

## The Existence of Auxiliary State Organs in Indonesia and Their Relevance to Islamic Thought

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### Abstrak

The purpose of this research is to examine and answer questions regarding the existence of Auxiliary State Organs as a state institution within the constitutional structure in Indonesia. The distribution of powers to special branches in a state of law is aimed to avoid centralized bureaucracy which tends to cause irregularities in issuing policies. Indonesia in its context does not apply *trias politica* purely with implications for the emergence of independent institutions which were not known in the previous era. The independent institutions referred to are usually referred to as state auxiliary institutions or auxiliary institutions which mean supporting state institutions. Among these institutions, sometimes there are also what are referred to as independent regulatory agencies, independent supervisory bodies or state institutions that carry out mixed functions. In the context of the history of Islamic politics, independent state institutions have significant relevance to what was implemented by the Prophet Muhammad, and the *khilafah* period after. The type and approach of legal research that will be carried out in this research is normative juridical/normative legal research, the research that is devoted to studying the principles or norms in positive law. The existence of auxiliary state organs is very important in carrying out government duties and maintaining state stability. In addition, this institution also has special duties and functions to support and support the implementation of the main institutional duties in Indonesia.

**Keywords :** Auxiliary State Organ; Islamic History; Politics

### INTRODUCTION

Since the 20th century, especially during the World War II period, it is known as the era of the welfare state. In the era of the welfare state, it was marked by the need for and state intervention in the field of people's lives and to deal with the development and complexity of state administration practices. This is a consequence of the welfare state notion in the 20th century, which idealized the presence of new institutions for the needs of the people that had not been handled.<sup>1</sup> Such constitutional logic is inherent in the emergence of state institutions that were not known in the previous era. The state institution lately known as an independent state institution. According to Jimly Asshiddiqie, these state institutions were born in established democratic countries, such as in the United States and France in the last three decades of the 20th century. These new institutions are commonly referred to as state auxiliary organs, or auxiliary institutions as supporting state institutions. Among these institutions,

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<sup>1</sup>Anna Zagrebina, "Concepts of Democracy in Democratic and Nondemocratic Countries," *International Political Science Review* 41, no. 2 (2020): 174–91.

sometimes there are also what are referred to as self-regulatory agencies, independent supervisory bodies, or institutions that carry out mixed functions between regulatory functions.

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Bruce Ackerman explicitly stated that the birth of an independent state commission was a form of rejection on the United States model of separation. Ackerman's argument seems to emphasize the logic behind the emerge of an independent state commission is a consequence of the transition to democracy that has occurred in several parts of the world.<sup>3</sup> The emerge of these state commissions, both independent and limited to the executive branch, is once again a form of the inability of the trias politica idea to stop authoritarian regimes that had emerged, even in the development of state administration to give birth to a new model of tyranny and authoritarianism in this case the behavior of corruption in a country.

In reality, various countries' constitutional reforms have also begun to adopt arrangements regarding independent state institutions in the new constitution. Research by Ackerman stated that there are also 81 countries that include independent agencies in their constitutions. Of the 81 countries, no less than 248 independent state institutions are directly mentioned in the constitution on four continents; Africa, Europe, America and Asia.<sup>4</sup>

This has relevance to Jimly Ashiddiqie's indications that seem to indicate and strengthen logical arguments for the birth of auxiliary organs in Indonesia, for example, the birth of the Corruption Eradication Commission (KPK), which actually carries out the functions attached to the executive branch.<sup>5</sup> This is in line with the background and reasons why an anti-corruption agency is needed, as stated at Law number 30 of 2002 concerning the Corruption Eradication Commission, as follows: 1) Whereas government agencies that handle corruption cases have not functioned effectively and efficiently in eradicating corruption crime. 2) the transition of the executive function into a separate institution that is independent in accordance with the considerations for the establishment of the Corruption Eradication Commission which has been transferred to the function of a separate institution that is independent.

Based on the reality above, it shows that the growth and existence of auxiliary organ state institutions, both theoretically and in fact in various countries caused by the problem of constitutional complexity no longer refers to the trias politica doctrine which is no longer in line with demands state administration in various countries. Especially in the United States as that explicated by Bruce Ackerman in the previous description. However, the existence of auxiliary organs in constitutional practice in Indonesia existentially confused. For example, the Eradication Commission Corruption (KPK) should be positioned as an auxiliary organ in reality positioned as an executive state institution, instead.

## METHOD

The type and approach of legal research that will be carried out in this research is normative juridical/normative legal research, a research that is devoted to studying the principles or norms in positive law.<sup>6</sup> The approach used in this research is the statute approach. The definition of the statute approach itself is an approach using legislation and regulations. In the statute approach, the focus of research is not only to look at the form of statutory regulations, but also to examine the content material, to seek philosophical foundations, ontological basis, and the legal ratio for the emerge of statutory regulations. To strengthen the assessment in research, the author also

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<sup>2</sup> Jimly Asiddiqie, *Perkembangan Dan Konsolidasi Lembaga Negara Pasca Reformasi*, 2017.

<sup>3</sup> Bruce Ackerman, "The New Separation of Powers," in *The Rule of Law and the Separation of Powers* (Routledge, 2017), 395–490.

<sup>4</sup> Ackerman.

<sup>5</sup> Asiddiqie, *Perkembangan Dan Konsolidasi Lembaga Negara Pasca Reformasi*.

<sup>6</sup> Zainuddin Ali, *Metode Penelitian Hukum* (Sinar Grafika, 2021).

uses a law comparison approach which is used to study and compare constitutions in various countries that have constitutionalized the ecocracy idea.

## RESEARCH RESULTS

### The Existence of Auxiliary State Organ in Indonesian

Auxiliary State Organs are institutions which do not position themselves as one of the three institutions of power in carrying out their functions according to trias politica. There are many terms to refer to this new type of institution, including state auxiliary institutions, supporting state institutions, complementary state institutions, independent state institutions, or state commissions. The formation of auxiliary state institutions is based on the premise that the classic theory of trias politica which divides institutional functions into legislative, executive and judicial functions can no longer be used to analyze power relations between state institutions.<sup>7</sup>

The tendency for the emergence of new state institutions in Indonesian occurred as a consequence of amendments to the 1945 Constitution of the Republic of Indonesia (read: UUD 1945). The Constitutional Court explained that the birth of new state institutions in various forms was a logical consequence of a modern democratic state wishing to more perfectly implement the principles checks and balances.<sup>8</sup>

According to Zainal Arifin, there are arguments that can be found as triggers for the formation of independent state institutions, namely the reform of the neo-liberal approach. The presence of an independent state commission in this context comes as part of a strong push for good governance, which criticizes the state for its corrupt behavior, thus pulling out state power to the public through the establishment of an independent commission. The role of the neo-liberal-style reformation program at least participates in interpreting the process of the presence of independent state institutions.<sup>9</sup> Not in the positive-negative context of that role, but at least it illustrates how the concept of pushing towards good governance becomes one of the patterns of reducing the role of the state with the presence of the independent state commission itself.

There are more than 34 organs, positions, or institutions whose existence is explicitly mentioned and regulated in the UUD 1945. These organs can be distinguished from two criteria, the hierarchical criteria for the form of normative sources that determine their authority, and the quality of their functions which are primary or supporting in state power system.<sup>10</sup> From a hierarchical perspective, state institutions or organs can be divided into three parts:

1. The first tier organs can be referred to as high state institutions, or all of these institutions have authority from the UUD 1945, for example: the presidential institution, the people's consultative assembly, the people's representative council, the regional representative council, the supreme court, the constitutional court, and the audit board;
2. The second tier organs are only referred to as state institutions, such as: the state minister, the Indonesian national army, the Indonesian republican police, the judicial commission, the general election commission, and the Indonesian bank, these institutions have received their authority from the UUD 1945, and some have received its authority from law; as well as;

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<sup>7</sup> Ahmad Basarah, "Kajian Teoritis Terhadap Auxiliary StateS Organ Dalam Struktur Ketatanegaraan Indonesia," *Masalah-Masalah Hukum* 43, no. 1 (2014): 1–8.

<sup>8</sup> Tjokorda Gde Indraputra and I Nyoman Bagiastra, "Kedudukan Komisi Pemberantasan Korupsi Sebagai Lembaga Negara Bantu (State Auxiliary Institutions)," *Jurnal Kertha Negara* 2, no. 5 (2014).

<sup>9</sup> Zainal Arifin Mochtar, "Lembaga Negara Independen," *Jakarta: Rajawali Pers*, 2016.

<sup>10</sup> S Laurensius Arliman, "Kedudukan Lembaga Negara Independen Di Indonesia Untuk Mencapai Tujuan Negara Hukum" (Kertha Semaya Journal Ilmu Hukum, 2020).

3. The third tier organs are state institutions whose source of authority comes from regulators or legislators under law, for example: the national human rights commission, the corruption eradication commission, the anti-violence protection commission against women and others.<sup>11</sup>

According to Hendra Nurtjahjo, the purpose of establishing this independent state institution was due to two reasons: because of increasingly complex state tasks that required sufficient independence for their operationalization and there was an effort to empower the tasks of existing state institutions by forming new, more specific institutions.<sup>12</sup> In line with this, I Dewa Gede Atmadja stated that the ultimate goal of independent state institutions is in the state administration of the Republic of Indonesia in accordance with the wishes of the state objectives mandated by the constitution.<sup>13</sup> As implied in the fourth paragraph of the opening UUD 1945 below:

*a) protect the entire Indonesian nation and all of Indonesia's bloodshed; b) promote the general welfare; c) educate the life of the nation; and d) participate in carrying out world order based on freedom, eternal peace and social justice.*

Meanwhile, according to Jimly Asshiddiqie, the emergence of so many institutions an independent state reflects the need to deconcentrate power from the hands of the bureaucracy or conventional organs of government, where power was concentrated in previous times.<sup>14</sup> This occurs as a result of demands for developments in the management of state power which are increasingly complex and complicated, while bureaucratic, centralized and concentrated power organizations cannot be relied upon to resolve this complexity. Because of this, a wave of deregulation, de-bureaucratization, privatization, decentralization and deconcentration emerged, which in turn saw independent state commissions as the answer to the complexities of modern state administration.

Responding to the complexity of modern constitutionalism, Bruce Ackerman explained that the structure of the branches of power in the United States constitutional system is no longer just three or four branches, but five branches of power, House, Senate, President as chief of executive, Supreme Court, and Independent Agencies. Ackerman wants to emphasize that the Montesquieu-style separation model which consists of three branches of power is outdated, and cannot answer the complexities of modern constitutionalism.<sup>15</sup>

In line with Bruce Ackerman, Cindy Skach argues that the model of separation of powers in a semi-presidential government system is the 'newest separation of power'. This system places six branches of power which each stand alone then and have their respective authorities. the House of representative, Senate, President as head of state, Prime Minister as head of executive, Judiciary, and Independent Agencies as six branches of power working within the government system. mixed in former communist countries in Eastern Europe such as Russia and France.<sup>16</sup>

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<sup>11</sup> Samuel P Huntington, "Will More Countries Become Democratic?," *Political Science Quarterly* 99, no. 2 (1984): 193–218.

<sup>12</sup> Nurtjahjo Hendra, "Lembaga, Badan, Dan Komisi Negara Independen (State Auxiliary Agencies) Di Indonesia: Tin. Jauan Hukum Tat A Negara," *Jurnal Hukum Dan Pembangunan* 3 (2005).

<sup>13</sup> I Dewa Gede Atmaja and Dewa Gede, "Aspek Hukum Dan Birokrasi Penyelenggaraan Pemerintahan," *Surabaya: Prespektif, H*, 1994.

<sup>14</sup> Asshiddiqie, *Perkembangan Dan Konsolidasi Lembaga Negara Pasca Reformasi*.

<sup>15</sup> Ackerman, "The New Separation of Powers."

<sup>16</sup> Cindy Skach, "The 'Newest' Separation of Powers: Semipresidentialism," *International Journal of Constitutional Law* 5, no. 1 (2007): 93–121.

Another reason for the rise of independent state commissions is the consequence of the transition to democracy that has taken place in several parts of the world. The emergence of these state commissions, both independent and limited to the executive branch, is once again a form of the inability of the trias politica idea to stop the authoritarian regime that had emerged. Bruce Ackerman explicitly stated that the presence of an independent state commission was a form of rejection of the Montesquieu and Madison model of separation of powers applied in the United States.<sup>17</sup>

Strengthening the Ackerman's opinion, Fabrice E. Lehoucq stated, the formation of an election commission that was independent from the interference of the executive and legislative bodies had made a major contribution to strengthening constitutional democracy, especially in Latin America. This success in innovating the formation of new institutions, which are free from executive and legislative intervention, is then used as a reference and adopted by many countries in the world.<sup>18</sup> As a result, in recent decades there has been an extraordinary growth in the number of independent state institutions anywhere in the world. Among the independent state institutions that have sprung up are electoral institutions, anti-corruption agencies, judicial oversight institutions, as well as administrative maladministration agencies such as the Ombudsman.

The characteristics of independent state institutions are:

1. Headed by a collective leadership, a system where decision making is done through deliberation
2. It cannot be controlled by a simple majority by a certain party.
3. The commissioners have a fixed length of service with staggered terms, which means they don't stop at the same time.
4. Members can only be dismissed from office according to what is specified in the rules.<sup>19</sup>

The main problem with independent state commissions is the meaning of independence itself; It must be emphasized that independence does not mean without supervision. Independence strictly does not mean without control. In the concept of independence, it contains an accountability system that must be strengthened. Therefore, in this concept, the best internal control system must be built, so that external supervision, although it must still exist, can be minimized. Self-control is the main key to oversight of independent state institutions, which allows these institutions to reduce erroneous external oversight elements such as forms of intervention, are prohibited in independent state institutions.<sup>20</sup> Therefore, even though independent state institutions are independent, they still adhere to the theory of limitation of powers.

In Indonesia, the Constitutional Court (MK) formulated the concept of an independent state institution based on decision number 005/PUU-IV/2006, regarding the review of the Judicial Commission Law. Although the term used for the Judicial Commission is not "independent" but "stand alone", it can be understood that basically the meaning of the term is the same. In its decision on the Judicial Commission Law regarding independence, the Constitutional Court stated:

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<sup>17</sup> Ackerman, "The New Separation of Powers."

<sup>18</sup> Fabrice Lehoucq, "Electoral Fraud: Causes, Types, and Consequences," *Annual Review of Political Science* 6, no. 1 (2003): 233–56.

<sup>19</sup> William F Fox, *Understanding Administrative Law* (LexisNexis, 2012).

<sup>20</sup> Mochtar, "Lembaga Negara Independen."

*The Constitutional Court will then consider the meaning of "independent" in article 24B subsection (1) of the UUD 1945 which reads, "a judicial commission is independent in nature which has the authority to propose the appointment of Supreme Court judges and has other powers in order to maintain and uphold the honor, nobility, dignity, and behavior of judges."*

Based on the regulation above, the Judicial Commission cannot be said to be not independent. In other words, there is interference from outsiders or other powers. Only for the reason that decision-making is based on facts obtained through cooperation or coordination with the judicial authorities themselves.<sup>21</sup> In line with the reality, the composition of the judicial commission does not only consist of former judges, legal practitioners, academics and members of the public, as stated above, but also the justices of the Supreme Court sitting together as members of the judicial commission. In fact, in general, the judicial commission, or what is called by another name in the world, is ex-officio headed by the chairman of the supreme court.

The Constitutional Court's decision emphasized that independence for independent state commissions is institutionally not personal (individual) independence. What is also important, the Constitutional Court provides guidance that the principle of independence does not prohibit coordination, synergy or cooperation with other institutions. Therefore, the Constitutional Court's decision is important as an affirmation of the constitutional basis for the presence of independent state agencies in Indonesia. Although, in the same decision, the Constitutional Court gave the position of the Judicial Commission as a supporting organ and the Supreme Court and the Constitutional Court as the main organs, which can be interpreted as the Constitutional Court positioning independent institutions such as the Judicial Commission under the main constitutional state institutions such as MA and MK in Indonesia.

The pattern of relations between independent state institutions and other state organs, including the main organs of the constitution, must of course be well formulated. So that the pattern of relations including mutual control and mutual supervision among state institutions can work with a better understanding.<sup>22</sup> A thought that is considered different from the system intended by Montesquieu and the thinkers of his day. It must be seen as a form of separation of powers in a new format and formulation, in accordance with the complexities and needs of modern state administration.

## **DISCUSSION**

### **The Relevance of Auxiliary State Organ with Islamic Thought**

In the early days of Islam, the figure of the Prophet was not only a messenger of Allah but also a head of state and a judge. He was considered the head of state after establishing a state in Medina with a written constitution called the Medina Charter together with native people (Ansar) and immigrant communities (Muhajirin), he even sent and received ambassadors.<sup>23</sup> In this early period too, the system of government was simple, all problems could be raised and resolved by the Prophet because he was guided by revelation. This was where his position as judge was. After the Islamic territory expanded, then the friends who became head of region

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<sup>21</sup> Michael E Milakovich and George J Gordon, *Public Administration in America* (Cengage Learning, 2013).

<sup>22</sup> Kartika Sasi Wahyuningrum, Hari Sutra Disemadi, and Nyoman Serikat Putra Jaya, "Independensi Komisi Pemberantasan Korupsi: Benarkah Ada?," *Refleksi Hukum: Jurnal Ilmu Hukum* 4, no. 2 (2020): 239–58.

<sup>23</sup> Inu Kencana Syafii, *Ilmu Pemerintahan Dan Al-Quran: Edisi Revisi* (Bumi Aksara, 2021).

and whose positions were very far from Medina were allowed to become judges based on the Qur'an, Sunnah and Ijtihad.<sup>24</sup>

In subsequent developments, the process of institutionalization in the Islamic government system took place. After the deceased of the Prophet Muhammad, the area of Islamic rule expanded so that state affairs became more complex, requiring a complex system of government as well. Even during the Khulafa Al-Rashidun's era, it is implemented already the concept of separation/sharing of Powers:

1. Ulil Amri (executor of sharia law);
2. Qadhi (executing justice);
3. Shura Council (Parliament); and
4. Ahlul Halli Wal Aqdi (Consideration Council).<sup>25</sup>

The reign of Khulafaur Rashidun was an important period in the history of Islamic travel, especially during the leadership of Umar bin Khattab. At that time the Government of Umar bin Khattab was known as a clean government and had leaders with firm and authoritative characteristics so that they could finally bring society to conditions of peace, tranquility and prosperity. This can be proven by the resolution of the crisis problem during Ramadan and the economic conditions and income of the Arab community at that time. Prosperity and an even distribution of the economy is obtained from several revenues, including from land taxes (kharaj), zakat and mortgage taxes (jizyah), spoils of war (ghonimah) and trade taxes (usyur).<sup>26</sup>

Umar bin Khattab implemented a more Islamic economy and the absence of arbitrariness from Kings and developed economic principles based on Islamic teachings, in line with the principles of the Qur'an and the Sunnah of the Prophet, regarding justice and balance. Following are some of the state institutions that were created during the reign of Umar bin Khattab to address some of the economic policies that occurred at that time.<sup>27 28</sup>

First, Establishing the Baitul Maal Institution. A significant increase in state revenue occurred when the area of authority was widened during the reign of Umar bin Khattab, therefore it was urgently needed to establish and develop the Baitul Maal. In the beginning, the forerunner to the existence of the Baitul Maal institution was initiated and functioned during the time of Rasulullah SAW and continued during the reign of Abu Bakr and then during the reign of Umar bin Khattab, its function was increasingly developed. Umar bin Khattab founded the Baitu Maal institution based in Medina with several other branches in various provincial capitals. In terms of handling and managing the institution, the caliph Umar bin Khattab appointed his chairman, Abdullah bin Ubaid al-Qari and as his deputy, Muayqab. Umar bin Khattab implemented several policies in the baitul maal institution, including classifying or grouping sources of state revenue into four parts, such as: income derived from zakat and 'ushr, then distributed to the local level and if there is a surplus or excess, the remaining income is stored in the central baitul maal and distributed to eight ashnaf; income derived from khums and alms, distributed to the poor whether they are Muslims or not. And also to finance their welfare; income originating from kharaj, fai, jizyah, 'ushr and land rent, used to cover administrative

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<sup>24</sup> Mujar Ibnu Syarif and Khamami Zada, "Fiqh Siyasaht Doktrin Dan Pemikiran Politik Islam, Jakarta: PT, "Gelora Aksara Pratama Erlangga, 2008.

<sup>25</sup> Syafiie, *Ilmu Pemerintahan Dan Al-Quran: Edisi Revisi*.

<sup>26</sup> Sjadzali Munawir, "Islam Dan Tata Negara," *Jakarta: Universitas Indonesia*, 1993.

<sup>27</sup> M Sulaeman Jajuli, *Ekonomi Islam Umar Bin Khattab* (Deepublish, 2016).

<sup>28</sup> Tina Arfah and Putri Jamilah, "Kebijakan Fiskal Umar Bin Khattab," *Jurnal Islamika* 4, no. 1 (2021): 25–38.

operational costs, military needs, and so on as well as pay pension funds and aid funds. Another income, used for caring for abandoned children, paying workers, and other social funds. As for distributing or channeling the Baitul Maal's assets, Umar bin Khattab established several departments, including: The military service department which functions to distribute or channel aid funds to people involved in war; Department of Justice; who is responsible for paying the wages or salaries of executive officials and judges; The Department of Islamic Education and Development, whose function is to distribute and channel financial assistance to developers and propagators of Islamic teachings and their family members, such as preachers and teachers; and the Social Security Department which provides assistance to the poor.<sup>29</sup>

Second, establish a hisbah institution or an institution that functions to control the market and morals (adab) in general. The purpose of this al-hisbah is to erase all bad deeds and replace them with virtues and benefits so that finally a sense of security and peace and justice is created in society. Some of al-hisbah's activities that function towards economic control include making various legal provisions clear so that there is no abuse in the utilization of existing resources, traders are prohibited from hiding damage or defects in their merchandise and in buying and selling transactions are prohibited from swearing falsely. Traders are also prohibited from engaging in monopolistic practices. Another function of the al-hisbah institution is to control and supervise measuring and weighing tools for sellers, oversee trade routes, determine the standard price of an item, ensure that all trading or buying and selling affairs are free from elements of usury, have the authority to force borrowers to pay their loans. if able, has the power to suspend debts until the debtor is deemed capable of paying his debts, provides various conveniences to his people such as food, housing, jobs, and so on.<sup>30</sup> This institution has the same function as the current State Agency in Finance and Asset Management (BPKAN) whose in charge of managing state finances and carrying out supervision on it.

The establishment of government institutions continued to develop until the dynasties era. During the dynasty of Umayya, the establishment of existing institutions and development of the new government apparatus were carried out after seeing or hearing the experiences of other countries that were more established in governance such as the Byzantium empire which were adopted by Mu'awiyah widely. The Umayyad caliphs, had established five kinds of administrative offices such as: correspondence affairs, tax affairs, armed forces affairs, police affairs and judicial affairs.<sup>31</sup> These institutions have functions similar to some of the existing government agencies such as the Ministry of Foreign Affairs, the Ministry of Finance, and the Ministry of Defence. In other words, Auxiliary state organs or supporting institutions in the government system of Indonesia are currently relevant to the thoughts of leaders who emerge various policies in Islamic history.

## CONCLUSION

The existence of auxiliary state organs is very important in carrying out government tasks and maintaining stability of the country. Auxiliary state organs refer to state institutions that have special duties and functions to support the implementation of the duties of the major institutions. The existence of auxiliary state organs in the constitutional system in Indonesian purposes to increase the effectiveness and efficiency of the government's duties in carrying out development programs and maintaining state stability. Nonetheless, these institutions must also

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<sup>29</sup> Arfah and Jamilah.

<sup>30</sup> Arfah and Jamilah.

<sup>31</sup> Fahrur Rozi, "Hisbah Dalam Islam," *Attanwir: Jurnal Keislaman Dan Pendidikan* 10, no. 1 (2019): 1–12.



operate in accordance with applicable rules and laws, and work in a coordinative line with other major state institutions. These institutions are expected to work effectively and efficiently in carrying out their duties and functions, and to be able to make a positive contribution to the development and progress of the country.

Auxiliary state organs in other Word independent or supporting institutions in the government system of Indonesia are currently relevant to the thoughts of leaders who emerge various policies in Islamic history, such as the era of the Prophet Muhammad, Rashidun Caliphs and the Dynasties afterward.

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