sup> Syofyan Hadi, "*Legislative Functions in the Presidential System of Government*", Journal of Legal Sciences February 2013, Vol. 9, No. 18, p. 80

author takes 2 countries as a comparison of constitutional law systems that take the Polotical triad system. With the basic similarity of the systems of the two countries, namely the civil law system, the country and France can be carried out a comparative system.<sup>8</sup> Therefore, this paper discusses how the Indonesian Constitutional Law (Polotical triad) system compares with the system in France.

## **Research Methods**

This type of research is a Normative Juridical legal research with the aim of conducting an assessment of the Indonesian government system related to the Polotical triad concept. Meanwhile, to conduct a content assessment of the changes contained in the comparison of the Trias Politica concept of the Indonesian State with the French State, using content analysis.

## **Discussion**

### **Similarities of the Indonesian Polotical triad System with France**

#### **a. Indonesian**

The Indonesian state had several changes in accordance with the changes in the order at that time, so the author immediately focused on the new order command system until now. The system of government during the new order was a presidential system of government, with the Republican form of government and the 1945 NRI Constitution as the law or basis of the constitution in force at the time. Based on the system of government that applies to the new order, it does not have any significant changes from the old order era, but there are still some fundamental differences in terms of the new order period being changed because it is considered a deviation from the old order. The government system in the new order changed the order of life of the people and the state based on the purity of the implementation of Pancasila and the 1945 Constitution for every government

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<sup>8</sup> Djoni Sumardi Gozali, 2020, "*Introduction to comparative legal systems (civil law, common law, and customary law)*", Bandung: Nusa Media, p. 4

policy. Some of the points of the government system during the new order period were listed in the explanation of the 1945 NRI Constitution which was in force at that time, including:<sup>9</sup>

- a) Indonesia is a country based on law (rechtsstaat)
- b) Constitutional System
- c) MPR the highest power holder of the state
- d) The President is the organizer of the highest government of the country and is under the MPR
- e) The President is assisted by the Minister and is not accountable to the House
- f) The President is not accountable to the House
- g) The powers of the Head of State or President are unlimited

The implementation of government in the new order era in practice deviated from its initial points, where power was fully held by the President. Almost all of the authority of the President regulated in the 1945 Constitution is carried out without the involvement of consideration and approval of the DPR as a representative of the people. The implementation of such a government system can have a positive impact if with control in the hands of the President, all government administration can be controlled more solidly, but without the approval and supervision of the DPR, this authority becomes easily misused. New points of thought emerged when the 1945 Constitution was re-implemented in Indonesia, including:<sup>10</sup>

- a) The embrace of the ideals of democracy and nomocracy at once and complementary complementary
- b) The principle of "*checks and balances*" and separation of powers
- c) Purification of the presidential system of government

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<sup>9</sup> Fikrotul Jadidah, "Constitutional Changes In The New Order Transition To Reform In Indonesian" Mandala Education Scientific Journal Vol. 6. No. 1. April 2020, p 158

<sup>10</sup> Abdul Aziz Zaini, Maturidi, "The Problem of Presidential Democracy After the Amendment of the Constitution", JSIP Volume 02 No. 01 February 2021, p 60

- d) Strengthening the ideals of unity and diversity in the container of the Unitary State of the Republic of Indonesia (NKRI)

In determining the constitutional system, Indonesia made four changes (amendments to the 1945 Constitution), it was based on imperfections in the constitution which are the result of human work is something certain. So it is natural that if there are changes to the Indonesian constitution or constitutional amendments intended for the Indonesian state, it is really a constitutional government. The basis for the amendment of the 1945 NRI Constitution at that time was:<sup>11</sup>

- a) Article 1 Tap MPR No. XIII/MPR/1998 concerning Limitation of The Term of Office of the President and Vice President
- b) Article 37 of the 1945 NRI Constitution concerning the Authority of the MPR to amend the 1945 NRI Constitution
- c) Tap MPR No. IX / MPR / 1999 concerning the Assignment of BP MPR RI to Continue Amendments to the 1945 NRI Constitution

After the amendment of the 1945 NRI Constitution, there was a purification or purification of the presidential system of government. Strengthening the presidential system of government in Indonesia after the amendment of the 1945 NRI Constitution has several substances, including:

- a) Presidential term restrictions
- b) Strengthening checks and balances by adding authority to parliament
- c) Direct election of the president by the people
- d) President and Vice President nominated together
- e) The president was ousted on preceding the grounds of lawlessness.

Indonesia implemented a presidential system of government in the period after the amendment or amendment of the 1945 Constitution as evidenced by the separation of powers between the legislative and executive branches. The

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<sup>11</sup> Wesley Liano Hutasoit, "Comparative Analysis of Amendments to the 1945 Constitution First Changes in 1999 Until the Fourth Amendment of 2002", Vol. 37, No. 2 (2017), p. 11

separation of powers of the two branches is an important indicator of the implementation of the presidential system of government in Indonesia after the amendment of the 1945 Constitution. The separation of powers of the legislative branch and the executive branch can be seen in the period before the amendment of the 1945 Constitution and the period after the amendment of the 1945 Constitution is an evidence or indicator of the implementation of the presidential system of government in Indonesia. State institutions or government institutions in the Indonesian presidential system of government after the amendment of the 1945 Constitution consist of seven institutions, including the MPR, DPR, DPD, President, BPK, MA, and MK, these institutions hold their respective state powers, namely:<sup>1213</sup>

- a) *Legislative Power* The Legislative Power, is a lawmaker. The legislature in Indonesia based on the 1945 Constitution after the amendment consists of the People's Consultative Assembly (MPR) and the House of Representatives (DPR) and the Regional Representative Council (DPD). The legal basis of these three institutions is already outlined in advance.
- b) *Executive Power* The Executive Power is the power to implement laws. The Executive Power in Indonesia under the 1945 Constitution after the amendment is the President. The legal basis regarding this president has been outlined in advance.
- c) *Judicial power* is a power of power that is obliged to defend laws and has the right to give justice to its people. The Judicial Body is the one with the power to decide cases, punishing any violation of the law that has been held and carried out. The judiciary in Indonesia based on Article 24 Paragraph

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<sup>12</sup> Zulfan, "Analysis of the Arrangements and Practices of the Separation of Powers of the Presidential System of Government Based on the Constitution", Vol. 25 No. 1 June 2018, p. 66

<sup>13</sup> Efi Yulistyowati, Endah Pujiastuti, Tri Mulyani, "Application of the Triassic Politica Concept in the Government System of the Republic of Indonesia: A Comparative Study of the 1945 Constitution Before and After the Amendment", Journal of Socio-Cultural Dynamics, Volume 18, Number 2, December 2016, p. 336



(2) of the 1945 Constitution before the amendment is the Supreme Court and the Constitutional Court.

- d) The power of Eksaminative is the functioning power against the examination of the state's finances. The Examinative Power in Indonesia under Article 23 of the 1945 Constitution after the amendment is the CPC.

## **b. France**

The French Revolution underlies the events underlying the social and cultural struggles of politics, the French Revolution also underlies the formation of understandings such as liberalism, democracy and nationalism that have an impact on the sovereignty and system of government established in the French state. The French Revolution is a process or change that occurs in the field of government or constitutional and societal systems that occur in France. The impact of the French Revolution on the field of government system was the change of power from an absolute King to a government that was democratic according to the Basic Law and had a House of Representatives. The French Revolution began during the reign of King Louis IV.<sup>14</sup>

Along with the political turmoil and the people's opposition to an absolute system of orders, the French classify into five stages in determining the french system of government. France's fifth Republican system of government is a semi-presidential system of government or a flow of government systems that exhibits the mixed nature of presidential and parliamentary systems of government. Under Constitution of *Ocktober 4, 1958*, Heads of State and Heads of Government are granted very broad privileges. The features of the system of government of the French fifth Republic are as follows:<sup>15</sup>

- a) Prancis is a unitary state

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<sup>14</sup> Sandy Kurnia Christmas, Evi Purwanti, "The Development of the System of Government and the Concept of Sovereignty After the French Revolution Against International Law" Journal of Indonesian Legal Development Volume 2, Number 2, Year 2020, p. 223

<sup>15</sup> French Constitution of October 4, 1958 "translation"

- b) The constitution is written
- c) The separation of powers is as follows, the executive is in the hands of the President, the legislature is in the hands of the Parliament, the judiciary is in the hands of the Judiciary
- d) Parliament is Bicameral
- e) The Cabinet consists of the House of Ministers and is led by the Prime Minister
- f) The Council of Ministers is a 9-member Council appointed by the President, the Speaker of the Assemblée, and the Speaker of the Senate.

The separation of powers contained in the semi-presidential system of government of the fifth Republic of France within the scope of the legislative, executive, judicial has different duties, functions, authorities in each institution, namely:<sup>16</sup>

- a) The President, in the current French Constitution gives more power to the executive body consisting of the President and Prime Minister. The President has an official position as Head of State and is the Supreme Commander in the National Armed Forces. The president is directly elected oleh the people with a term of 5 years. One of the most important powers the President has is his authority to dissolve the National Assembly and hold new elections to the legislature. The President along with the National Assembly and the Parliament Sovereignty will appoint the Constitutional Council. The president is also given the authority to put certain policy issues such as agreements in the European Union into a national referendum. The power of the President can be strongly encouraged, because even though the Council of Ministers, and it is the President who presides over the Cabinet Session (Session of Ministers).

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<sup>16</sup> Diah Wahyuningsih et al, "*Comparison of Indonesian and French Governments*" Paper of Universitas Muhamadiyah Yogyakarta, 2017, pp. 34-36

- b) The Prime Minister is elected by the National Assembly. The Prime Minister here is the head of the Council of Ministers or Cabinet where these cabinets themselves are appointed by the President with the recommendation of the Prime Minister. The Prime Minister is responsible for domestic policy, the Prime Minister is responsible for domestic policy, the Prime Minister has significant authority as the leader of the majority party or coalition within the National Assembly. *The Balance of Power* (BoP) between the President and the Prime Minister depends on the Party being influential in the legislature.
- c) Legislative Power
- The National Assembly of France (National Assembly) The National Assembly of France (National Assembly) is the lower house of the French Parliament bicameral under the Fifth Republic. The National Assembly representing local constituencies and is directly elected for a term of 5 years, has the power to dissolve the cabinet so that the majority party becomes the determinant of the government's choice. The members of the National Assembly consist of 577 members.
  - The Senate (Parliament Sovereignty) of the Senate is part of the French legislature. The Senate has a term of 6 years. Members of the Senate served in Luxembourg. The Senate consists of at least 321 members, of which 296 each are stationed in Metropolitan France, 13 others are stationed in areas and departments located outside France, the remaining 12 members are intended for French citizens who are abroad. Senators are elected indirectly by the people but are elected by members of departments, regions, and communes. The authority of the Senate was also restricted. In a sense, when there is a disagreement between these two legislatures, the final decision remains the authority of the National Assembly.
- d) The Judicial Power of the French Judicial System consists of two branches, where in each branch there is a kind of hierarchy of the supreme court. The

first branch (Administrative courts) deals with issues related to government regulations or disputes between public institutions. The second branch (the general court) deals with civil cases and the criminality of French citizens. In general courts or judicial courts there are two types of courts. Namely the civil court and the criminal case court. The civil court is tasked with handling cases between individuals or individuals with corporations. Meanwhile, criminal courts handle cases of misdemeanors and or murder cases.

### **Differences between Indonesia's Triassic Politica System and Perancis**

In terms of the government system between the Indonesian State and the French State, it has implemented the same triassic politica system. In the system of government of the fifth Republic France also has a separation of powers in it which, among other things, in the executive institution is run by the President and Prime Minister, the legislative institution is run by the National Assembly and the Senate, and in the judicial institution is run by the Administrative Court and the general court. However, there is a difference between the triassic politics adopted by the French State and the Indonesian State, there is a difference in several ways such as the presidential and semi-presidential systems adopted by France.

Unlike the Indonesian government system which adheres to the presidential system of government, the system of government used by the French state is a semi-presidential system of government. This is clearly different from the purely presidential system of government used by the Republic of Indonesia, where in this case the President only runs the government alone and is assisted by a Vice President. Meanwhile, the fifth Republic of France, which is a unitary state, adheres to a semi-presidential system, this is because in running the wheels of his

government the President acts as head of state and is assisted by the Prime Minister in his government.<sup>17</sup>

In the Fifth Republic applied Constitution of October 4, 1958 as the fifth and most recent constitution of the French Republic, introduced on October 5, 1958 explaining the position of President with Prime Minister, so it is very clear that France adheres to a semi-presidential system. A semi-presidential system of government is a government in which there are elements of a presidential system of government and a parliamentary system of government mixed and the characteristics of both systems are equally applied. The semi-presidential system of government seeks to find common ground between the presidential system of government and the parliamentary system of government. The dual function of the president as in the presidential system of government is maintained, but as the head of government, the president shares power with the prime minister which gives rise to the *dual executive system*.<sup>18</sup>

France's fifth republic has a President and a Prime Minister in its executive body, the President acts as head of State directly elected by the people, while the prime minister is appointed by the president of a political party or a combination of political parties that control a majority seat in parliament. Based on the system of government that the French fifth Republic uses in this system the main one is the president, so it can be said that the characteristics of the parliamentary system are combined into the system of the presidency system, therefore this system can also be referred to as the *quasi-presidency system*.

## **Conclusion**

The comparison of the legal system between the State of Indonesia and the French State broadly has similarities in the state system of law (*Civil Law*), and has a similarity in taking the concept of Trias Politica. The two States adopted the

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<sup>17</sup> Robertus Robet, "The Experience of France's Semi-Presidentialism System: A Consideration For Indonesia", Law Review Volume XII No. 3 - March 2013 p. 433

<sup>18</sup> Suhardi. S, "System of Government", Journal of Academia, p. 14

concept of separation of powers intended to avoid arbitrary power in carrying out the government system so that they can control and balance each other (*checks and balances*).

From the comparison of the legal system between the State of Indonesia and the French State, there are also differences, namely in terms of the presidential system which is the concept of the Indonesian State and the semi-presidential which is the concept of the French State. In terms of application, of course, there are differences between presidential and semi-presidential. The Presidential concept is the concept of the president as head of state assisted by the vice president while the semi-presidential, the president is assisted by the prime minister.

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