

Constitutional Transformation and Public Power: Reinterpreting the Separation of Powers in Contemporary Indonesia

Marzuki¹, Abdul Rahman²

¹Fakultas Hukum Universitas Islam Sumatera Utara, Indonesia

²Fakultas Agama Islam Universitas Islam Sumatera Utara, Indonesia

Email : marzuki.lubis@fh.uisu.ac.id, abdul_rahman@fai.uisu.ac.id

Abstract:

The transformation of constitutional governance in the twenty-first century has fundamentally altered the distribution and exercise of public power. The classical doctrine of the separation of powers, originally designed to prevent the concentration of authority among the legislative, executive, and judicial branches, is increasingly challenged by the emergence of independent constitutional institutions, administrative agencies, decentralized governance, and collaborative policymaking mechanisms. In Indonesia, constitutional reforms following the 1998 democratic transition have significantly reshaped institutional relationships, expanding the architecture of public authority beyond the traditional framework of trias politica. These developments raise fundamental constitutional questions regarding whether the classical doctrine of the separation of powers remains adequate for explaining the contemporary structure of state power. This study aims to reinterpret the doctrine of the separation of powers within the context of Indonesia's contemporary constitutional system by examining the transformation of public power in the modern administrative state. Employing a normative legal research approach, the study analyzes constitutional provisions, statutory regulations, Constitutional Court decisions, and comparative constitutional theories alongside contemporary scholarship on constitutional governance and administrative constitutionalism. The findings demonstrate that Indonesia has experienced a significant constitutional transformation in which public power is no longer exercised exclusively through the interaction of the three classical branches of government. Instead, constitutional authority is increasingly distributed across independent institutions, regulatory agencies, decentralized governmental entities, and collaborative governance networks that perform constitutionally significant public functions. Consequently, the traditional doctrine of the separation of powers requires reinterpretation to accommodate these institutional developments while preserving the fundamental principles of constitutionalism, democratic accountability, and the rule of law.

Keywords: constitutional transformation; separation of powers; public power; constitutional governance; constitutional accountability; Indonesia; administrative state.

I. Introduction

The doctrine of separation of powers is one of the main foundations of the modern constitutional state. Since its systematic introduction by Montesquieu, the concept has been seen as a mechanism to prevent the concentration of power and protect the freedoms of citizens through the division of legislative, executive, and judicial functions. In its development, this doctrine not only became a political theory, but also shaped the institutional architecture of various democratic countries, including Indonesia. Through the principle of separation and limitation of power, the constitution is expected to be able to create a system of checks and balances that ensure the accountability of state administrators while preventing abuse of authority (Vile, 1998).

Nevertheless, the changing character of the modern state shows that the classically divided power is increasingly facing challenges. The contemporary state no longer only performs traditional governmental functions, but is also involved in economic regulation, social protection, market supervision, public risk management, and the provision of complex administrative services. This condition gives birth to what many scholars call the administrative state, which is a state where most of its power is exercised through administrative institutions, independent regulatory bodies, and special institutions that have normative and quasi-judicial authority. As a result, the line between legislative, executive, and judicial functions has become increasingly blurred as many modern institutions carry out hybrid functions (Vermeule, 2016).

A similar transformation also occurred in Indonesia after the amendment of the 1945 Constitution of the Republic of Indonesia in the period 1999–2002. Constitutional reform not only strengthens the principles of the rule of law and democracy, but also establishes a new institutional configuration that is much more complex than before the reform. The presence of the Constitutional Court, the Judicial Commission, Bank Indonesia as an independent central bank, the General Election Commission, and various other independent institutions shows that the distribution of state power can no longer be fully explained through the traditional *trias politica* framework. In addition, the implementation of regional autonomy expands the centers of public power outside the central government, so that the relationship between constitutional actors becomes increasingly multidimensional (Asshiddiqie, 2006).

This development raises fundamental questions about the relevance of the doctrine of separation of powers in the context of contemporary Indonesian constitutionality. Normatively, the constitution still recognizes the division of functions between legislative, executive, and judicial institutions. However, in fact, much of the public authority is exercised through inter-agency coordination mechanisms, independent bodies, and governance networks involving actors outside the traditional governance structure. This phenomenon shows that the concept of public power has undergone a transformation from a hierarchical model to a more distributed and networked governance model. Thus, the main question is no longer whether the separation of powers is still necessary, but how the doctrine should be reinterpreted in order to be able to explain the institutional reality of the modern state.

The international literature has extensively discussed the transformation of the doctrine of separation of powers in the context of the administrative state. Bruce Ackerman (2000) argues that the modern state needs an institutional structure that goes beyond the classical division of power because many public functions are carried out by independent institutions that are not entirely under the executive branch. Meanwhile, Peter L. Strauss (1984) highlights the emergence of the "fourth branch of government" which consists of administrative bodies with broad regulatory authority. In a more recent development, Adrian Vermeule (2016) argues that the theory of separation of powers must be adjusted to the reality of the administrative state which makes administrative institutions the main actor in the administration of public power.

However, most of these studies were developed based on the experiences of the United States and Western European countries. The Indonesian context has different characteristics because institutional transformation occurs through post-authoritarian constitutional reform, extensive decentralization, and the establishment of various independent institutions with constitutional and legal foundations. Research on the separation of powers in Indonesia generally still focuses on the relationship between traditional branches of power or on the sectoral analysis of the authority of certain institutions. Studies that specifically place the transformation of public

power as the basis for reinterpreting the doctrine of separation of powers in the Indonesian constitutional system are still relatively limited.

Based on these conditions, this study identified a gap in the literature. First, there has not been much research that links the development of the Indonesian administrative state with the change in the meaning of the doctrine of separation of powers. Second, the study of independent institutions and public governance networks still tends to be separate from the discussion of constitutional theory in general. Third, there is no conceptual model that explains how power-sharing in contemporary Indonesia can be understood as a constitutional power-sharing system involving more than three classical branches of power.

Departing from these gaps, this article aims to analyze the transformation of public power in the Indonesian constitutional system and reinterpret the doctrine of separation of powers in the context of the contemporary administrative state. This research also develops a conceptual model called the Constitutional Networked Power Model, which is a framework that views the division of power as a constitutional system of distribution of authority involving traditional state institutions, independent institutions, regulatory bodies, and interconnected public governance mechanisms. Thus, this article not only contributes to the development of Indonesian constitutional law theory, but also expands the international discourse on the adaptation of the doctrine of separation of powers in the modern constitutional state.

II. Research Methods

This study employs a normative legal research design grounded in doctrinal constitutional analysis. The research examines the evolution of the separation of powers doctrine within Indonesia's constitutional system by integrating constitutional interpretation with comparative constitutional theory and contemporary public law scholarship. Rather than evaluating the effectiveness of legal institutions through empirical observation, the study seeks to explain how constitutional principles governing the distribution of public power should be reinterpreted in response to institutional transformation within the modern administrative state. Such an approach is particularly appropriate because the central object of inquiry concerns the normative development of constitutional doctrine and its theoretical implications for constitutional governance rather than the measurement of institutional performance (Van Hoecke, 2011; Smits, 2017).

The primary legal materials consist of the 1945 Constitution of the Republic of Indonesia, constitutional amendments enacted between 1999 and 2002, statutes governing state institutions, Constitutional Court decisions relevant to institutional relations and constitutional authority, as well as authoritative international constitutional literature concerning the separation of powers, constitutional governance, and the administrative state. These legal sources are complemented by secondary materials including peer-reviewed journal articles, scholarly monographs, comparative constitutional studies, and official institutional documents that examine contemporary developments in constitutional theory and public administration.

The analytical framework combines doctrinal legal analysis, constitutional interpretation, and comparative constitutional analysis. Doctrinal analysis is employed to identify the constitutional principles governing the allocation and limitation of public authority within Indonesia's constitutional framework. Constitutional interpretation is subsequently used to examine the relationship between constitutional norms and the institutional developments that

have emerged following Indonesia's constitutional reforms. Comparative constitutional analysis provides additional explanatory value by examining how contemporary constitutional scholarship has responded to the transformation of public power in other democratic jurisdictions, particularly regarding the emergence of independent constitutional institutions, administrative agencies, and network-based governance structures (Ackerman, 2000; Vermeule, 2016).

This study adopts a functional approach to constitutional interpretation, which assumes that constitutional legitimacy derives not merely from the formal classification of governmental institutions but also from the constitutional functions they perform. Accordingly, institutions exercising constitutionally significant public authority should be analyzed according to their substantive constitutional roles rather than their formal institutional status. This perspective enables the research to explain why many contemporary public institutions cannot be adequately understood through the classical tripartite model of legislative, executive, and judicial powers alone.

The research further applies a conceptual synthesis method to integrate constitutional theory, administrative law scholarship, and contemporary governance studies into a unified analytical model. Instead of treating institutional diversification as an exception to the classical doctrine of the separation of powers, the study interprets these developments as evidence of an ongoing constitutional transformation requiring doctrinal reinterpretation. Through this analytical process, the research develops the Constitutional Networked Power Model, which conceptualizes contemporary constitutional governance as a network of constitutionally accountable institutions exercising interconnected public authority while remaining subject to constitutional supremacy, democratic accountability, and the rule of law.

Finally, the validity of the proposed conceptual framework is established through normative coherence analysis. This method evaluates whether the proposed reinterpretation remains consistent with the fundamental constitutional principles embedded in the Indonesian Constitution while simultaneously addressing institutional realities that have emerged in the contemporary administrative state. Consequently, the proposed model is intended not merely as a descriptive account of institutional change but as a normative framework capable of strengthening constitutional accountability within Indonesia's evolving system of constitutional governance.

III. Result and Discussion

3.1 The Evolution of the Separation of Powers in Constitutional Theory

The doctrine of the separation of powers has long been regarded as one of the defining principles of constitutional democracy. Its primary objective is to prevent the concentration of governmental authority by distributing public power among distinct institutional bodies capable of exercising mutual control. Rather than functioning merely as an organizational model of government, the doctrine represents a constitutional mechanism designed to safeguard individual liberty, preserve democratic legitimacy, and maintain the rule of law. Throughout its historical development, however, the concept has undergone significant theoretical transformation in response to changing political institutions, administrative structures, and societal demands. Consequently, understanding the contemporary relevance of the separation of powers requires tracing its evolution from a rigid institutional doctrine toward a more adaptive constitutional principle.

Although discussions concerning divided governmental authority can be found in the writings of Aristotle and Polybius, the modern doctrine is generally attributed to Charles-Louis

de Secondat, Baron de Montesquieu. In *De l'esprit des lois* (The Spirit of the Laws), published in 1748, Montesquieu argued that political liberty could only be preserved when legislative, executive, and judicial powers were entrusted to separate institutions capable of restraining one another. His theory emerged as a response to absolutist monarchy in eighteenth-century Europe, where excessive concentration of political authority frequently resulted in arbitrary government. For Montesquieu, institutional separation was not pursued solely for administrative efficiency but constituted an essential constitutional guarantee against tyranny (Montesquieu, 1748/1989).

The influence of Montesquieu's theory became particularly evident in the constitutional development of the United States. While the framers of the United States Constitution embraced the principle of separated governmental functions, they simultaneously recognized that complete institutional isolation would be neither practical nor desirable. James Madison famously argued in *The Federalist* No. 51 that constitutional liberty depends not merely upon separating governmental branches but upon enabling each branch to exercise constitutional checks over the others. This understanding transformed the doctrine from a system of strict institutional separation into one characterized by reciprocal accountability through the principle of checks and balances (Hamilton, Madison, & Jay, 1788/2003).

The transition from rigid institutional compartmentalization toward functional interaction significantly influenced subsequent constitutional scholarship. Rather than viewing governmental institutions as operating within isolated constitutional spheres, twentieth-century constitutional theorists increasingly emphasized the necessity of institutional cooperation while preserving mechanisms of accountability. Vile (1998) argues that the historical development of the doctrine demonstrates considerable flexibility, reflecting continuous adaptation to constitutional realities rather than unwavering adherence to Montesquieu's original formulation. Accordingly, the separation of powers should be understood not as a fixed constitutional formula but as an evolving principle capable of accommodating institutional innovation without abandoning its underlying objective of preventing arbitrary power.

The expansion of governmental responsibilities during the twentieth century further accelerated this transformation. As modern states assumed broader regulatory, economic, and social functions, legislatures became increasingly dependent upon specialized administrative institutions possessing technical expertise and regulatory capacity. This institutional evolution produced what scholars commonly describe as the administrative state, in which significant public authority is exercised through administrative agencies rather than exclusively by constitutionally established political branches. Such developments challenged the classical assumption that legislative, executive, and judicial functions could be clearly distinguished in institutional practice.

Peter L. Strauss (1984) was among the first constitutional scholars to systematically explain this phenomenon by introducing the concept of the "Fourth Branch" of government. He observed that independent administrative agencies frequently combine rule-making, executive implementation, and adjudicatory functions within a single institution. Although these agencies formally operate within the executive branch, their institutional independence, statutory authority, and regulatory responsibilities render them constitutionally distinct from traditional executive departments. Consequently, the classical tripartite model becomes increasingly insufficient for explaining how contemporary governmental authority is actually exercised.

Bruce Ackerman (2000) further developed this critique by arguing that modern constitutional democracies require a more differentiated understanding of institutional power.

According to Ackerman, constitutional governance increasingly depends upon specialized institutions created to perform constitutionally significant functions while remaining insulated from ordinary political pressures. Electoral commissions, constitutional courts, central banks, anti-corruption agencies, and independent regulatory commissions illustrate institutional innovations that cannot be adequately categorized within the traditional legislative-executive-judicial framework. Their constitutional legitimacy derives less from institutional classification than from the public functions they perform and the accountability mechanisms governing their authority.

More recently, constitutional scholarship has shifted from analyzing institutional separation toward examining the broader distribution of public power. Rather than asking which branch formally exercises a particular governmental function, contemporary constitutional theory increasingly focuses on identifying where constitutionally significant authority is located, how such authority is exercised, and through which accountability mechanisms it remains subject to constitutional control. This functional perspective reflects the growing complexity of democratic governance, where constitutional authority is frequently dispersed across networks of public institutions possessing overlapping responsibilities and shared decision-making capacities (Dyzenhaus, 2021).

This theoretical evolution demonstrates that the separation of powers has never been a static constitutional doctrine. Instead, it has continuously adapted to institutional transformation while preserving its normative objective of limiting arbitrary power through constitutional accountability. The central concern of constitutionalism therefore shifts from maintaining rigid institutional boundaries toward ensuring that every exercise of public authority regardless of the institutional form through which it is exercised remains constrained by constitutional principles, democratic legitimacy, and the rule of law. This shift forms the conceptual foundation for understanding contemporary constitutional governance and provides the analytical basis for examining Indonesia's constitutional transformation in the following section.

3.2 Transformation of Public Power in Contemporary Indonesia

Indonesia's constitutional development following the constitutional amendments of 1999–2002 represents one of the most significant institutional transformations in Southeast Asia. Rather than merely revising constitutional provisions, the amendment process fundamentally restructured the organization of state power by replacing a centralized constitutional system with a more dispersed institutional arrangement characterized by stronger accountability mechanisms, judicial review, independent constitutional bodies, and democratic decentralization. These reforms altered not only the architecture of government but also the constitutional understanding of how public authority is exercised within the Indonesian state (Asshiddiqie, 2005).

Prior to the constitutional amendments, the institutional design of the 1945 Constitution reflected a highly centralized conception of state authority. The People's Consultative Assembly (Majelis Permusyawaratan Rakyat—MPR) occupied the highest constitutional position as the embodiment of popular sovereignty, while executive authority was concentrated in the presidency. Although legislative and judicial institutions formally existed, their constitutional authority remained relatively limited in comparison with the dominant position of the executive branch. Such an arrangement reflected the constitutional philosophy prevailing during the early decades of Indonesian independence, where institutional stability and governmental unity were considered essential for national consolidation. Nevertheless, the concentration of authority also

generated structural weaknesses by reducing effective constitutional oversight and limiting the operation of institutional checks and balances (Lindsey, 2012).

The democratic transition initiated in 1998 fundamentally changed this constitutional landscape. Through four successive constitutional amendments enacted between 1999 and 2002, Indonesia introduced a new constitutional framework emphasizing the distribution rather than the concentration of governmental authority. The amended Constitution strengthened the representative function of the House of Representatives (Dewan Perwakilan Rakyat), established the Regional Representative Council (Dewan Perwakilan Daerah), created the Constitutional Court (Mahkamah Konstitusi), reinforced judicial independence through the Judicial Commission (Komisi Yudisial), introduced direct presidential elections, and significantly expanded constitutional guarantees for human rights. Collectively, these reforms reflected a decisive shift from institutional hierarchy toward constitutional balance and accountability (Butt & Lindsey, 2018).

A notable consequence of these constitutional reforms has been the emergence of numerous independent institutions exercising constitutionally significant public functions. Although several of these bodies derive their authority directly from the Constitution, others have been established through legislation to perform specialized regulatory and oversight responsibilities. Institutions such as the General Elections Commission (Komisi Pemilihan Umum), the Corruption Eradication Commission (Komisi Pemberantasan Korupsi), the Financial Services Authority (Otoritas Jasa Keuangan), Bank Indonesia, the National Ombudsman, and the Indonesian Broadcasting Commission illustrate the increasing diversification of public authority within Indonesia's constitutional system. These institutions frequently exercise regulatory, supervisory, investigative, adjudicative, and policy-making functions that extend beyond the conventional boundaries separating legislative, executive, and judicial powers.

The proliferation of independent constitutional and statutory institutions demonstrates that public power in Indonesia is no longer monopolized by the three traditional branches of government. Instead, constitutional authority has become functionally distributed across a broader network of institutions established to enhance impartiality, technical expertise, and institutional independence. This development reflects a broader global trend in which complex governance challenges require specialized regulatory bodies capable of operating beyond ordinary political competition while remaining accountable to constitutional principles (Ackerman, 2000).

The transformation of public power has also been reinforced by Indonesia's extensive decentralization program. Since the enactment of regional autonomy reforms in the early 2000s, substantial governmental authority has been transferred from the central government to provincial, regency, and municipal administrations. Decentralization has significantly expanded the number of public actors involved in constitutional governance by enabling local governments to formulate policies, administer public services, regulate local development, and manage regional financial resources within constitutionally prescribed limits. Consequently, constitutional authority is now exercised simultaneously across multiple levels of government rather than being concentrated within central institutions alone (Hadiz, 2010).

Alongside decentralization, the increasing complexity of public administration has encouraged collaborative governance involving state institutions, independent agencies, professional regulatory bodies, civil society organizations, and, in certain sectors, private entities

performing public functions. Public policymaking has therefore evolved into a process characterized by institutional interaction rather than unilateral governmental decision-making. Regulatory frameworks governing financial markets, elections, environmental protection, telecommunications, and public procurement increasingly rely upon coordinated institutional arrangements involving multiple actors exercising complementary forms of public authority. Such governance structures illustrate that constitutional decision-making has become progressively networked rather than exclusively hierarchical.

This institutional diversification inevitably raises important constitutional questions concerning accountability. Under the classical doctrine of the separation of powers, accountability primarily operates through horizontal relationships among the legislative, executive, and judicial branches. However, contemporary governance arrangements involve numerous institutions whose constitutional position cannot be adequately explained through traditional branch classification. Their independence often strengthens impartial decision-making but simultaneously complicates mechanisms of democratic control, legal responsibility, and constitutional supervision. As a result, constitutional accountability must increasingly extend beyond conventional interbranch relations toward more comprehensive mechanisms capable of supervising dispersed public authority (Dyzenhaus, 2006).

Another significant development concerns the changing nature of governmental functions themselves. Contemporary public institutions frequently exercise hybrid constitutional roles that combine legislative rule-making, executive implementation, regulatory supervision, and quasi-judicial adjudication within a single organizational framework. This convergence of functions is particularly evident among independent regulatory authorities responsible for overseeing highly technical sectors requiring continuous administrative expertise. Consequently, institutional legitimacy derives less from strict adherence to functional separation than from the existence of transparent procedures, legal accountability, judicial review, and constitutional oversight capable of preventing arbitrary exercises of public power.

These developments indicate that Indonesia's constitutional transformation cannot be understood solely as a redistribution of authority among existing constitutional organs. More fundamentally, the reforms have generated a new constitutional landscape in which public power is exercised through an increasingly interconnected institutional network operating across multiple constitutional levels and functional domains. Such institutional complexity demonstrates that the classical doctrine of the separation of powers, while remaining normatively important, no longer provides a comprehensive explanatory framework for understanding the contemporary organization of constitutional authority in Indonesia.

Accordingly, the central constitutional issue is not whether the separation of powers has become obsolete, but whether its theoretical foundations require reinterpretation to accommodate the realities of modern constitutional governance. The institutional evolution observed in Indonesia suggests that constitutionalism should focus less on preserving rigid institutional boundaries and more on ensuring that every institution exercising public authority regardless of its constitutional classification remains subject to constitutional supremacy, democratic accountability, and the rule of law. This observation provides the analytical bridge to the following discussion, which critically examines the limitations of the classical doctrine of the separation of powers when confronted with the institutional realities of the contemporary administrative state.

3.3 Constitutional Challenges to the Classical Doctrine of Separation of Powers

The constitutional transformation experienced by Indonesia demonstrates that the classical doctrine of the separation of powers continues to possess significant normative value but faces increasing limitations as an explanatory framework for contemporary constitutional governance. While the doctrine remains indispensable for preventing arbitrary government and preserving institutional accountability, the structural assumptions underlying its classical formulation no longer fully correspond to the institutional realities of the modern state. Public authority is now exercised through a diverse range of constitutional actors whose powers frequently transcend the traditional legislative, executive, and judicial categories. Consequently, the principal constitutional challenge is not whether the doctrine should be abandoned, but how it should be reinterpreted to preserve its normative objectives while accommodating institutional transformation.

One of the most fundamental limitations of the classical doctrine lies in its assumption that governmental authority can be clearly divided according to institutional functions. Montesquieu's original formulation was developed within an eighteenth-century political environment in which state responsibilities remained relatively limited and institutional functions could be distinguished with reasonable clarity. Contemporary constitutional governance, however, operates within administrative systems characterized by technical regulation, policy specialization, and continuous institutional interaction. As governmental responsibilities have expanded, public institutions increasingly perform multiple constitutional functions simultaneously, rendering rigid institutional classifications progressively less accurate as analytical tools (Vermeule, 2016).

The emergence of the administrative state represents one of the most significant developments contributing to this transformation. Administrative agencies today formulate legally binding regulations, supervise regulatory compliance, issue licensing decisions, resolve administrative disputes, and impose sanctions within their respective sectors. These activities involve legislative, executive, and adjudicative functions that are frequently exercised by a single institution under statutory authority. Such institutional arrangements challenge the traditional premise that constitutional legitimacy depends upon strict functional separation among distinct governmental branches. Instead, legitimacy increasingly depends upon procedural fairness, statutory authorization, judicial review, transparency, and institutional accountability (Mashaw, 2012).

Independent constitutional institutions further complicate the traditional understanding of separated governmental powers. Unlike conventional executive agencies, many independent bodies are deliberately insulated from direct political control to safeguard impartiality, professional expertise, and institutional credibility. Their constitutional significance derives precisely from their capacity to exercise regulatory authority without becoming instruments of partisan political interests. Nevertheless, this institutional independence simultaneously generates constitutional questions concerning democratic legitimacy, accountability, and constitutional supervision. Institutions that exercise substantial public authority while remaining partially autonomous from ordinary governmental control require accountability mechanisms different from those envisioned by the classical doctrine of checks and balances.

This institutional diversification also reflects a broader transformation in the concept of public power itself. Traditionally, constitutional scholarship equated public authority with the formal powers exercised by state institutions. Contemporary governance demonstrates that constitutionally significant authority may also emerge through regulatory coordination, delegated decision-making, intergovernmental cooperation, and specialized administrative expertise. As a consequence, constitutional analysis increasingly focuses upon the substantive effects of

governmental authority rather than merely identifying the institution exercising it. Public power is therefore understood as a constitutional function whose legitimacy depends upon legal authorization, constitutional accountability, and effective oversight rather than solely upon institutional location (Dyzenhaus, 2006).

The complexity of modern governance has also intensified institutional interdependence. Contemporary policymaking frequently requires coordinated action among legislatures, executive agencies, constitutional courts, independent commissions, regional governments, and specialized regulatory authorities. Financial regulation, environmental governance, electoral administration, cybersecurity, public health, and competition policy illustrate policy domains where constitutional objectives cannot be achieved through isolated institutional action. Instead, constitutional governance increasingly operates through collaborative decision-making processes involving multiple institutions exercising complementary constitutional responsibilities. Such arrangements indicate that constitutional effectiveness depends less upon institutional separation than upon the quality of constitutional coordination.

Indonesia provides a particularly illustrative example of this institutional evolution. Following constitutional reform, the distribution of public authority has expanded beyond the traditional branches of government into a constitutional landscape populated by independent commissions, decentralized governmental institutions, constitutional courts, supervisory bodies, and sector-specific regulators. Although each institution performs distinct constitutional functions, their responsibilities frequently overlap, requiring continuous interaction rather than institutional isolation. Constitutional disputes arising from overlapping authority, jurisdictional ambiguity, and regulatory coordination reveal that constitutional governance has become considerably more dynamic than the classical doctrine originally anticipated.

These developments have encouraged constitutional scholars to reconsider the meaning of institutional accountability. Rather than relying exclusively upon horizontal checks among legislative, executive, and judicial branches, contemporary constitutional systems increasingly employ multiple accountability mechanisms operating simultaneously. Judicial review, parliamentary oversight, administrative review, financial auditing, independent supervisory institutions, transparency obligations, public participation, and constitutional litigation collectively constitute an expanded architecture of constitutional accountability. Such mechanisms demonstrate that accountability itself has become multidimensional, extending beyond the institutional relationships envisaged by traditional separation-of-powers theory (Kavanagh, 2023).

The growing prominence of constitutional courts further illustrates this transformation. In many constitutional democracies, constitutional adjudication no longer functions merely as an instrument for resolving legal disputes but increasingly shapes institutional relationships, constitutional interpretation, and public policymaking. Through constitutional review, constitutional courts influence legislative priorities, executive discretion, and administrative governance while simultaneously protecting constitutional rights. Their role reflects an evolving constitutional order in which institutional interaction rather than institutional isolation becomes the defining characteristic of constitutional governance (Stone Sweet, 2000).

Another challenge arises from the increasing constitutional relevance of institutions established by statute rather than directly by the Constitution. While classical constitutional theory generally privileges constitutionally enumerated branches of government, contemporary governance frequently assigns constitutionally significant responsibilities to statutory institutions

possessing extensive regulatory authority. These bodies exercise public functions affecting constitutional rights, economic governance, democratic processes, and public accountability despite occupying an institutional position outside the traditional constitutional framework. Their existence demonstrates that constitutional influence extends beyond formal constitutional organs into a broader ecosystem of legally constituted public authorities.

Collectively, these developments indicate that the central weakness of the classical doctrine does not lie in its normative commitment to limiting governmental power, but in its institutional assumptions regarding the organization of that power. Contemporary constitutional governance is increasingly characterized by institutional plurality, functional overlap, and interconnected authority operating across multiple constitutional levels. Consequently, preserving the underlying objectives of constitutionalism requires moving beyond a rigid institutional interpretation of the separation of powers toward a more adaptive constitutional framework capable of explaining how dispersed public authority can remain democratically legitimate and constitutionally accountable.

This analysis suggests that the future development of constitutional theory should focus less on maintaining strict institutional compartmentalization and more on identifying constitutional principles capable of governing increasingly complex institutional relationships. The doctrine of the separation of powers therefore requires reinterpretation not because its foundational values have become obsolete, but because contemporary constitutional governance demands a broader understanding of how constitutional authority is created, exercised, limited, and supervised. Such reinterpretation provides the theoretical foundation for developing a constitutional model that better reflects the realities of the contemporary administrative state while preserving the essential objectives of constitutional democracy.

3.4 Reinterpreting the Separation of Powers in the Administrative State

The preceding analysis demonstrates that the principal challenge confronting contemporary constitutionalism does not arise from the abandonment of the separation of powers doctrine but from the transformation of the institutional environment within which that doctrine operates. The expansion of administrative governance, the proliferation of independent regulatory institutions, and the increasing complexity of public decision-making have fundamentally altered the structure through which constitutional authority is exercised. These developments require a reinterpretation of the doctrine that preserves its normative foundations while adapting its institutional application to the realities of the contemporary administrative state.

At its core, the classical doctrine of the separation of powers was designed to address a specific constitutional concern: the prevention of arbitrary government through the distribution of public authority among institutions capable of restraining one another. The doctrine therefore pursued an objective rather than a particular institutional arrangement. Preventing the concentration of power, ensuring governmental accountability, and protecting individual liberty constituted its essential constitutional values. Consequently, the continuing relevance of the doctrine should not be assessed according to whether contemporary institutions continue to resemble the eighteenth-century model of governmental organization, but according to whether those constitutional objectives remain effectively protected within present-day governance structures (Vile, 1998).

This distinction between constitutional purpose and institutional design is particularly important for understanding the administrative state. Modern public administration has

expanded far beyond the execution of legislative policies. Administrative institutions now formulate technical regulations, supervise compliance, resolve administrative disputes, coordinate public services, manage complex economic sectors, and increasingly exercise discretionary authority requiring specialized expertise. Such responsibilities cannot realistically be allocated exclusively among legislative, executive, and judicial institutions without significantly reducing governmental effectiveness. Accordingly, institutional specialization has become an inherent feature of constitutional governance rather than an exception to it (Vermeule, 2016).

The emergence of specialized institutions should not, however, be interpreted as diminishing constitutional accountability. On the contrary, constitutional legitimacy increasingly depends upon ensuring that every institution exercising public authority remains subject to constitutional limitations regardless of its formal institutional classification. In this sense, the separation of powers evolves from a doctrine primarily concerned with institutional differentiation into a broader constitutional principle governing the exercise, limitation, and supervision of public authority. Constitutional accountability therefore becomes function-oriented rather than institution-oriented.

This functional reinterpretation also reflects the evolution of constitutional governance within comparative constitutional scholarship. Contemporary constitutional systems increasingly recognize that accountability may be achieved through multiple institutional arrangements rather than a single organizational model. Judicial review, parliamentary oversight, administrative review, financial auditing, transparency obligations, public participation, independent supervision, and constitutional litigation collectively perform constitutional functions traditionally associated with institutional checks and balances. The effectiveness of constitutional control consequently depends less upon preserving rigid institutional boundaries than upon ensuring that these complementary accountability mechanisms operate coherently across the constitutional system (Kavanagh, 2023).

An equally important implication concerns the constitutional understanding of public power. Classical constitutional theory generally assumed that public authority originated exclusively from constitutionally established governmental branches. Contemporary governance demonstrates a more complex reality. Independent commissions, regulatory agencies, autonomous public institutions, and decentralized governmental entities frequently exercise powers capable of directly influencing constitutional rights, democratic participation, economic regulation, and administrative justice. Their authority derives from legal authorization, yet its constitutional significance stems from the substantive impact such authority produces within society. Consequently, constitutional analysis must extend beyond identifying institutional status toward evaluating the constitutional consequences of institutional action.

This perspective suggests that constitutional accountability should attach not to institutional labels but to the exercise of constitutionally significant public functions. Whenever an institution exercises authority capable of affecting constitutional rights, democratic processes, or the legal position of individuals, that institution should be regarded as operating within the constitutional order regardless of whether it belongs formally to one of the traditional governmental branches. Such an approach substantially broadens the scope of constitutional supervision while preserving the normative commitment to limited government.

Indonesia provides compelling evidence supporting this reinterpretation. Constitutional reform has generated a governance structure in which numerous institutions exercise constitutionally relevant responsibilities while operating under diverse legal foundations.

Constitutional courts interpret constitutional norms; independent commissions supervise elections and judicial ethics; financial authorities regulate monetary stability; oversight institutions investigate maladministration and corruption; regional governments implement constitutionally protected autonomy; and numerous sectoral regulators formulate binding administrative standards. Although these institutions differ in constitutional status, they collectively participate in the exercise of public authority affecting constitutional governance. Their constitutional relevance therefore cannot be adequately explained solely through the traditional doctrine of separated governmental branches.

Rather than viewing this institutional diversity as evidence of constitutional fragmentation, it may instead be understood as reflecting the maturation of constitutional governance within a complex democratic state. Modern constitutional systems increasingly rely upon differentiated institutional capacities capable of responding to highly specialized regulatory challenges while remaining integrated through common constitutional principles. Constitutional unity is therefore maintained not through institutional uniformity but through the consistent application of constitutional values including legality, accountability, transparency, proportionality, judicial protection, and democratic legitimacy across the entire governance structure.

From this perspective, the separation of powers should no longer be interpreted exclusively as an institutional doctrine organizing governmental branches. Instead, it should be reconceptualized as a constitutional framework governing the distribution, interaction, and accountability of public authority throughout the constitutional system. Such reinterpretation preserves the doctrine's historical objective of preventing arbitrary power while simultaneously accommodating the institutional pluralism characterizing the contemporary administrative state. The emphasis consequently shifts from institutional isolation toward constitutional coordination, where the legitimacy of public authority depends upon the effectiveness of constitutional oversight rather than the formal location of institutional power.

This reinterpretation ultimately reveals that constitutional democracy is sustained less by rigid institutional compartmentalization than by an integrated network of constitutionally accountable institutions performing complementary public functions. The constitutional question therefore becomes not whether authority is exercised by the legislature, executive, judiciary, or an independent institution, but whether every exercise of public power remains constrained by constitutional norms, subject to meaningful accountability, and capable of effective legal review. Such an understanding creates the theoretical foundation for a new constitutional framework capable of explaining contemporary Indonesian constitutional governance beyond the limitations of classical separation-of-powers theory.

The foregoing analysis establishes the basis for developing a new conceptual model that captures the constitutional dynamics of modern governance. Rather than replacing the doctrine of the separation of powers, the proposed model seeks to extend its analytical capacity by incorporating institutional pluralism, functional accountability, and constitutional coordination into a unified theoretical framework. This framework, presented in the following section as the Constitutional Networked Power Model, constitutes the principal theoretical contribution of this study and offers a new approach for understanding constitutional governance in contemporary Indonesia.

3.5 Constitutional Networked Power Model: A New Framework for Contemporary Constitutional Governance

The preceding discussions demonstrate that contemporary constitutional governance can no longer be adequately understood through an institutional framework that confines public authority to the traditional legislative, executive, and judicial branches. Constitutional reforms, institutional diversification, administrative specialization, and increasingly interconnected governance structures have collectively transformed the manner in which public power is organized and exercised. These developments do not invalidate the doctrine of the separation of powers; rather, they expose the need for a broader constitutional framework capable of explaining how multiple institutions simultaneously exercise constitutionally significant authority while remaining accountable to constitutional principles.

Based on the doctrinal and comparative analysis undertaken in this study, this article proposes the Constitutional Networked Power Model (CNPM) as a conceptual framework for understanding constitutional governance in contemporary Indonesia. The model reinterprets the separation of powers not as a rigid institutional division but as a dynamic constitutional system in which public authority is distributed across interconnected institutions that collectively perform constitutional functions while remaining subject to constitutional accountability. Unlike the classical doctrine, which primarily emphasizes institutional boundaries, the proposed model places constitutional legitimacy at the center of governance by focusing on the exercise, limitation, coordination, and supervision of public power regardless of institutional form.

The Constitutional Networked Power Model is founded upon the proposition that constitutional authority should be understood as a constitutional network rather than an institutional hierarchy. Within this network, every institution exercising constitutionally relevant public functions forms part of an integrated constitutional order whose legitimacy derives from adherence to shared constitutional principles. Consequently, constitutional governance is maintained not through institutional isolation but through continuous interaction among institutions operating under common constitutional norms. Public authority therefore becomes relational rather than hierarchical, with constitutional accountability serving as the principal mechanism that preserves coherence across the constitutional system.

The model developed in this study consists of five interrelated constitutional pillars that collectively define contemporary constitutional governance.

The first pillar is Constitutional Supremacy. The Constitution remains the supreme legal foundation governing every exercise of public authority. Regardless of whether authority is exercised by constitutionally established organs, independent commissions, administrative agencies, or decentralized governmental institutions, constitutional legitimacy depends upon conformity with constitutional norms. Institutional diversity therefore does not diminish constitutional supremacy; instead, it expands the range of institutions required to operate within constitutional constraints.

The second pillar is Functional Distribution of Public Power. Unlike the classical doctrine, which allocates authority primarily according to institutional categories, this pillar recognizes that constitutional functions may be distributed across institutions possessing specialized expertise and distinct regulatory responsibilities. Legislative, executive, regulatory, supervisory, adjudicative, and administrative functions increasingly intersect within contemporary governance. Constitutional legitimacy consequently depends upon the lawful allocation of constitutional functions rather than strict institutional compartmentalization.

The third pillar is Integrated Constitutional Accountability. Public authority should remain subject to multiple, mutually reinforcing accountability mechanisms operating simultaneously throughout the constitutional system. Judicial review, parliamentary oversight, administrative supervision, constitutional litigation, financial auditing, transparency obligations, public participation, and independent monitoring collectively establish an integrated framework of constitutional control. Accountability therefore becomes systemic rather than exclusively bilateral between governmental branches.

The fourth pillar is Institutional Coordination. Contemporary constitutional governance requires continuous cooperation among public institutions exercising complementary constitutional responsibilities. Effective governance increasingly depends upon coordinated constitutional action rather than institutional competition. Coordination, however, should never diminish constitutional independence or compromise institutional integrity. Instead, it should facilitate coherent public administration while preserving constitutional oversight and legal responsibility.

The fifth pillar is Democratic Constitutional Legitimacy. Every exercise of public power must ultimately remain accountable to constitutional democracy. Institutional independence cannot justify the absence of democratic legitimacy, nor can governmental efficiency override constitutional rights and the rule of law. Democratic legitimacy is therefore maintained through transparency, constitutional review, public participation, procedural fairness, and effective legal remedies that ensure every institution remains accountable to the constitutional order.

The interaction among these five pillars produces a constitutional system fundamentally different from the institutional logic underlying the classical doctrine of the separation of powers. Rather than organizing governmental authority through isolated constitutional branches, the Constitutional Networked Power Model conceptualizes constitutional governance as an integrated constitutional ecosystem in which institutions remain autonomous in performing their respective functions while simultaneously operating within a shared framework of constitutional responsibility. Institutional diversity therefore strengthens rather than weakens constitutional governance because constitutional coherence derives from common constitutional principles rather than identical institutional structures.

From a theoretical perspective, the proposed model contributes to constitutional scholarship in three significant respects. First, it expands the concept of public power beyond formal governmental branches by recognizing that constitutionally significant authority may also be exercised by independent constitutional institutions, statutory regulatory agencies, decentralized governments, and other legally constituted public bodies. This reconceptualization reflects the institutional realities of contemporary constitutional democracies while preserving the normative objective of limiting arbitrary power.

Second, the model shifts constitutional analysis from an institution-centered paradigm toward a function-centered understanding of constitutional governance. The central constitutional inquiry is no longer confined to identifying which institution formally exercises authority, but extends to evaluating whether every exercise of public power remains constitutionally authorized, procedurally accountable, and legally reviewable. This functional perspective enables constitutional theory to accommodate institutional innovation without sacrificing constitutional certainty or democratic legitimacy.

Third, the Constitutional Networked Power Model introduces the concept of networked constitutional accountability, referring to a multidimensional system of constitutional control in which accountability emerges through the interaction of diverse constitutional institutions rather than exclusively through horizontal checks among the legislative, executive, and judicial branches. This concept extends the traditional doctrine of checks and balances by recognizing that constitutional oversight within the administrative state increasingly depends upon overlapping mechanisms of review, supervision, transparency, participation, and judicial protection operating across the constitutional network.

The practical implications of the proposed model are equally significant for Indonesia's constitutional development. Constitutional reform should no longer focus solely upon redesigning institutional structures or redistributing formal constitutional authority. Instead, reform efforts should prioritize strengthening constitutional accountability across the entire governance system by improving institutional coordination, clarifying constitutional responsibilities, enhancing transparency, reinforcing judicial oversight, and ensuring that every institution exercising public authority remains effectively constrained by constitutional principles. Such an approach would better reflect the realities of Indonesia's contemporary constitutional order while preserving the democratic values embedded within the 1945 Constitution.

Ultimately, the Constitutional Networked Power Model does not reject the doctrine of the separation of powers. Rather, it represents its constitutional evolution. The classical doctrine successfully established the normative imperative that governmental power must never become absolute. The constitutional challenge of the twenty-first century lies in ensuring that this imperative continues to govern increasingly complex institutional arrangements where public authority is dispersed across multiple constitutional actors. By repositioning constitutional accountability as the central organizing principle of contemporary constitutional governance, the proposed model provides a theoretical framework capable of explaining institutional transformation while preserving the enduring objectives of constitutionalism, democratic government, and the rule of law.

IV. Conclusion

This study has demonstrated that the classical doctrine of the separation of powers remains a fundamental constitutional principle for limiting governmental authority and safeguarding democratic governance. Nevertheless, the institutional assumptions upon which the doctrine was originally constructed no longer fully correspond to the realities of contemporary constitutional governance. The emergence of the administrative state, the proliferation of independent constitutional institutions, the expansion of decentralized governance, and the increasing complexity of regulatory administration have fundamentally transformed the organization and exercise of public power in Indonesia. Consequently, constitutional authority can no longer be understood exclusively through the traditional tripartite framework of legislative, executive, and judicial branches, but must instead be viewed within a broader constitutional architecture characterized by institutional plurality, functional specialization, and continuous constitutional interaction.

The analysis further reveals that the principal constitutional objective of the separation of powers has never been the preservation of rigid institutional boundaries as an end in itself. Rather, its enduring purpose lies in preventing arbitrary government by ensuring that every exercise of public authority remains constrained by constitutional norms, democratic accountability, and the rule of law. This understanding allows the doctrine to evolve alongside

institutional transformation without abandoning its normative foundations. Accordingly, the reinterpretation proposed in this article shifts constitutional analysis from an institution-centered perspective toward a function-oriented understanding of constitutional governance, in which constitutional legitimacy depends primarily upon the constitutional quality of public authority rather than the formal institutional identity of the actor exercising it.

Building upon this reinterpretation, the article proposes the Constitutional Networked Power Model (CNPM) as its principal theoretical contribution. Unlike the classical doctrine, which conceptualizes constitutional governance through separated institutional branches, the proposed model understands constitutional authority as a network of constitutionally accountable institutions exercising interconnected public functions under a unified framework of constitutional supremacy, integrated accountability, institutional coordination, functional distribution of power, and democratic legitimacy. The model therefore extends contemporary constitutional theory by providing a conceptual framework capable of explaining how modern constitutional systems preserve constitutional control despite increasing institutional diversification. In doing so, the study contributes to the growing international discourse concerning constitutional governance, administrative constitutionalism, and the evolution of public power within democratic states.

From the perspective of Indonesian constitutional development, the proposed framework carries important practical implications. Future constitutional reform should move beyond debates concerning the formal redistribution of institutional authority and instead strengthen constitutional accountability across the entire governance system. This includes improving coordination among constitutional institutions, clarifying the constitutional responsibilities of independent regulatory bodies, reinforcing judicial oversight, expanding transparency and public participation, and ensuring that every institution exercising public authority remains effectively subject to constitutional review. Such an approach would better reflect the realities of Indonesia's post-reform constitutional order while preserving the constitutional values embedded in the 1945 Constitution.

The findings of this study also open several directions for future research. Comparative analyses involving constitutional systems in other democratic jurisdictions could further examine the applicability of the Constitutional Networked Power Model beyond Indonesia. Likewise, empirical investigations into the operation of constitutional accountability among independent institutions, administrative agencies, and decentralized governments would provide valuable evidence for assessing the practical implementation of the theoretical framework proposed in this article. Such studies would not only enrich comparative constitutional scholarship but also contribute to the continuing development of constitutional governance in an era of increasingly complex public administration.

Ultimately, the evolution of constitutional governance should not be interpreted as a departure from constitutionalism, but rather as evidence of its continuing capacity to adapt to changing institutional realities. The enduring challenge for modern constitutional democracies is therefore not to preserve the institutional arrangements of the past, but to ensure that every manifestation of public power regardless of its institutional form remains accountable to the Constitution, democratic principles, and the rule of law. The Constitutional Networked Power Model offers one possible framework through which this constitutional objective may be understood and advanced within the evolving landscape of contemporary governance.

References

- Ackerman, B. (2000). The New Separation of Powers. *Harvard Law Review*, 113(3), 633–729. <https://doi.org/10.2307/1342339>
- Ackerman, B. (2000). The New Separation of Powers. *Harvard Law Review*, 113(3), 633–729. <https://doi.org/10.2307/1342339>
- Asshiddiqie, J. (2005). *Konstitusi dan Konstitusionalisme Indonesia*. Jakarta: Konstitusi Press.
- Asshiddiqie, J. (2006). *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*. Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia.
- Butt, S., & Lindsey, T. (2018). *Indonesian Law*. Oxford University Press.
- Dyzenhaus, D. (2006). *The Constitution of Law: Legality in a Time of Emergency*. Cambridge University Press. <https://doi.org/10.1017/CBO9780511619494>
- Dyzenhaus, D. (2021). The Political Constitution and the Administrative State. In M. Elliott, J. Varuhas, & S. Wilson Stark (Eds.), *The Unity of Public Law? Doctrinal, Theoretical and Comparative Perspectives*. Hart Publishing.
- Hadiz, V. R. (2010). *Localising Power in Post-Authoritarian Indonesia: A Southeast Asia Perspective*. Stanford University Press.
- Hamilton, A., Madison, J., & Jay, J. (2003). *The Federalist Papers*. New York: Bantam Classics. (Original work published 1788)
- Kavanagh, A. (2023). *The Collaborative Constitution*. Cambridge University Press. <https://doi.org/10.1017/9781009231433>
- Lindsey, T. (Ed.). (2012). *Indonesia: Law and Society* (2nd ed.). Federation Press.
- Mashaw, J. L. (2012). *Creating the Administrative Constitution: The Lost One Hundred Years of American Administrative Law*. Yale University Press.
- Montesquieu, C. de Secondat. (1989). *The Spirit of the Laws* (A. M. Cohler, B. C. Miller, & H. S. Stone, Trans.). Cambridge University Press. (Original work published 1748). <https://doi.org/10.1017/CBO9780511800922>
- Republic of Indonesia. (1945). *The 1945 Constitution of the Republic of Indonesia* (as amended).
- Smits, J. M. (2017). What Is Legal Doctrine? On the Aims and Methods of Legal-Dogmatic Research. In R. van Gestel, H.-W. Micklitz, & E. L. Rubin (Eds.), *Rethinking Legal Scholarship: A Transatlantic Dialogue* (pp. 207–228). Cambridge University Press. <https://doi.org/10.1017/9781316688920.011>
- Stone Sweet, A. (2000). *Governing with Judges: Constitutional Politics in Europe*. Oxford University Press.
- Strauss, P. L. (1984). The Place of Agencies in Government: Separation of Powers and the Fourth Branch. *Columbia Law Review*, 84(3), 573–669. <https://doi.org/10.2307/1122444>
- Van Hoecke, M. (Ed.). (2011). *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* Oxford: Hart Publishing.
- Vermeule, A. (2016). *Law's Abnegation: From Law's Empire to the Administrative State*. Cambridge, MA: Harvard University Press.
- Vermeule, A. (2016). *Law's Abnegation: From Law's Empire to the Administrative State*. Harvard University Press.
- Vile, M. J. C. (1998). *Constitutionalism and the Separation of Powers* (2nd ed.). Indianapolis: Liberty Fund.
- Vile, M. J. C. (1998). *Constitutionalism and the Separation of Powers* (2nd ed.). Liberty Fund.