



Filling Members of the Financial Audit Board: Constitutional Review and Legislative Intervention

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ABSTRACT

The purpose of the study is to analyse the independence system of filling the position of BPK members based on the theory of independence of state institutions based on the interpretation of the State constitution. The method used is normative research that highlights conceptual and philosophical aspects as an approach to issues of independence of state apparatus. The findings in this paper show that there is a polarisation in the filling of positions of BPK members that is not in line with constitutional principles such as independence from supervision in determining central positions, so that the checks and balances aspect that is expected to be applied by the BPK does not seem independent in determining certain positions. The polarisation of BPK member positions that seems political has resulted in hidden interests that can actually interfere with the independence of BPK as a state audit institution. In the future, it is necessary to strengthen the BPK institution as a state institution that

is in a new power space known as the inspection space by making changes and adding concrete and internal regulations in the aspect of filling BPK members in terms of the theory of state institutional independence.

A. Introduction

As constitutional state, Indonesia in all forms of actions and policies formed and implemented by the government should refer to the applicable rules and regulations.¹ From this construction it is understood that the deepest meaning of a rule of law is the power to obey the law.² The system of power management or state institutions of the Republic of Indonesia is reflected in the state institution of the Supreme Audit Agency (BPK). BPK is a state high institution that has the authority to examine the management and accountability of state finances.³ Based on the original text of the 1945 Constitution, chapter VIII concerning financial matters, Article 23 paragraph 5 explains that in examining the management and responsibility of state finances, a financial audit agency is held whose regulations are stipulated by law.⁴ In carrying out its governance, BPK is currently led by 9 BPK members consisting of a BPK Chairperson who is also a member, a Deputy Chairperson who is also a member, and 7 members. BPK members are positions filled by people determined by the DPR.⁵ This is what is being debated, namely regarding the extent of the DPR's power over filling members of state institutions who have the task of overseeing the management and accountability of state finances. The rules for filling state officials carried out by the DPR are currently ideally balanced with the role of several other state institutions as a form of a process of checks and balances,⁶ but currently the process for filling the positions of BPK members is still purely carried

¹ Muhammad Mutawalli, "Kewenangan Badan Pemeriksa Keuangan Dalam Melakukan Pemeriksaan Dana Desa Yang Bersumber Dari APBN," *Jurnal Litigasi (e-Journal)* 23, no. 1 (2022): 61–82, <https://doi.org/10.23969/litigasi.v23i1.5030>.

² Muhammad Ikram Nur Fuady et al., *Hukum Di Indonesia* (Jakarta: Galiono Digdaya Kawthar, 2023).

³ Fitria Dewi Navisa, "Antinomi Kewenangan Presiden Dengan DPR Dan BPK Terkait Dengan Di Investasi Newmont," *Jurnal Hukum Dan Kenotariatan* 6, no. 3 (2022): 1406–22.

⁴ Mutawalli, "Kewenangan Badan Pemeriksa Keuangan Dalam Melakukan Pemeriksaan Dana Desa Yang Bersumber Dari APBN."

⁵ Tubagus Muhammad Nasarudin, "Kedudukan Badan Pemeriksa Keuangan (BPK) Sebagai Lembaga Negara Di Bidang Pengawasan Keuangan Negara," *Justicia Sains: Jurnal Ilmu Hukum* 5, no. 1 (2020): 88–107, <https://doi.org/10.24967/jcs.v4i1.414>.

⁶ Hendar Ristriawan and Dewi Kania Sugiharti, "Penguatan Pengelolaan Keuangan Negara Melalui Mekanisme Checks and Balances System," *Jurnal Konstitusi* 14, no. 3 (2017): 601.

out by the DPR.⁷ In short, there is no process of checks and balances. This is then vulnerable to be misused by related parties for political gain.

The function of the DPR, which can be said to be "absolute" in the election of BPK members, cannot be separated from the issue of the existence of a dominant political element, so it is feared that the elected BPK members will be far from the essence of the BPK as a professional institution that upholds professional and independent elements. The rules and process for selecting members of the Financial Audit Board are considered not capable of realizing independent organizational governance and integrity. Currently, the selection process for state financial audit institutions is too controlled by the DPR.⁸ This has more or less had an impact on the potential for accusations that the results of the BPK examination are considered to be politicized to protect or bring down someone based on the orders of a political party. The problem of dominating the authority of the DPR is one of the problems that is an obstacle in realizing an independent pattern for filling out BPK members. The five BPK members for the 2019-2024 period who were appointed by the Supreme Court in 2019 are dominated by figures with political party backgrounds. The five members are Achsanul Qosasi (Democratic Party), Daniel Lumban Tobing (PDI Perjuangan), Harry Azhar Aziz (Golkar Party), and Pius Lustrilanang (Gerindra Party). Only Hendra Susanto comes from internal BPK. They are members elected and approved by the DPR in 2019. They were selected from 55 prospective members. Meanwhile, the other four BPK leaders who have served are BPK Chairman Agung Firman Sampurna, Deputy Chairman Agus Joko Pramono, and two members, namely Isma Yatun and Bahrul Alam.

In Article 23 F of the 1945 Constitution, it is stated that BPK members are elected by the DPR on the recommendation of the Regional Representative Council (DPD). The root of the BPK's current problems is the member selection process which is controlled by the DPR. Even though the constitution stipulates that the election of BPK members is carried out by the DPR based on the recommendation of the DPD, the DPD's recommendation is only a formality. DPD recommendations are often not taken into consideration by the DPR in making decisions.

The importance of revising the BPK Law in relation to improving the filling of BPK member positions in the framework of realizing a free and independent BPK

⁷ Muhammad Imron Rosyadi, "Wewenang Badan Pemeriksa Keuangan Dan Badan Pengawasan Keuangan Dan Pembangunan Dalam Menilai Kerugian Keuangan Negara," *Mimbar Keadilan: Jurnal Ilmu Hukum*, 2016: 28.

⁸ W Putra, "Perbandingan Konsep Pemilihan Jabatan Publik BPK Atau SAI Di Beberapa Negara Untuk Mewujudkan BPK Yang Independen," *Jurnal Penelitian Hukum De Jure* 19, no. 3 (2019): 385–403, <https://doi.org/10.30641/dejure.2019.V19.385-403>.

apart from the interests of political institutions. Research related to the independence and improvement of the BPK, among others, was carried out by Dumaria Simanjuntak in 2017 regarding "Filling the Positions of BPK Members to Create an Independent BPK" which focused on the need to amend Law Number 15 of 2006 concerning the BPK so that institutionally the BPK is much more independent and transparent by involving other institutions such as PPATK and KPK.⁹ Apart from that, further research was also carried out by Salsa Yaumil Akbari and Ninuk Wijningsih in 2022 regarding "The Authority of the DPR in the Election of Members of the Supreme Audit Agency" which focused on gaps in the procedures for selecting members of the Supreme Audit Agency. Financial Audit Agency in 2021 and the requirements contained in Law Number 15 of 2006 concerning the Financial Audit Agency as well as the legal consequences that occur if the procedures carried out in selecting members of the Financial Audit Agency conflict with applicable laws and regulations. The process of selecting BPK members that do not fulfill the requirements stated in the law causes the DPR's decision to elect BPK members to be annulled, if the DPR's decision has formal or procedural defects and the legal consequence of a decision that can be canceled is that the decision can only be said not binding and ending, when the decision was reversed.¹⁰ Furthermore, research conducted by Mieke Rayu Raba in 2017 regarding "The Role of the Financial Audit Agency in Carrying Out Audits on State Financial Management to Realize Good Governance According to Law Number 15 of 2006", explains that the BPK is a state financial audit institution . institutions given special authority. attribution for the sake of law still experiences difficulties in carrying out its audit authority independently, because external factors are still permitted by the applicable regulations. This causes the effectiveness of the BPK's authority to always be disturbed and give the impression of not being transparent.¹¹

From the description above, to determine the object and substance of the focus of this article, the author formulates several questions that will be answered in this article, including, how is the phenomenon of filling out BPK members viewed from the constitutional aspect and the influence of intervention by people's

⁹ Dumaria Simanjuntak, "Pengisian Jabatan Anggota Badan Pemeriksa Keuangan (BPK) Untuk Mewujudkan BPK Yang Independen," *Jurnal Hukum & Pembangunan* 47, no. 2 (2017): 239–66, <https://doi.org/10.21143/jhp.vol47.no2.1454>.

¹⁰ Salsa Yaumil Akbari and Ninuk Wijningsih, "Kewenangan Dewan Perwakilan Rakyat Dalam Pemilihan Anggota Badan Pemeriksa Keuangan," *Reformasi Hukum Trisakti (e-Journal)* 4, no. 2 (2022): 371–83, <https://doi.org/10.25105/refor.v4i4.14107>.

¹¹ Mieke Rayu Raba, "Peran Badan Pemeriksa Keuangan (BPK) Dalam Melakukan Pemeriksaan Terhadap Pengelolaan Keuangan Negara Untuk Mewujudkan Pemerintahan Yang Baik Menurut UU No. 15 Tahun 2006," *Lex Crimen (e-Journal)* 6, no. 3 (2017): 152–60.

representative institutions in filling out BPK members? Furthermore, how is the historicity of filling out BPK members related to the theory of the independence of state institutions? So what is the idea of an independent and democratic mechanism for filling out BPK members? This research ultimately contributes to the formation and refinement of a proportional checks and balances mechanism by prioritizing the principle of institutional independence in the constitutional system in Indonesia, especially in the aspect of the scope of authority to audit state finances carried out by the BPK institution.

The aim and contribution of this writing is at least to provide ideas and models for filling the positions of independent BPK members by examining the principles of democracy and state administration and then connecting them with the theory of the independence of state institutions. Conceptually, the filling in of BPK members needs to be carried out in a structured manner, starting with amendments to the 1945 Constitution by the MPR which is then continued with revisions to the BPK Law by the DPR, DPD and together with the President. creating harmonization between changes to the 1945 Constitution and the BPK Law.

B. Method

This research is a normative legal research. Normative legal research is legal research that has an orientation towards coherence between legal principles, theories, concepts, and doctrines with statutory regulations.¹² This study uses primary legal materials including: the 1945 Constitution of the Republic of Indonesia and the law on Audit Board of the Republic of Indonesia. Secondary legal material includes all types of research that discusses discussion about the independence of filling the members of the financial audit body, the theory of institutional independence and the theory of filling positions. The non-legal materials in this research are various non-legal studies on filling members on Audit Board of the Republic of Indonesia, especially social and political constitutional system regarding filling members. Analysis of legal materials is carried out by collecting existing legal materials (inventory), then carrying out legal analysis by prioritizing legal concepts and doctrines adapted to the formulation of the problem being discussed, and the results of the analysis then confirming the presence of legal solutions (prescriptions) that answer the legal issues being discussed.¹³

¹² P M Marzuki, *Penelitian Hukum (Cetakan Ke-14)* (Jakarta: Kencana Prenada Media Group, 2019).

¹³ Irwansyah Irwansyah, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel* (Yogyakarta: Mirra Buana Media, 2020).

C. Finding and Discussion

1. The Phenomenon of Filling BPK Members: Constitutional Review and DPR Intervention

The BPK law, which was first born since Indonesia's independence, is a mandate from the 1945 Constitution before amendments to Chapter VIII Financial Matters Article 23 paragraph (5) which states that in order to examine state financial accountability, a Financial Audit Board is held, the implementation of which is stipulated by law act. The law is Law Number 17 of 1965 concerning the Stipulation of Government Regulations in lieu of Law Number 6 of 1964, concerning the Establishment of the Audit Board of the Republic of Indonesia (State Gazette of 1964 No. 41) to become law. Since the enactment of the 1965 Law, the BPK for the first time had a basis in the form of a law to regulate the authority, composition and work procedures of the BPK. Then in a period of 8 years, the first BPK Law was repealed with the new BPK Law, namely Law Number 5 of 1973.

According to the history of the birth of the 1945 Constitution, the birth of the term "Financial Audit Board" in our constitution arose when the third draft of the Constitution was the result of a General Meeting of the Investigative Body for Preparatory Efforts for the Independence of the Republic of Indonesia on July 15, 1945. In the minutes of the meeting the discussion continued the second draft of the Constitution which resulted in a draft of the 1945 Constitution.¹⁴ Third on July 16, 1945 it was the figure of Bung Hatta who proposed the establishment of a Financial Audit Board to examine responsibility for state finances. However, the formulation regarding the BPK at that time did not yet create the concept of an independent BPK. In contrast to the 1945 Constitution before the amendment, the 1945 Law after the Amendment mandates the need for an independent financial auditing body to carry out audits of managers and responsibilities in state finances. Article 23E paragraph (1) of the Constitution after the Third Amendment "To examine the management and responsibility for state finances, a free and independent Audit Board of the Republic of Indonesia is held.

The role of the House of Representatives in the 1973 Law was limited to proposing 3 (three) candidate members. The members of the Audit Board of the Republic of Indonesia are appointed for a term of 5 (five) years. After completing

¹⁴ Dani Habibi and Ian Aji Hermawan, "Perluasan Kewenangan Badan Pemeriksa Keuangan Dalam Mengawasi Keuangan Negara Di Lingkup Pemerintahan Daerah," *Vol. 6 No. 2 (2020): Veritas et Justitia* 6, no. 2 (2020), <https://doi.org/10.25123/vej.v6i2.3512>.

the term of office, the BPK Member may be reappointed as a Member of the Supreme Audit Agency for a term of 5 (five) years. If there will be a vacancy in the membership of the Audit Board of the Republic of Indonesia due to the expiration of the term of office of the members of the Audit Board of the Republic of Indonesia, then the term of office of the members of the Audit Board of the Republic of Indonesia shall be extended until the appointment of at least 3 (three) members of the Audit Board of Indonesia is carried out. each change of membership of the Audit Board of the Republic of Indonesia 3 (three) old members can be reappointed with the aim of ensuring the continuity of the work of the Audit Board of Finance and without neglecting the need for refreshment. So the 1973 Law does not recognize the term change over time.

Based on the description above, the great power possessed by the president in appointing and dismissing the chairman, deputy chairman and members of the BPK in the era of the 1973 law could be one of the reasons for the ineffectiveness of this examining body. In the case of the election of BPK members, there is no process of checks and balances between the legislature and the executive. Unlike the 2006 BPK Law, where there was involvement of the presidential (government) and DPR institutions.¹⁵ The history of filling the positions of BPK members after independence began with the 1945 Constitution which gave birth to the BPK Law for the first time through the promulgation of Law no. 17 of 1965. Then the law was repealed with Law no. 5 of 1973 which later became invalid with the promulgation of BPK Law no. 15 of 2006. The provisions for filling the positions of members of the BPK in each of these laws will be described by the author as follows:

a. Fulfillment of BPK Member positions according to Law Number 17 of 1965

The BPK for the 1965-1972 period had very broad tasks. BPK's task is to supervise, examine and research the control and management of state finances to eliminate bureaucratism and corruption. BPK's audit task In the current era, it has alluded to the prevention of corruption as stipulated in Article 16 of Law no. 17 of 1965. But in this era both the 1945 Constitution before the amendment and the BPK Law itself did not mention the existence of an independent BPK so that it is impossible to aim at eliminating corruption without regulating the independence of this state audit institution. In addition to regulating the duties of the BPK, this Law also regulates the BPK's obligation to

¹⁵ Oce Madril, "Pemilihan Anggota Badan Pemeriksa Keuangan," Koran Tempo, 2013, <http://koran.tempo.co/konten/2013/06/27/314090/Pemilihan-Anggota-Badan-Pemeriksa-Kuangan>.

prepare a report on audit results that must be submitted to the President. The report on the results of the BPK audit is then submitted by the President to the DPR.¹⁶ This rule regarding the reporting of BPK audit results illustrates that even though the BPK at that time was one of the highest state institutions, it was still under the authority of the executive branch.

b. Fulfillment of BPK Member positions according to Law Number 5 of 1973

During the enactment of Law Number 5 of 1973,¹⁷ the Audit Board of the Republic of Indonesia was defined as a State High Institution which in carrying out its duties was independent from the influence and power of the Government, but did not stand above the Government. This Law regulates the duties of the BPK to examine the Government's responsibility regarding State Finances including all implementation of the State Revenue and Expenditure Budget.¹⁸ The results of the BPK audit are then notified to the House of Representatives. The Audit Board of the Republic of Indonesia is in the form of a council consisting of a chairman who is also a member, a deputy chairman who is also a member and 5 (five) members. The Chairperson, Deputy Chairmen and Members of the Audit Board of the Republic of Indonesia are appointed by the President on the recommendation of the House of Representatives. The House of Representatives proposes 3 (three) candidates.

The intent of the provisions in this Law is to position the BPK as an institution outside the powers of the executive branch that is parallel to the government, but the arrangements for filling the positions of BPK members have a different meaning. The authority to fill the positions of BPK members is still a division of authority between the government and the DPR. This can be concluded from the provision that the five BPK members are appointed by the President with 3 of them being at the suggestion of the DPR. Therefore, based on the provisions of Article 1, Article 7 and Article 8 paragraph (1) of this Law which regulates the position of the BPK and filling the positions of BPK members, it can be stated that the BPK is not truly independent.

¹⁶ Republik Indonesia, *Undang-Undang Republik Indonesia Nomor 15 Tahun 2006 Tentang Badan Pemeriksa Keuangan* (Jakarta: Sekretariat Negara, 2006).

¹⁷ Republik Indonesia, *Undang-Undang Republik Indonesia Nomor 5 Tahun 1973 Tentang Badan Pemeriksa Keuangan* (Jakarta: Sekretariat Negara, 1973).

¹⁸ Mei Susanto, Rahayu Prasetyaningsih, and Lailani Sungkar, "Kekuasaan DPR Dalam Pengisian Pejabat Negara Dalam Sistem Ketatanegaraan Indonesia," *Jurnal De Jure Kemenkumham* 18, no. 1 (2018).

c. Fulfillment of BPK Member positions according to Law Number 15 of 2006

After the enactment of Law Number 15 of 2006,¹⁹ the position of BPK is a state institution who are free and independent in examining the management and accountability of state finances. According to George Jellinek, state institutions are divided into two parts, namely direct state apparatus (unmittelbare organ) and indirect state apparatus (mittelbare organ).²⁰ BPK is a state institution that is free and independent in examining the management and accountability of state finances. As a free and independent state institution, BPK is tasked with examining the management and accountability of state finances carried out by the Central Government, Regional Governments, other State Institutions, Bank Indonesia, State-Owned Enterprises, Public Service Agencies, Regional-Owned Enterprises, and institutions or other bodies that manage state finances.

BPK members are elected by the DPR taking into account the considerations of the DPD. The 2006 Law tried to elevate the role of the DPD instead of the 1973 Law which did not mention the role of the DPD in the process of filling the positions of BPK members. The considerations of the DPD required in the process of filling the positions of BPK members in the 2006 Law are submitted in writing containing all the names of all candidates in full, and submitted to the DPR within a maximum period of 1 (one) month from the date of receipt of the letter requesting consideration from the DPR Leadership. Then the candidates for BPK members are announced by the DPR to the public to obtain input from the public. The DPR begins the process of selecting BPK members starting from the date of receipt of the notification letter from BPK and must complete the election of new BPK members no later than 1 (one) month before the term of office of the old BPK members ends.

In the case of the election of BPK members, there is no process of checks and balances between the legislature and the executive. Unlike in the election of other state officials, where there is involvement of the president (government) and the DPR. Indeed there is involvement of the DPD. But the DPD is only limited to giving recommendations which can easily be ignored by the DPR. This means that the authority is fully in the hands of the DPR. This

¹⁹ Republik Indonesia, *Undang-Undang Republik Indonesia Nomor 15 Tahun 2006 Tentang Badan Pemeriksa Keuangan*.

²⁰ Firmansyah Arifin, D Tjiptonugroho, and J Asshiddiqie, *Lembaga Negara Dan Sengketa Kewenangan Antarlembaga Negara* (Jakarta: Konsorsium Reformasi Hukum Nasional, 2005).

model is prone to abuse. Moreover, in fact, the selection process for public officials in the DPR is always not transparent. So far, the fit and proper test process has only served as a venue for political transactions. In fact, not infrequently, this process becomes a venue for bribery transactions. Considerations in the selection of candidates also often can not be accounted for. Sometimes the DPR chooses candidates with low quality and low integrity. Political reasons dominate more than considerations of competence and integrity. It is this politicization that should be avoided in the election of BPK members, because BPK is not a political institution.

The consideration of the DPD is submitted in writing containing all the names of the candidates in full, and submitted to the DPR within a maximum period of 1 (one) month from the date of receipt of the letter requesting consideration from the leadership of the DPR.²¹ Candidates for BPK members are announced by the DPR to the public to obtain input from the public. The DPR begins the process of selecting BPK members starting from the date of receipt of the notification letter from BPK and must complete the election of new BPK members no later than 1 (one) month before the term of office of the old BPK members ends.

The regulation on the position of the BPK in other high state institutions in this Law has separated the BPK from the powers of the government and the powers of the DPR. It can be said that the process for selecting members of the BPK has so far been purely carried out by the DPR because it is the DPR that conducts the fit and proper test.²² The involvement of the DPD in providing considerations has not made the process of filling the positions of BPK members away from political interests. Judging from the article on filling the positions of BPK members, with the election of nine BPK members by the DPR through consideration of the DPD, filling the positions of BPK members has actually been far from being influenced by executive power but is still not free from the influence of the DPR's power which incidentally is a political institution.

²¹ A D Basniwati, "Hubungan DPR Dan BPK Dalam Melaksanakan Fungsi Pengawasan," *Jatiswara* 30, no. 1 (2017).

²² G P Jasa and R Herawati, "Dinamika Relasi Antara Badan Pemeriksa Keuangan Dan Dewan Perwakilan Rakyat Dalam Sistem Audit Keuangan Negara," *Law Reform* 13, no. 2 (2017): 189–203, <https://doi.org/10.14710/lr.v13i2.16155>.

2. BPK Independence: Relevance in the Concept of Independent State Institutions

The membership of the BPK during the 1965 Law era totaled 21 people, then during the 1973 Law period the BPK members numbered 5 people and in the 2006 Law era there were 9 people. According to Logeman's theory the position of BPK member is a college position, in which BPK members are elected to represent BPK jointly.²³ The way in which BPK members are elected from time to time through appointment and appointment by the president has evolved into being elected by the DPR with the consideration that the DPD is a representative democratic election because they are not directly elected by the people. Fulfilling the positions of BPK members by appointing, appointing and dismissing them at the time of enactment of Law no. 17 of 1965 is solely the authority of the president. Through the process of appointing, appointing and dismissing the chairman, deputy chairman and members of the BPK in the hands of the president, the BPK is far from being an independent institution that can professionally carry out its duties to carry out audits of the management and accountability of state finances in order to create an Indonesian government that is clean from KKN. With the inclusion of members of political parties as BPK members, the BPK at that time was very political.

One of the main reasons why the DPR is given broad authority in filling public positions is to perform a checks and balances function on the president's authority. As we know, before the amendment to the constitution, the president had enormous authority. The president even monopolizes parliamentary power. And at that time, the parliament had almost no power to oversee and control the power of the president. Another reason is as a form of transparency and public accountability. Related to this, Peter Waller and Mark Chalmers, in a research report entitled *An Evaluation of Pre-Appointment Scrutiny Hearings*, stated that the involvement of parliament in the process of selecting public officials aims to protect the rights and interests of the public. The rights and interests of the public can be achieved through an election procedure that is transparent, accountable and participatory. The parliamentary election process is usually carried out openly, and the people can witness it, and even get involved in giving input.

But the various reasons above are starting to be questioned. This transfer of authority has implications for the swelling of power. DPR becomes out of control.

²³ Harun Alrasid, "Masalah Pengisian Jabatan Presiden Di Indonesia Sejak Sidang Dokuitsu Zyunbi Choosakai 1945 Sampai Sidang Majelis Permusyawaratan Rakyat 1993: Suatu Tinjauan Formal Yuridis" (Universitas Indonesia, 1993), p. 18.

As a result, there has been a shift in abuse from the executive to the legislature, as happened in the bribery case in the election of former BI Senior Deputy Governor Miranda S. Goeltom. However, absolute power tends to be corrupt. The full power of the DPR in selecting BPK members must be balanced with other powers. The minimum effort in accordance with the constitution is to strengthen the involvement of the DPD. The recommendations and considerations of the DPD must really be considered by the DPR. It is more ideal if the DPR chooses from a list of candidate names recommended by the DPD.²⁴

In accordance with George Jellinek's theory of state institutions, the BPK as one of the state institutions whose establishment was directly mandated by the 1945 Constitution of the Republic of Indonesia is a direct instrument of the state (unmittebare organ). The existence of BPK in the 1945 Constitution of the Republic of Indonesia as an equal state institution in the midst of the existence of executive, legislative and judicial powers is a characteristic compared to the constitutions of other countries. However, when examined with the theory of trias politica, the BPK is not included in executive power, legislative power and judicial power so that in Indonesia it does not actually adhere to the concept of trias politica purely, both before amendments to the 1945 Constitution of the Republic of Indonesia and after amendments to the 1945 Constitution of the Republic of Indonesia were made. A.B Kusuma also expressed the same opinion that the founding fathers of the country never intended to adhere to trias politica.²⁵ A government can be called democratic with or without the trias politica principle, either by separation of powers or by fusion of powers.

So far, the fit and proper test process has only served as a place to carry out political transactions. There is even a possibility that the process will become a venue for bribery transactions. Political reasons dominate more than considerations of competence and integrity. In addition, the consideration of the selection of candidates also often cannot be accounted for. Therefore, further regulations are needed regarding the formation of a special committee to select candidates for BPK members and then submit the best candidate to the DPR to be elected, as happened in the election of the Corruption Eradication Commission leaders.

From the description above, the author tries to establish the continuity of BPK regulations with the BPK's position as a state institution that has special authority in matters of auditing state finances which of course must be independent.

²⁴ Madril, "Pemilihan Anggota Badan Pemeriksa Keuangan."

²⁵ Ananda B Kusuma, *Sistem Pemerintahan Pendiri Negara Versus Sistem Presidensiel Orde Reformasi* (Jakarta: Badan Penerbit Fakultas Hukum, Universitas Indonesia, 2011), p. 216.

This needs to be seen in investigating the independence of state institutions. In the context of institutional independence itself, substantively the independence that an independent state institution must have includes at least three things: (1) institutional or structural independence; (2) functional independence; (3) administrative independence in the form of financial independence and personnel independence.²⁶ The absence of interference from other powers or the absence of dependence on one party on another party in literature also means "independence".²⁷

3. Ideas for Independent and Democratic Filling of BPK Members

As an ideal idea for filling BPK members in the future that is independent and democratic, of course the factors that influence the difficulty of realizing institutional independence in filling BPK members and the possibility of violations committed by BPK members due to political intervention require reform and change. Maurice Duverger in his book entitled *I'Es Regimes Des Politiques* states that there are two ways to fill democratic positions, namely direct democracy and representative democracy. What is meant by direct democracy is a way of filling positions by the people directly electing someone to occupy certain positions in the government, while representative democracy is a way of filling positions by the people electing a person or political party to elect someone to occupy a certain position in order to carry out (institutional) tasks of the state such as legislative, executive, and judicial powers.²⁸

Regarding the regulations governing the authority of the BPK and efforts to internalize the BPK institution. As an initial idea, the author proposes the formation of a selection committee in the BPK member selection mechanism which is internal and does not involve the DPR and DPD as authorized institutions in accordance with the constitutional mandate. Doctrinally, the BPK is a supervisory institution that was formed on the basis of independence and efforts to create a checks and balances process in the Indonesian constitutional system.²⁹

The selection committee is formed from elements of the central government and elements of society (Community Participation) such as the

²⁶ Jimly Asshidiqie, *Pokok-Pokok Hukum Tata Negara Indonesia* (Jakarta: Bhuna Ilmu Populer, 2008), p. 879-880.

²⁷ Sirajuddin and Winardi, *Dasar-Dasar Hukum Tata Negara Indonesia* (Malang: Setara Press, 2015), p. 190.

²⁸ Majelis Permusyawaratan Rakyat RI, *Naskah Akademik Undang-Undang Dasar Negara Republik Indonesia 1945 Usulan Komisi Konstitusi* (Jakarta: Sekretariat Jenderal MPR RI, 2004).

²⁹ Winasis Yulianto, "Rekonseptualisasi Penyelesaian Sengketa Kewenangan Lembaga Negara," *Jurnal Ilmiah Fenomena* 12, no. 1 (2014): 1111-1133.

mechanism used by the Corruption Eradication Committee (KPK) in determining the positions of chairman and members of the supervisory board. However, in the realization stage, it is necessary to revise the 1945 Constitution. The basis for the amendment to the 1945 Constitution can be interpreted as the elastic and living nature of the 1945 Constitution. The elastic nature of the 1945 Constitution is interpreted by developments over time and a constitutional system that continues to experience political and legal distortions of government. The amendment to the 1945 Constitution focuses on changes to Article 23F paragraph (1) which states that the election of BPK members is the task of the DPR with the assistance of DPD considerations and then ratified by the President. In Article 23F paragraph (1) it is necessary to reformulate the authority of the DPR and DPD regarding the mechanism for selecting BPK members. In this revision, the authority of the DPR and DPD to elect BPK members needs to be closed. The authority in question is focused on the DPR and DPD only as people's representative institutions which only carry out the function of monitoring internal selection carried out by the BPK independently. This supervisory aspect also needs to involve the PPATK and KPK institutions to strengthen the supervisory function of the selection process and filling of positions for BPK members.

If these conditions have been met, then the selection of BPK members is carried out by the BPK ranks by involving internal structural officials of the BPK institution who are then of course supervised by the DPR, DPD, Central Government, PPATK, KPK, and Community Representatives (if necessary). The results of the selection and selection of BPK members are then submitted to the DPR to be fulfilled again by considering the proposed results of the implementation and supervision of the selection committee that has been formed. After it is deemed implemented and meets the principles of transparency and democracy, it is then proposed to the President as an element of the central government to then be ratified and appointed as a member of the BPK definitively and legally.

Therefore, the idea of strengthening and making efforts to realize the BPK as an independent state institution needs to be realized and based on aspects of constitutional change and fulfilling aspects of the constitutionality of state institutions. Once the constitutionality aspect of the independence of state institutions is fulfilled, then in practice the BPK can operate independently, autonomously and apart from external influences which have a very high potential for conflict of interest. From the principle of independence of state institutions, the intervention of other state institutions by itself cannot affect the sustainability of

the BPK, moreover other state institutions, in this case the DPR, DPD, PPATK, KPK and the Central Government, are only partners in carrying out their duties. aspects of monitoring the institutional sustainability of the BPK in order to implement the principle of checks and balances. in a proportional constitutional system.

A state institution is said to be independent if it is mandated to be independent, free from interference from other parties and limitations on its independence. Independent State Institutions are said to be constitutional only if the basis for their formation is the constitution.³⁰ The basic principle is that the constitution is the highest law, namely its position as a law that is higher than ordinary law, which has the implication that there are no longer any restrictions on what is stated in the constitution, namely regarding its constitutive function as a starting point in forming a government. The constitution establishes the main institutions of government, such as the legislature, executive, and judiciary, while determining the composition and manner of appointment of these institutions is often left to ordinary law.

D. Conclusion

The election mechanism of BPK members should involve several important institutions such as PPATK and KPK and the third era of BPK Law that the filling of positions still does not reflect its independence. To realise a BPK that is free and independent in the sense that it is far from the interference of executive and political interests, it is necessary to make changes to Law No. 15/2006 on BPK. Changes to this law are made as a follow-up to the decision of the Constitutional Court No. 13/PUU-XII/2013 which decided that several articles related to the filling of BPK members have no legal force, as well as improvements to the articles related to the process of selecting BPK members by DPR and DPD. The idea is to amend Article 23F paragraph (1) of the Constitution by closing the authority of the DPR and DPD in the aspect of nomination of BPK members, where its authority is limited to supervising the implementation of the selection to the selection committee formed. This change will also have an impact on the revision of the BPK Act by adding a special article on the formation of the selection committee, where the selection committee consists of internal structural officials within the institutional scope of BPK who then run the selection mechanism independently and open to supervision by DPR, DPD, Central Government, PPATK, KPK and also involves direct supervision from the public. Likewise, the author recommends researchers to

³⁰ Bunyamin Alamsyah and Uu Nurul Huda, "Politik Hukum Pelembagaan Komisi-Komisi Negara Dalam Sistem Ketatanegaraan Indonesia," *Jurnal Hukum Dan Peradilan* 2, no. 1 (2013): 94.

continue this research from various perspectives. This research is only descriptive and reveals the independence side of the appointment of BPK officials.

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