

## **UNDERSTANDING THE STATE ORGAN AS A TOOL OF STATE EQUIPMENT BASED STATELESS THEORY (INDONESIAN PEOPLE)**

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### **ABSTRACT**

*State institution / state organ / state apparatus is a unit inseparable from the state existence. The existence of the state organ is intended to fill and carry out the state. The establishment of state institution/organ/apparatus is a manifestation of the people representativeness mechanism in order to carry out the government. Also, the establishment of a country is for the sake of people's interest so that such an establishment should represent people's aspiration. The people's aspiration is realised in the form of the state theory of the Indonesian Nation.*

**Keywords:** State Organ, State institution, The State Theory.

### **INTRODUCTION**

There is almost no exactly the same thing from the constitutional law of a nation than the constitutional law of other nations. The difference is caused by unequal history and background of a nation also by the personality of every nation.<sup>1</sup> Logemann distinguishes formal principle (formele stelselmatigheid) and the principle of material (materiele stelselmatigheid) in constitutional law.<sup>2</sup>

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When considered theories of constitutional law, it will be found theories of constitutional law experts in constitutional law for the legal system of each country. Dutch constitutional law theory put forward by the Dutch expert in constitutional law, constitutional law theory put forward by the British constitutional law expert English, Russian constitutional law theory by the Russian constitutional law expert. And every constitutional law of a country or nation shows the nature or characteristics of the nations concerned.

<sup>2</sup> H. J. A. Logemann, translator: Makkatutu and J.C. Pangkerego, A Theory About Positive Constitutional Law, New Ichtar Publisher-Van Hoeve, Jakarta, 1975, p. 82-83.

That law (including constitutional law) consists of two elements,<sup>3</sup> namely the element of spirituality that is both abstract and environmental elements that are real. Spiritual element is referred to as the ideal elements and rooted in the human mind. As the building law, this is known as the ideal elements notions. Because rooted in the human mind, the concepts are general (universal) and fixed.<sup>4</sup>

While the second element is the element that is the real nature and the environment anywhere in the world that humans live. Herman Heller called it as an element of nature and local culture. Because of the natural and human environment, including the values, personality, tradition in which human life is different, the results are different from one another. This element is referred to as the principles. That is why it is possible there is a difference in the principles, such as the principle of democracy of a nation is not the same as other nations. Western world in a more democratic freedom while giving weight to the East give more weight to the equation. So even though the same sense that democracy, but it is different, it depends on the principles which are considered democratic.<sup>5</sup>

This means that the notions (formele stelselmatigheid) can only be universal, for example, form a republic, but how it (the material) may be different. How can a nation of republics lifting President, covering what powers inherent in the office of President, more broadly how a nation set state life, it all depends on the people themselves, all of which are usually arranged in constitutional law (positive).

While the state science is the science that addresses: a) basic understanding as well; b) basic joints on the state.<sup>6</sup> When connected with sistemik theoretical approach, a discussion of the definition and basic joints (principal) are included in the discussion of the state of science in general and is also called the 'theory of the state'.

According to Jellinek, the state of scientific theory (teoretische staats-wissenschaft) exists in the sense of a general nature applicable to all countries, the so-called of the General staatslehre. In addition, there are also states that are special science, besondere staatslehre, the state's theory that apply to one particular country.

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<sup>3</sup> Azhary, Stateless Nation Theory Indonesia (An understanding of the concepts and principles in Constitutional Law, Speech at the inaugural ceremony of Acceptance of Office pronounced as professor of the Faculty of Law at the University of Indonesia in Jakarta on July 26, 1995, p. 2-3 .

<sup>4</sup> For example, understanding the kind of country the "Republic" means the country is headed by the President, not by the King.

<sup>5</sup> Problems in the principles of democracy; See: Aidul Fitriaciada Azhari, Constitutional Interpretation and implications Formation of the constitutional system of Democracy Against Autocracy Or (Studies 1945 and the Struggle Interpretation Realizing Democracy in Indonesia), Dissertation Faculty of Law, University of Indonesia, 2005.

<sup>6</sup> The definition comes from earlier Wahjono Padmo introduced with the term 'basic understanding of understanding' and 'principal joints' of the state. However, the term 'base' would be able to show the actual direction of the definition.

State science is theoretical, abstract, and universal.<sup>7</sup> The assumption that they are similar conditions in each country (in general) so it can not be directly applied in the practice of the state in particular. While the discussion of the object of constitutional law and administrative law is concrete (specific), the bound state at a particular time and place. Object constitutional law and administrative law are thus closer to the discussion of science specifically state the Republic of Indonesia which is applied the theory of the state of Indonesia.

To gain knowledge about the philosophy comprehensive state and the basic theory of the state, it is necessary to serving the general state of science and the science of particular countries as well special state science complement (complementary) to the general state of science; of the order of the general theoretical towards more local order, specific, and practical.<sup>8</sup> Meanwhile, in a practical sense (practische staatswissenschaft), theory of state (teoretische staats-wissenschaft) are applied in practice or state activities will be political science. So between the state science (teoretische staatswissenschaft) and political science (practische staatswissenschaft) there is a significant relationship pattern. Meanwhile, according to the tradition of Anglo-Saxon countries, political science has a different content with the state of science for political science is a discipline that stands alone.

Sociological analysis of the state in the sense of seeing the country as a building society or a nation as a roundness / intact (ganzheit) include the nature of the nature of the state, the justification of the state, the country, the main types of countries, and destination countries.<sup>9</sup>

While the analysis of the state of the law or juridikal angle structure (substance), that analyzes the content of a substance or state organizations. Analysis include: how to shape, how its structure, what are the elements of the country, how the existence of the constitution, what country supplies the tools, how the system and its representative institutions, how the country functions regulated, what joints are also used for administration organization running the country. Both of these approaches will be discussed in the framework of the theory systematic particular state of the Republic of Indonesia. Systematics have been made by Georg Jellinek will remain a relevant reference in discussing the specific terms of the theory of the state, namely the Indonesian nation state theory.

### The Nature of Theory Stateless.

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<sup>7</sup> In a more extensive explanation, the nature of the state of science is theoretical, abstract, general, and universal. In this case, the general nature no longer need to be disclosed because it is included in the word 'universal.' Something that normally direct universal general (general) also. However, something that is common is not necessarily universal.

<sup>8</sup> Science is a particular state a concrete interpretation of (local) of global thinking in the general state of science.

<sup>9</sup> Five sociological theory approach (the state as a social community) called Allgemeine soziale Staatslehre. See: Teuku Hamzah Amir et al (ed.), State Science: Lecture Padmo Wahjono, Faculty of Law, University of Indonesia, Indo Hill Co., Jakarta, 2003, p. 19.

Must be distinguished between state theory with the theory of the state. If the theory that the state becomes the central point of the discussion is the authority, the power of the government, as a means to discuss the state power structure, why a person or group of people ruling over a group / community. For example, the theory of the justification of state power (rechtsvaardigings Theorie), among them are, the theory of theocracy (theocratieshe Theorie), the theory of power (machten Theorie) and others. While the state's theory, it focuses on the self-organization of a container society / community of the nation. Countries considered as a container / embodiment where the peoples organize themselves (de staat in dit is een figuur volksgemeenschap zichzelf organiseren van het gemeenschapwezen). Jellinek named the state's theory as staatsvorming Theorie. When discussing the theory of the state, from the standpoint of the law, while at the time discussing the theory of the state, from the standpoint of social and philosophical.<sup>10</sup>

Jellinek in discussing the general state of science, introducing the theory of two terms (zweiseiten Theorie). This theory is reviewing the state of the two points of view, namely in terms of sociological and juridical terms. In terms of sociological look at the country as a building society or a nation as a sphericity (ganzheit), while judicial notice of the state in terms of its structure or the state as a legal building. Juridical (legal entity legal community) is often called the Allgemeine staats rechtlehre.<sup>11</sup>

In the study of constitutional law, both points of view it is not impossible to separate, because one component have a strong attachment. This means that the same object of study with a different viewpoint, certainly not likely to be separated. It is not possible to discuss the power of the state of the law alone without viewing angle as well as from a social-philosophical angle.<sup>12</sup>

For example, the Constitution can not be understood only if the country reads a text and explanation only. Should be studied historical background, the circumstances at the time the Constitution was made, and the most important is to know the mind of the maker. Therefore, when assessed with other measures, is certain misconceptions or erroneous interpretations that are inconsistent with the intent and spirit of the Constitution.

Constitution which were the work of a nation, of course made in order to formulate the will of the nation in question. Given that it has been stated above, it can be concluded that there will be no single Constitution similar to other state Constitution. If anything, it is just limited to understanding-understanding alone (formeel stelsel matigheid), while the contents (materieel stelsel matigheid) may

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<sup>10</sup> Hendra Nurtjahjo, *State Science: Development Theory and Supplements Stateless*, Eagles, Jakarta, 2005, p. 6-7.

<sup>11</sup> See: Teuku Amir Hamzah (ed.), *State Science ..... Op. Cit.*, P. 21.

<sup>12</sup> Azhary, *Stateless Nation Theory Indonesia (An understanding of pengetahuan-definition and principles in Constitutional Law*, Speech at the inaugural ceremony of Acceptance of Office pronounced as professor of the Faculty of Law at the University of Indonesia in Jakarta on July 26, 1995, p. 3-4 .

differ according to the values approved by the nation in regulating bernegaranya life.

The meaning of "understanding basic understanding" (*formele stelsel matigheid*) is the thing that is generally understood to have the same meaning. While the meaning of "basic joints" (*materiele stelsel matigheid*) is the same thing, but because of the influence of a view of life and the conditions of different societies, it becomes different.

To understand that in this country the equipment, basic joints used (basic) life of the Indonesian nation state as the basis for analysis. For example, if an analysis of the existence of institutions state in the state system using the idea of democracy as a joint state, in this case will be used the idea of democracy in the constitution of the Republic of Indonesia, namely the idea of people as understood sovereignty the drafters of the constitution.<sup>13</sup> The idea of people's power is commonly known as Pancasila democracy; democracy is based on the value of the five precepts; democratic Indonesia.

For the Indonesian nation state theory of how and where is sought or found the Indonesian nation state theory. Indonesia has determined that life state regulated in the Constitution of 1945 therefore must be sought in the 1945 Constitution of the Indonesian nation state theory which of course is a typical view of Indonesia can not be separated from the influence of nature and culture of Indonesia, a way of looking which is based on the basic philosophy of the state. Although it should still be understood that the Indonesian nation state theory can not be separated completely from the theory of the state in general, it is only a specialization, namely a general theory that theoretical state associated with the real facts of life in a community group of the Indonesian nation, state and nation.

Thus the analysis of the existence of state institutions in the state system refers to a theoretical understanding of the Indonesian nation state. Special theory of the Indonesian nation state is the result of reflection from the theory of the state in general (*algemeine staatslehre*). The theory of this state can be regarded as 'acculturation' theory of the state that comes from Western Europe with a view of life, history, nuances psikopolitic, and state constitutional law of the Republic of Indonesia.<sup>14</sup>

Essence Theory Based Tool Equipment Stateless State.

State theory starting from the proposition (*premissie*) is meant by Bierens de Haan, that an association (*gemeenschap*) naturally has the will to organize. Understanding the organization (*Organisatie*) in contrast to the sense of order (*Ordering*). Organizations naturally occurring and is caused by the encouragement

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<sup>13</sup> In the language of the founding fathers, this idea is also known as 'the idea of democracy'

<sup>14</sup> The term 'acculturation' is used by Padmo Wahjono to describe the presence of a fusion or an adjustment in the field of scientific knowledge about the country, among others, were developed in Europe and in Indonesia itself. See Teuku Amir Hamzah, *State Science ... Op. Cit., Hlm.1.*

that comes from within, is the regularity arises because the intent and will of the mind.<sup>15</sup>

Bierens de Haan state according Further, is a form which is where a community organizes itself (de staat in dit is een figuur zichzelf organiseren van het gemeenschapswezen). Society is a community of nations mentioned (volksgemeenschap). Affirmed that the state is a product of a community (nation) where she organized herself, not vice versa as stated by Hobbes in his doctrine of the agreement state that is outdated.<sup>16</sup>

Detailed elaboration of state theory is a theory of the nature of the nature of the state (das Wesen des Staates). The most urgent question in the theory of the nature of the actual nature of the state is whether the nature of the country. Based on the historical development of the terminology of 'state' or 'state' in the literature, there are several terms that are often used as synonyms. Each equivalent word 'state' itself has its own character.<sup>17</sup>

Etymological explanation can help how to interpret the nature of the nature of the state. Nevertheless, sociological and juridical explanation regarding the nature of the nature of the state is still required in a comprehensive understanding regarding the specific state theory.

Theory community agreement (pactum unionist social contract) in the arena of constitutional law<sup>18</sup> that put the state nature "as a protector of the rights of human rights" in which the state, as the executor of the will of the general (generale Volente). Meanwhile, Hans Kelsen stating the nature of the state as "the embodiment of national legal order" personificatie van het rechtorde because existens state building visible from the legal system in regulate the community life of the nation.<sup>19</sup> Padmo Wahjono On the other hand, the properties distinguish the nature of the country in three perspectives. individualistic perspective that promotes the more than a public community or nation. perspective class or classes which considers the state as a tool group / class for oppressing class / grade more than the individual. Whereas integrative perspective that prioritizes community although the community but the human dignity of a person still be appreciated.<sup>20</sup>

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<sup>15</sup> JD Bierens de Haan, staatsidee, in: ML Bodlaender Politiea, Grote mannen over staat en Maatschappij, Elsevier, fourth printing, Amsterdam / Brussels / London / New York, 1956, p. 8; as cited by A. Hamid S. Attamimi, Decree of the President of the Republic of Indonesia Role in the Implementation of the State Government, the Graduate School Dissertation, University of Indonesia, Jakarta, 1990, p. 85.

<sup>16</sup> Ibid.

<sup>17</sup> The term or terms that become the guardian of the country, among others: policy (city-state); country (country-state); community / civiteit; Rijk or reich; He stato; staat; state (nation state); kingdom (monarchy); sultanate (soulthan); country of residence / state / country; Desha, village, desh (such as Bangladesh); land (such as: England, Deutschland, and so forth).

<sup>18</sup> See John Locke, published in Man and the State: The Political Philosophers, 1953, p. III cited by Moh. Kusnardi and Harmaily Ibrahim, Introduction to the Law of the State of Indonesia, Center for the Study of State Constitutional Law Faculty of Law, Jakarta, 1983, p 122.

<sup>19</sup> See explanation in Padmo Wahjono: Republic Indo-nesia, Eagle Press, Jakarta, 1986, p. 54.

<sup>20</sup> Padmo Wahjono, Pancasila Ideology In Life As constitutional, in Seminar 'Pancasila Ideology In Various Fields As the social, civic, and Stateless', BP-7 center, Jakarta, 1989, p. 8; as quoted by A. Hamid S.

Finally, the nature of the sociological nature of the state can be seen as: (1) bonding a nation; (2) as an organization authority; or (3) organization as a position (ambten Organisatie); and in the form of excess negative as well as (4) the organization of power. While the juridical nature of the state can be seen. as: (1) the owner or ruler of the land "(feudal patrimonial theory), and (2)" the party that controls or rule "(the result of a reciprocal agreement between the two parties dualistic). history of the theory of the state can be found the type of the modern state,<sup>21</sup> namely the representation democracy and is building a democratic constitutional state. Formation of a democratic constitutional state (rechtsstaat) be the end of all these future goals of modern nation states.<sup>22</sup>

By definition, a state tool fittings or commonly referred to as a state institution is an institution, the institution that was set up to carry out state functions.<sup>23</sup> Based on the theory of the classical theory of the state at least there are some important functions such as policy-making functions of the laws (legislative function), the function or functions implementing regulations governance (executive function), and the function of judge (judicial function).

The theory is often the reference 'theory of functions and organs of state' is the trias politica (tri civil). This theory made so that power is not concentrated on one hand or one particular institution. Power should be divided into three major functions to be mutually 'supervise' (check) and each 'offset' (balances) in the operation of real power. Thus, power can be limited according to function and can be controlled internally by other institutions equal, and externally by the people as real constituents are represented by the state institutions.

Fittings for the state based on the theories of the state, including the executive power, in this case can be president or prime minister or king, legislative power, in this case be referred to the parliament or by other names such as the legislature, and judicial powers as the Court Supreme. Each country's fittings may have other organs organs to assist the implementation of its functions. Executive power, for example, assisted the deputy minister and the minister who led one particular department. However, in reality, these types of state agencies that applied each country will vary according to the political history of the development of the state and also in accordance with the needs of society in the countries concerned.

In keeping with the times, the state functions again later elaborated into tasks detailed descriptions of the state so that the state becomes the purpose of these functions in the form of state duties, whose scope is so much. Then the more

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Attamimi, 1990, Decree of the President of the Republic of Indonesia Role in the Implementation of the State Government, the Graduate School Dissertation, University of Indonesia, Jakarta, p. 90.

<sup>21</sup> In this type occurs blend modern state (convergence) between popular sovereignty and the rule of law.

<sup>22</sup> View posts Yusril Ihza Mahendra in: Dynamics Tata Negara Indonesia; and also in the writings of Franz Magnis Suseno Political Ethics. They mention that the highest ideal state in this century is the 'Law of the Democratic State'.

<sup>23</sup> Moh. Kusnardi and Bintan Saragih, State Science, Revised Edition, Style Media Primary, Jakarta, 2000, p. 241

complex activities of the modern state, the more agencies or the equipment needed. Fittings or institution that is determined by the constitution are often no longer able to accommodate the specific tasks that generally require independence and professionalism in the implementation. Thus, the formation of the equipment or the organ of state (agency) has a condition sine qua non for the growth of the country. Similarly, the term evolved diverse equipment in the country, such as organs, institutions, forums, institutions, additional institutions (state auxiliaries), independent bodies (independent state bodies or self-regulatory bodies), state enterprise, and others.

Conceptually, the purpose of the institution or state-tool fittings in addition to running the state is a state function, as well as to carry out the functions of government. In other words, the institutions must form a unity process are interconnected with each other within the framework of the implementation of state functions or terms used Sri Soemantri is the actual governmental process.<sup>24</sup> Thus, although in practice the type of state institutions of every country is different, the concept of the institutions should work and have relationships in such a way so as to form a whole to realize the practical functions of the state and ideologically realize the goal state.

Equipment Tool For Managing Function State State State To Reach Destination. The essence of this idea is the trias politica<sup>25</sup> separation of powers is based on the country's main functions: executive, legislative, and judicial. Executive functioning government exercise power; legislative, the law makes provision for the exercise of power; judicial function prosecute violations of the legal provisions have been made. The doctrine of separation of powers function is called the horizontal separation of powers, while the vertical division of power is intended as federalism.<sup>26</sup>

Trias politica principle is implemented by a system of checks and balances that understanding as follows:<sup>27</sup>

*“system that ensure that for every power in government there is an equal and opposite power placed in separate branch to restrain that force... checks and balances are the constitutional controls whereby separate branches of government have limiting powers over each others so that no branch will become supreme.*

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<sup>24</sup> Sri Soemantri, 1986, on State Institutions According to the 1945 Constitution, Bandung, Alumni.

<sup>25</sup> Djoko Soetono translate this term with the term Tri Praja (Trias politica Montesquieu); Chess Praja Van Volenhioven for his theory; Dwi Praja (dichotomy) to Goodnow (Policy making and policy executing).

<sup>26</sup> Federalism is called territorial division of powers. This opinion is called by B. Ananda Kusuma, Birth 1945, UI HTN Study Center, 2004, p. 24 26 Ananda also indicates Miriam Budiardjo error stating that Indonesia adheres to the Trias Politica in terms of division of powers (the division of power is not expressly functions) and not the separation of powers (separation of functions is expressly subject).

<sup>27</sup> L. Berman and Bruce Allen Murphy, 1999, Approaching Democracy, Second Edition, New Jersey: Prentice Hall, 1999, p. 58

Thus in determining the functions and tasks should refer to the objectives contained in the state constitution. From the basic objective function is then defined function; of these functions are further described in task assignment; of these tasks then shaped organ organ (agency) executing. Institutions of state and government in everyday situations can be set according to the destination country basis.<sup>28</sup>

In organization theory, its main target is effective, efficient, and equitable. Implementation of a function or a task does not necessarily have to be placed on only one institutional organ alone. Detailed study of the administration tasks that refers to a particular function needs to be done so that organizational structuring state institutions can walk towards the fulfillment of the basic objectives in an efficient state and do not overlap.

First of all, in this case stems on the organs that have a specific function namely the state as *gezagsorganisatie*. This means that the organ will depend on the state function. If you take the state theory of functions of Montesquieu, then there are three functions of the three organs. Montesquieu's teachings are no longer tenable, because it does not distinguish between the functions and organs, as one organ may have more than one function.<sup>29</sup> According to Montesquieu's division of functions can not be used again, so still have to combine this with the distribution function of the state division of Goodnow, the organ which consists of policy making and policy executers. Thus the distribution is contained organs or political office and political organs or positions based on skill. And if it is connected with the views of other scholars of Rowse is the dividing of: (a) the political framework (political office) and; (b) administrative framework (administrative office).

Similarly the equipment tools of this country, it has historically been linked to the purpose of each country. But legal experts are not satisfied with it, due to lack of historical theories explaining the real thing, so he menganalisisir from a legal perspective, is reviewing how the structure of the state supplies tools legally, so this is all still originate in the state as an organization . If sensible at Jellinek, then there will obtain a settlement regarding the appropriate criteria for dividing the state organs. But if sensible on Hans Kelsen, Hans Kelsen then just look at the norm, according to Herman Heller state as an organ of certain people that seemed to represent the overall authority in carrying out the public interest, the organization which organizes certain tasks is the state. This means that the state is an organization of office, the country's juridical organ of the organization's office. Then the state organs seen from how the organization was formed position. In this case it is forced to look at in terms of history. Seen first that the state functions or duties in the field of state called the office, and this function can not be separated

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<sup>28</sup> Hendra Nurtjahjo. State Science ..... Op.Cit., P. 71 73.

<sup>29</sup> Teachings van Vollenhoven with chess praja.

from the whole, due to the existence of a state function known of the destination country. This means that the function can not be separated from an organization, and the organization was formulated as a partnership based on the division of labor is fixed or lasting. Cooperation that still produce a state organization and the function is called position.

Jellinek said that all positions and positions that are also owned or held by a person. So this guy representing the post. Therefore, the organization is a division of labor is fixed, the position also remains, although the person could be alternated. Consequently it is the representative, the representative of a position (ambtsdrager), people always distinguish two kinds of action, namely: (a) the action prive; (b) the action office. The purpose of this action distinction primarily for accountability. Size to hold is:

- a.) Implementing regulations regarding its function.
- b.) Must also implement the joints of the law, such as justice, equality, non-discrimination and others.
- c.) Must carry out their duties with the best or the best way.

## **CONCLUSION.**

State institutions as a means of state equipment into an inseparable whole with the existence of the state. The existence of state organs to fill in and run the country. The formation of state institutions as a means of state equipment is a manifestation of the people's representation mechanisms to govern. Similarly, the establishment of no other country in the interests of the people so that the establishment of state institutions / organs of state / country fittings should represent the aspirations of the people. Aspirations of the people mentioned in the form of the joints and the state values embodied in the theory of the state (of Indonesia).

Future changes in constitutional and structural institutional reforms, have also changed the meaning of state institutions. A number of new agencies, which are generally called 'commission' or any other name, either by the Constitution or laws called 'state agency', while these bodies are not the status of the equipment state acting for and on behalf of the state. When judging assignments of new agencies, the government basically does the job of an administrative nature, or as a supporting body. With reference to the theory of the state (of Indonesia) related to the study of equipment in this country, so to avoid confusion with the notion of state institutions due to a variety of new rules in the Constitution or the law, it is necessary to distinguish between state agencies in terms of constitutional and non-constitutional. As previously mentioned, the state agency in the constitutional sense is confined to a state institution as an element of state organization acting for and on behalf of the state, while the state institutions are not acting for and on behalf of the state not including constitutional state institution. Any action of state institutions in this second sense can be classified and administrative nature only.

To find out, whether a state agency as acting for and on behalf of the state or not, is determined by the substantive rules regarding the assignment of authority of state institutions concerned. With that knowledge, as well as well known, whether an entity is a state agency or political subdivision not a constitutional body.

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