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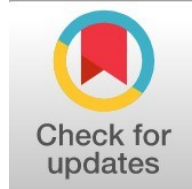
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Reconstruction of the Distinction Between State and Government in the Indonesian Constitutional System Based on People's Sovereignty

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Abstract

General Background: Constitutional democracy requires a clear distinction between the state as a sovereign entity and the government as the executor of constitutional authority to preserve the rule of law and public accountability. **Specific Background:** In the Indonesian constitutional system, the blurred separation between the state and the government has contributed to the personalization of power, weakened oversight mechanisms, and the procedural reduction of popular sovereignty. **Knowledge Gap:** Previous constitutional law studies have primarily emphasized institutional arrangements and electoral democracy without systematically reconstructing the conceptual and functional distinction between the state and the government based on popular sovereignty. **Aims:** This study aims to reconstruct the distinction between the state and the government within the Indonesian constitutional framework by emphasizing the principle of popular sovereignty and constitutional accountability. **Results:** Using normative legal research with statutory, conceptual, and historical approaches, the study demonstrates that the state constitutes a permanent entity embodying the sovereignty of the people, whereas the government functions as a temporary institution deriving authority from constitutional mandates. The findings further reveal that political domination, regulatory inconsistencies, oligarchic tendencies, and low constitutional literacy contribute to conceptual distortions in governance practices. **Novelty:** This study proposes a hierarchical constitutional reconstruction model that repositions the state as the principal sovereign entity and the government as a derivative and accountable organ of power. **Implications:** The reconstruction strengthens constitutional democracy by clarifying authority boundaries, reinforcing checks and balances, improving constitutional literacy, and restoring the people's role as the primary source and controller of sovereignty in Indonesia.

Highlights:

- ♦ Permanent sovereignty is constitutionally attached to the state rather than executive institutions.
- ♦ Political domination and regulatory ambiguity contribute to democratic backsliding in governance practices.
- ♦ Hierarchical constitutional arrangements reinforce accountability and public control over authority.

Keywords: State, Government, Popular Sovereignty, Constitutional Democracy, Legal Reconstruction

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Introduction

In contemporary constitutional systems, the separation between the state as a sovereign entity and the government as the executive organ of power is a fundamental principle in a rule of law and constitutional democracy. The state is understood as a permanent power organization consisting of the elements of the people, territory, and sovereignty, whereas the government is an institution that exercises state power temporarily based on the mandate of the people. In the context of Indonesia, The 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) confirms that sovereignty resides in the hands of the people and is exercised in accordance with the Constitution, while also establishing Indonesia as a state governed by law. This demonstrates that the state embodies the sovereignty of the people, whereas the government serves only as the executor of that mandate.

Nevertheless, in the practice of governance in Indonesia, the distinction between the state and the government is frequently unclear. The state is often reduced to the government, so that government actions are perceived as a direct representation of the state. This condition has the potential to cause the personification of the state in the government and weaken the function of public oversight. Conceptually, the state is permanent, whereas the government is temporary and can be replaced through democratic mechanisms. This blurring affects the weakening of public understanding of popular sovereignty as the primary source of the legitimacy of power.

The development of modern constitutional democracy asserts that popular sovereignty is not only realized through electoral procedures but also through the limitation of power and government accountability. Recent studies show that a healthy democracy requires mechanisms of checks and balances, distribution of power, and the rule of law as instruments of power control. [1], [2]. In this context, a clear separation between the state and the government becomes important so that the sovereignty of the people is not reduced to merely formal legitimacy. After the amendment of the 1945 Constitution of the Republic of Indonesia, Indonesia's constitutional system has undergone significant changes through the strengthening of state institutions and mechanisms of checks and balances. Nevertheless, the practice of governance is still marked by the dominance of political parties, political (criminal) transactions, and oligarchic tendencies in public policy-making. [3]–[5]. In addition, the weak accountability and transparency, as well as the widespread practice of corruption and money politics (campaigning), indicate that the implementation of popular sovereignty is not yet fully substantive.[6]–[8].

Theoretically, an ideal constitutional democracy places popular sovereignty within a framework of polycentric distribution of power, in which the people function not only as the source of legitimacy but also as the controllers of power. From this standpoint, the government is not the holder of sovereignty, but rather the executor of the people's mandate that must operate in accordance with the constitution. Therefore, a clear understanding of the distinction between the state and the government is essential for maintaining the balance of power and preventing the misuse of authority. However, a research gap remains within the study of constitutional law in Indonesia, particularly the absence of research that systematically reconstructs the distinction between the state and the government based on the principle of popular sovereignty. Most previous studies have focused primarily on institutional dimensions or electoral democracy, without comprehensively analyzing the conceptual and functional differences between the state and the government, along with their implications for constitutional practice.

Based on this, the novelty of this research lies in the effort to reconstruct the distinction between the state and the government through a conceptual, normative, and contextual approach based on popular sovereignty. This reconstruction includes affirming the ontological difference between the state and the government, rearranging their functional relationship, and strengthening the role of the people as the source of legitimacy and controller of power. Thus, this study is expected to strengthen the foundation of a democratic state of law and restore the orientation of power administration to the interests of the people in accordance with the mandate of the 1945 Constitution of the Republic of Indonesia.

Method

This research is normative legal research, Doctrinal Legal Research, which is research that focuses on the study of legal norms contained in legislation, doctrines, and court decisions.[9]. This type of research was chosen because the main object of study in this research is the conceptual construction regarding the distinction between the state and government in the Indonesian constitutional system, which inherently lies within the realm of norms, principles, and legal theory. The approaches used include the Statute Approach, Conceptual Approach, and Historical Approach. The statute approach is used to examine provisions in the 1945 Constitution of the Republic of Indonesia and other related regulations. The conceptual approach is used to analyze theories of the state, constitutional democracy, and popular sovereignty. Meanwhile, the historical approach is used to understand the development of the Indonesian constitutional system, particularly after the amendments to the 1945 Constitution of the Republic of Indonesia.

The technique for collecting legal materials in this study was carried out through library research, which includes the collection of primary, secondary, and tertiary legal materials. Primary legal materials consist of the 1945 Constitution of the Republic of Indonesia, relevant legislation, as well as Constitutional Court decisions related to the principles of popular sovereignty and inter-institutional relations of the state. Secondary legal materials include textbooks on constitutional law, national and international scientific journals, as well as previous research results relevant to the topic of distinction between state and government. Tertiary legal materials include legal dictionaries, encyclopedias, and other references that assist in understanding legal concepts. The collection of legal materials was carried out through searches in scientific journal databases such as Google Scholar, Scopus, and HeinOnline, as well as through university libraries. The primary emphasis of this research lies in the depth of normative analysis of the available legal materials; therefore, the quality of the study is

determined by the relevance, authority, and timeliness of the sources utilized.

The technique for analyzing legal materials in this research uses a qualitative analysis method with a prescriptive-analytical approach. Qualitative analysis is carried out by studying, interpreting, and systematizing legal materials to find relationships between norms, principles, and relevant legal concepts. The prescriptive approach is used to formulate normative legal arguments in order to provide recommendations or an ideal model related to the reconstruction of distinctions between the state and the government. The analysis process is conducted through several stages, namely the inventory of legal materials, classification based on relevance, legal interpretation both grammatically, systematically, and teleologically, as well as drawing conclusions deductively. With this analysis technique, the research is expected to produce a comprehensive, logical conceptual construction that aligns with the principles of the rule of law and popular sovereignty in the constitutional system of Indonesia.

Results and Discussion

From the perspective of constitutional theory, both classical and modern, the state and the government are two entities that have different positions and functions conceptually. The state is understood as a permanent power organization that has constitutive elements in the form of territory, people, and a sovereign government. Meanwhile, the government is a state organ that exercises power functions based on constitutional mandates for a certain period of time. Thus, theoretically, the government is only a part of the state, not a representation of the state as a whole. In contemporary studies, this distinction is considered an important prerequisite for the continuity of a healthy constitutional democracy. [10], [11].

Within the framework of a democratic rule of law, the distinction between the state and the government becomes crucial to ensure that power is not centralized and remains under the control of the people as the highest sovereign. As emphasized in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that sovereignty resides in the hands of the people and is exercised in accordance with the Constitution. This principle demonstrates that the legitimacy of governmental authority is derivative in nature, meaning that it originates from the people through the constitution rather than being inherent. Consequently, the government must operate under the rule of law, be subject to oversight mechanisms, and adhere to the principles of public accountability. Recent research shows that democratic systems that fail to maintain the boundary between the state and the government tend to experience democratic erosion and weakening of oversight institutions. [12], [13].

However, in the practice of Indonesian state governance, the distinction between the state and the government often becomes blurred. One of the main factors causing this condition is the dominance of political practices (crimes) that personify the state into the government. In various contexts, the government is frequently regarded as the only representation of the state, causing criticism directed at the government to be interpreted as an act of disloyalty toward the state itself. This phenomenon reflects a distortion in the structure of power legitimacy, in which the government implicitly assumes the symbolic position of the state. The personalization of power by the government constitutes one of the indicators of democratic decline, as government actors appropriate the legitimacy of the state in order to preserve their authority. [14], [15].

In addition, a system of government that relies on the power of political parties also strengthens the blurring of lines between the state and the government. The government's dependence on support in parliament often gives rise to power compromises that weaken the legislative oversight function. Under such conditions, the checks and balances mechanism, which should be a main pillar of constitutional democracy, does not function optimally. On the other hand, low constitutional literacy among the public also exacerbates this situation. Limited understanding of the concepts of the state, government, and popular sovereignty reduces democracy to merely an electoral procedure, without being accompanied by substantive participation and effective public control.

From a juridical perspective, Indonesia's constitution actually provides a fairly clear normative foundation regarding the relationship between the state, government, and the people. Article 1 paragraphs (2) and (3), as well as Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia systematically indicate that the people are the holders of sovereignty, the state is a legal order built on the basis of that sovereignty, and the government is the executor of governmental power based on the constitution. However, conceptual ambiguity is still visible in various laws and regulations under it. For example, Law Number 20 of 2023 concerning State Civil Apparatus places loyalty to the state and to a legitimate government in one parallel formulation, which has the potential to create bias in personnel loyalty. In addition, the inconsistent use of the terms 'state duties' and 'government duties' further reinforces the conflation between the state and the government in legal practice.

The impact of this lack of distinction is very significant on the implementation of popular sovereignty. First, there is a shift in the meaning of popular sovereignty from being substantive to procedural. Second, there is an increased potential for abuse of power due to weak mechanisms of control over the government. Third, the level of public accountability decreases because the government is no longer positioned as an organ that can be critically monitored by the people. In the long term, this condition has the potential to weaken the quality of democracy and threaten the principles of the rule of law. In a constitutional democracy, this condition is associated with the phenomenon of democratic backsliding, which is the decline in the quality of democracy due to weakened institutions and blurred limits of power. [16].

Based on these issues, a conceptual reconstruction is needed that can clarify the distinction between the state and the government in Indonesia's constitutional system. This reconstruction must be based on the principle of people's sovereignty

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as the main foundation, as well as the values of the Pancasila state of law as a normative and philosophical framework. Philosophically, this reconstruction places the people as the sovereign owner, the state as the organization of power owned by the people, and the government as the executor of the people's mandate. Thus, no state organ, including the government, possesses sovereignty independently. In modern legal theory, the reconstruction of the constitutional concept becomes important to restore the balance between power and accountability and to strengthen the supremacy of the constitution.[17].

The reconstruction model proposed in this study is hierarchical-constitutional based on the sovereignty of the people, which includes several main formulations. First, the state must be understood as a higher and permanent entity as the embodiment of the sovereignty of the people, so it cannot be equated with the government, which is temporary in nature. Second, the government is an organizing body that derives its authority from the constitution, so every government action must be within the legal limits set. Third, the relationship between the government and the people must be built within a framework of mandate and accountability, not power domination. Fourth, the loyalty of citizens and state apparatus must be directed to the state and the constitution, not to the government in power. It is important to strengthen the relationship between the state, the constitution, and the people as the basis of the legitimacy of power, as well as to limit the role of the government so that it does not exceed its constitutional mandate.[18], [19].

To clarify the conceptual construction and implications of the reconstruction model, it can be seen in the following table:

Table 1. conceptual construction and implications of the reconstruction model

No	Reconstruction Components	Main Substance	Implications for the State Administration System
1	Affirmation of the State's Position	The state as the highest and permanent entity as the embodiment of the people's sovereignty	Preventing the equating of the state with the government and avoiding excessive claims of power by the government
2	Government Authority (Derivative)	The government derives its authority from the constitution and is limited in nature	Clarifying the limits of government power so that it does not exceed the constitutional mandate
3	The Relationship Between the Government and the People	A relationship based on mandate and accountability, not domination	Strengthening the people's position as controllers and evaluators of power
4	Loyalty Orientation	The loyalty of citizens and officials is to the country and the constitution, not to the government	Increasing accountability and preventing the politicization of state apparatus
5	Strengthening the Relationship Between the State and the People's Constitution	The state as a representation of the people, the constitution as the basis of legitimacy, the government as the executor	Strengthening the legitimacy system of power based on the sovereignty of the people
6	Limitation of Government Power	The government must act within the corridor of law and the constitution	Preventing abuse of power and maintaining the rule of law
7	Strengthening Constitutional Democracy	Democracy is not only procedural, but also substantive	Encouraging a system of power control by the people in a sustainable manner

Based on the conceptual construction formulated in the table, this reconstruction model not only has a theoretical dimension but also provides practical implications for strengthening Indonesia's constitutional system. First, this reconstruction clarifies the limits of government power, thereby preventing excessive claims over state authority. Second, it strengthens the position of the people as the owners of sovereignty who have the right to control and evaluate the government. Third, it increases the accountability of state administrators through the affirmation of a loyalty structure oriented towards the constitution. Fourth, it reinforces the meaning of constitutional democracy, where democracy is not only understood as an electoral mechanism but also as a system of power control by the people in a sustainable manner.

Thus, the reconstruction of the distinction between the state and the government is not only a theoretical necessity but also a practical urgency in efforts to strengthen democracy and the rule of law in Indonesia. Reaffirming the conceptual boundaries between the two will prevent the distortion of power and ensure that the people remain the primary owners and controllers within the state system. Ultimately, the government will function proportionally as the executor of a mandate that is subject to the constitution and oriented toward the interests of the people as a whole.

Conclusion

This research emphasizes that conceptually there is a fundamental difference between the state and the government in constitutional theory, where the state is a permanent entity representing the sovereignty of the people, whereas the government is merely a temporary organ that exercises power based on a constitutional mandate. However, in the practice of Indonesian governance, this distinction tends to become blurred due to the dominance of political crimes, the personalization of power, regulatory inconsistencies, and low constitutional literacy among the public. This condition impacts the reduced meaning of popular sovereignty, weakens oversight mechanisms, and increases the potential for abuse of power, which ultimately threatens the quality of democracy and the principles of the rule of law. In response to this issue, this study offers a conceptual reconstruction based on popular sovereignty that positions the state as the main permanent entity and the government as the executor of a derivative and accountable mandate. This hierarchical-constitutional reconstruction model highlights the importance of clearly defining the limits of authority, reinforcing checks and balances mechanisms, and reorienting loyalty toward the state and the constitution rather than toward the ruling government. Accordingly, this reconstruction possesses not only theoretical significance for the development of constitutional law but also practical relevance in strengthening a constitutional democracy that is more substantive, participatory, and centered on the people. In the future, further research is required to examine the concrete implementation of this reconstruction model, particularly through the harmonization of legislation, the strengthening of institutions, and the enhancement of public constitutional literacy. Moreover, empirical approaches may also be developed to evaluate the extent to which this reconstruction model is effective in constitutional practice. Through these efforts, it is expected that a clearer and more accountable constitutional system in Indonesia can be achieved, one that genuinely reflects the principle of popular sovereignty as the fundamental basis of the rule of law.

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