

**RECONSTRUCTING THE STATUS OF CONSTITUTIONAL
COURT RESEARCHERS**

***MEREKONSTRUKSI STATUS PENELITI MAHKAMAH
KONSTITUSIONAL***

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ABSTRACT

Researchers at state institutions were forced to leave their positions, including those at the Constitutional Court. Researchers then lose the opportunity to hold the title of research professor. These researchers were also given a new duty, which was to help courts and give Constitutional Justices substantial support. The predicate "assistance" in this rule, which receives no detailed explanation, leads to multiple interpretations and affects the productivity of assistants to expert constitutional judges. Based on this, it is interesting to discuss how the status quo regulates career paths and academic freedom of Constitutional Court researchers in personnel law and how the ideal concept of setting career paths and academic freedom for researchers at the Constitutional Court. This study uses a normative research method, in which its results implicitly suggest a return to the previous rules. The researcher also suggests that the positions of assistant judge and researcher be strictly separated and that opportunities be provided for researchers to hold the title of academic professor. Researchers think BRIN should merge research institutions with the same form and function.

Keywords : Civil Apparatus, Judges Assistant, Constitutional Court.

ABSTRAK

Para peneliti di lembaga-lembaga negara dipaksa untuk meninggalkan posisi mereka, termasuk mereka yang berada di Mahkamah Konstitusi. Para peneliti kemudian kehilangan kesempatan untuk menyandang gelar profesor riset. Selain itu, para peneliti ini kemudian diberi tanggung jawab baru, yaitu membantu hakim serta memberikan dukungan substantif kepada Hakim Konstitusi. Predikat "bantuan" dalam aturan ini, yang tidak mendapat penjelasan rinci, menyebabkan berbagai interpretasi dan memengaruhi produktivitas asisten hakim ahli konstitusi. Berdasarkan hal ini, menarik untuk membahas bagaimana status quo mengatur jalur karier dan kebebasan akademik para peneliti Mahkamah Konstitusi dalam bidang hukum personalia dan bagaimana konsep ideal dalam menetapkan jalur karier dan kebebasan akademik bagi para peneliti di Mahkamah Konstitusi. Studi ini menggunakan metode penelitian normatif, yang hasilnya secara implisit menyarankan untuk kembali ke aturan sebelumnya. Peneliti juga menyarankan agar posisi asisten hakim dan peneliti dipisahkan secara ketat dan agar diberikan kesempatan bagi para peneliti untuk menyandang gelar profesor akademik. Peneliti berpendapat bahwa BRIN harus menggabungkan lembaga-lembaga penelitian dengan bentuk dan fungsi yang sama.

Kata Kunci : Aparatur Sipil Negara, Asisten Hakim, Mahkamah Konstitusi.

I. INTRODUCTION

Academic culture, or the cohesiveness of academic life and activities, is internalized, understood, and practiced by members of the academic community in research and higher education institutions. Academic freedom is a right shared by all members of the academic community. Everyone in the community has the right to academic independence. According to Article 17 paragraph (1) of Government Regulation Number 30 of 1990 concerning Higher Education, academic freedom is the right of members of the academic community to engage in academic activities related to education and the advancement of science and technology. Accordingly, academic freedom refers to the independence of academics who have been given responsibilities.¹

Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia explicitly provides protection for freedom of opinion, which should be the basis for the assurance of the rights of thought and conveying the results of their thoughts. Citizens have the right to be involved in expressing

¹ Amarru Muftie Holish, "Keberpihakan Sistem Peradilan Dalam Upaya Perlindungan Kebebasan Akademis Kampus Dalam Berkumpul Dan Berserikat (Studi Analisis Putusan Nomor 23 /Pid.Sus/2015/Pn Kln)," *The Digest: Journal of Jurisprudence and Legisprudence* 1, no. 1 (2020).

their freedom to voice their thoughts, opinions and assemble, which are the determinant variables for generating and dynamizing democratic political life, which is carried out in direct policy formulation or institutional intermediation that can legitimize the representation of their interests. Community participation is constructed on the freedom of association and expression.² However, academic freedom is often confused or distorted with the meaning of freedom of expression in general, namely the freedom to express opinions through open and demonstrative statements about something that has nothing to do with scientific activities, such as a statement of attitude towards a policy or a situation. Yet that kind of freedom is not academic freedom.³

The conditional relationship between academic freedom and scientific autonomy shows how important they are to academic life. As a result, the role of national education is very important in a third-world nation like Indonesia. As in developed nations generally, it serves as a tool for knowledge transfer as well as a component of acculturation (enculturation) in a wide range of fields. Establishing national character and personality (nation and character building) is one of the most important parts in this case; it is crucial to the process of nation building in the sense of restoring the Indonesian state and nation.⁴

The existence of researchers occupies a strategic position to act as providers of education and knowledge producers. However, in practice, because of the complexity of science and scholarship, this field does not only come into contact with higher education institutions with all the sovereignty they have, the academic community, academic freedom and academic culture, but also touches other broader fields. In the reformation era, there was widespread awareness that scientific problems, with all their complexities, also directly and indirectly come into contact with basic values and affect the index of democracy. In other words, we want to say that researchers are not only entities that organize educational activities and knowledge development, but also play a role in the process of democratization and the realization of basic democratic values.⁵ There are at least four categories of elements of the democracy index mentioned by David Beetham. First, the presence of an ethical and equitable general election system. Second, the government is transparent, responsible, and reactive. Third, there is political will and efforts to constantly promote and preserve human rights,

² Riant D Nugroho, *Kebijakan Publik, Formulasi, Implementasi Dan Evaluasi* (Jakarta: Elex Media Komputindo, 2003).

³ Moh Mahfud MD, "Perspektif Politik Dan Hukum Tentang Kebebasan Akademik Dan Kritik Sosial," *UNISIA* 17, no. 32 (1997).

⁴ A G M van Melsen, *Ilmu Pengetahuan Dan Tanggung Jawab Kita* (Jakarta: Gramedia, 1992).

⁵ Muladi, *Demokratisasi, Hak Asasi Manusia, Dan Reformasi Hukum Di Indonesia* (Jakarta: The Habibie Center, 2002).

particularly civil and political rights, and fourth, there is a democratic society that is expressed in a confident attitude, notably through numerous civil society groups.⁶

Academic freedom was also affirmed in the Lima Declaration,⁷ which states that:

“Academic freedom’ means the freedom of members of the academic community, individually or collectively, in the pursuit, development and transmission of knowledge, through research, study, discussion, documentation, production, creation, teaching, lecturing and writing”.

This means that freedom is a necessary prerequisite for research, instructional activities, administrative tasks, and services that higher education institutions may rely on. Every individual of the academic community have the right to execute their tasks without prejudice in whatever situation, and without worrying about persecution or interference from the government or other parties.⁸

Academic freedom has traditionally been linked to upholding the rights and responsibilities of the academic community in higher education institutions, however it appears that this perspective is no longer entirely accurate. Through the tri lemma of higher education, it must be recognized that research is one of the university's features; yet, higher education institution entities do not always engage in this activity.⁹ In Indonesia, government-owned research groups that report directly to the President, such as the National Research and Innovation Agency, do research in addition to higher education, which is governed by the Ministry of Education and Culture. Through Presidential Regulation Number 78 of 2021 (Perpres 78/2021), this Agency significantly altered the position of researchers, particularly those who work outside of higher institutions. Article 65 of Presidential Regulation 78/2021 confirms this, stating that the National Research and Innovation Agency will take over the duties, functions, and authority of work units that conduct scientific and technological research, development, and application within ministries and agencies.

One of the institutions affected by this integration is the Constitutional Court. After the enactment of Presidential Regulation 78/2021, researchers at the Constitutional Court are required to merge with the National Research and Innovation Agency as a result of the merger of research organizations in

⁶ Muladi.

⁷ “The Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education of The Sixty-Eighth General Assembly of World University Service,” <https://www.wusgermany.de/Sites/Wusgermany.de/Files/Userfiles/WUS-Internationales/Wus-Lima-Englisch.Pdf>.

⁸ Natangsa Surbakti, “Kebebasan Akademik Dan Otonomi Keilmuan Hukum Di Indonesia,” *Jurisprudence* 1, no. 2 (2004).

⁹ Asian Development Bank, *Education in Indonesia: Rising to The Challenge* (Paris: OECD Publishing, 2015).

Indonesia. Then this was considered inappropriate and caused a polemic. It is commonly known that the duties of researchers within the scope of the Constitutional Court have differences from those of researchers in general. In addition to carrying out the task of conducting research for the sake of knowledge, Constitutional Court researchers also have the duty to provide assistance to Constitutional Court Judges. This would of course raise fundamental contradictions if Constitutional Court researchers were forced to join the National Research and Innovation Agency.

In 2022, this polemic was mediated by the issuance of Minister of State Apparatus Empowerment and Bureaucratic Reform Regulation Number 40 of 2022 concerning the Functional Position of Expert Assistant to Constitutional Judges. This regulation then gave birth to the nomenclature of Expert Assistants for Constitutional Judges, which is attached to Constitutional Court researchers. This regulation was followed up by issuing based on the Decision of the Secretary General of the Constitutional Court Number 391 of 2022 concerning the Appointment of Civil Servants in the Functional Position of Expert Assistant to Constitutional Judges in the Registrar's Office and Secretariat General of the Constitutional Court, 25 People Civil Servants in the Functional Position of Researchers turning into Assistant Experts to Constitutional Judges.

At first glance, this polemic appears to have been resolved and accommodated the duties and rights of researchers under the auspices of the Constitutional Court. However, if studied in a comprehensive manner, in fact, This rule has not provided certainty for the situation of researchers inside the Constitutional Court. First, after the birth of Permen-Pan RB 40/2022, Constitutional Court researchers have career paths like Civil Servants with other functional expertise,¹⁰ namely consisting of First Expert Assistant Constitutional Judges, Junior Expert Assistant Constitutional Judges, Middle Expert Assistant Constitutional Judges and Main Expert Assistant Constitutional Judges. The absence of certainty regarding the ability of Constitutional Court researchers to obtain the title of Research Professor is certainly a disadvantage for researchers within the Constitutional Court. The ambiguity of this career path cannot be answered by Presidential Regulation 78/2021. Whereas previously, Article 25 Paragraph (2) Joint Decision Number 128 of 2004 between the Ministry of State Apparatus Utilization and Bureaucratic Reform, the Minister of National Education, and the Minister of Research and Technology concerning the Functional Position of Researcher in the form of awarding the title of Research Professor to the main researchers at the Indonesian Institute of Knowledge which is technically then regulated in the Regulation of the Indonesian Institute of Sciences Number 15 of 2018

¹⁰ Article 6 Permen-Pan RB Number 41 Year 2023 Regarding Functional Positions, It States That the Level of Functional Expertise Positions Consists of Prominent, Middle, Junior, and First Experts.

concerning the Title of Research Professor. Ironically, the National Research and Innovation Agency, which is a new institution resulting from the amalgamation of several government research institutions, including the Indonesian Institute of Knowledge, uses Indonesian Institute of Knowledge Regulation No. 15 of 2018 to appoint Research Professors at the National Research and Innovation Agency.¹¹

Second, the new nomenclature in the form of Expert Assistant to Constitutional Judges attached to Constitutional Court researchers, in fact, gives a pragmatic impression of the duties of Constitutional Court researchers. The Constitutional Court researcher's assertion that the Functional Position of Expert Assistant to Constitutional Judges is to assist and offer substantive support to Constitutional Judges serves as proof of this. According to the creation of these regulations, the Constitutional Court researcher's responsibilities are twofold: serving as an assistant judge and offering substantial assistance. Even if this substantial help might be seen as an academic task in terms of carrying out pertinent scientific study, the precise definition of "assistance" remains unclear. Referring to the phrase assistant to Constitutional Judges, it can be annotated that assistants to Constitutional Judges provide assistance to judges, for example, in making reports on the activities and work of judges. In fact, in several countries, the involvement of assistant judges is very complex and substantial, such as conducting research and preparing cases or making decisions.¹² Such regulations make researchers at the Constitutional Court have two different tasks and carry quite heavy responsibilities. This will certainly affect the researcher's performance, effectiveness, and efficiency.

Third, the task of an expert assistant to Constitutional Judges as an assistant and conducting this research also has an impact on the independence of researchers in an academic context, which should be the main characteristic of a researcher. The attachment of Constitutional Court researchers to the nomenclature of expert assistants to Constitutional Judges makes researchers attached to judges in particular and institutions in general. This can interfere with the scientific objectivity of researchers. The researcher's assessment and view of an incident within the Constitutional Court is very limited because it is considered part of an institutional organisation that cannot stand alone. This certainly interferes with the freedom of academic speech, which is also the right of every academician, including researchers.

¹¹ BRIN, "BRIN Kukuhkan 4 Penelitinya Sebagai Profesor Riset," <https://brin.go.id/news/110452/brin-kukuhkan-4-penelitinya-sebagai-profesor-riset>, 2023.

¹² Tudorel Toader and Marieta Safta, "Judges and Assistant-Magistrates Within Constitutional Courts," *Revista De Drept Constitutional*, 2016.

By looking at those problems, the author is interested in writing and researching the paper titled “*Reconstruction of the Civil Services System for Researchers at the Constitutional Court of the Republic of Indonesia*”. The problems that will be discussed in this paper are: First, how the status quo affects career-path adjustment and academic freedom for Constitutional Court researchers in Employment Law; and second, what the ideal concept of career-path adjustment and academic freedom for Constitutional Court researchers should be.

II. METHOD

Qualitative research was the kind of study that was done. Research conducted without the use of statistical formulae and symbols is referred to as qualitative research.¹³ This research begins with assumptions and employs an interpretive/theoretical lens. The study of research problems investigates how people or groups view social issues.¹⁴

III. ANALYSIS AND DISCUSSION

a. Career Path Adjustment and Academic Freedom of Researcher at the Constitutional Court

Career Path is a self-development effort carried out by an employee as a career planner and an organisation as a career management. At the individual level, career development helps workers manage their mental health and well-being.¹⁵ Meng-Long Huo revealed that there is a close relationship between worker behaviour and decisions made related to work with career goals.¹⁶

Law Number 13 of 2003 concerning Manpower, as amended by Law of the Republic of Indonesia Number 6 of 2023 concerning Stipulation of Government Regulations in Lieu of Law Number 2 2022 concerning Job Creation to Become a Law, governs work as a workforce in Indonesia. Law 5 of 2014 concerning Personnel governs work as a state apparatus. These two work regimes have different arrangements for career paths, driven by task and function factors, resulting in different rights and obligations. Despite significant differences, the psychological and social impacts of career development on workers subject to these two laws ultimately have the same result.

¹³ Hadari Nawawi and Mimi Martini, *Penelitian Terpadu* (Yogyakarta: Gajah Mada University Press, 1996).

¹⁴ John W Creswell, *Penelitian Kualitatif Dan Desain Riset: Memilih Diantara Lima Pendekatan* (Yogyakarta: Pustaka Pelajar, 2015).

¹⁵ Sista Mayangdarastri and Khanifatul Khusna, “Retaining Millennials Engagement and Wellbeing Through Career Path and Development,” *Journal of Leadership in Organizations* 2, no. 1 (2020).

¹⁶ Meng-Long Huo, “Career Growth Opportunities, Thriving at Work and Career Outcomes: Can COVID-19 Anxiety Make a Difference?,” *Journal of Hospitality and Tourism Management* 48 (2021).

According to Article 3 of the Regulation of the Minister of Administrative and Bureaucratic Reform No. 40/2022, assistants to Constitutional Justice Experts at the Constitutional Court are categorised as Civil Servants and are subject to the civil service law regime in Indonesia. This resulted in researchers at the Constitutional Court in general, having rights and obligations like a State Civil Apparatus. One of the rights possessed by the Expert Assistant of Constitutional Judges is career development, competency, career patterns, transfers, and promotions which are carried out using a merit system.¹⁷

The Expert Assistant to the Constitutional Court had the status of a technical implementer in carrying out Research, Development, and/or Science and Technology Studies activities at Research, Development, and/or Research Organizations of Government Agencies, in this case the Constitutional Court, prior to the creation of Regulation of the Minister of Administrative and Bureaucratic Reform No. 40/2022. The Republic of Indonesia State Personnel Agency Regulation Number 9 of 2019 about Guidelines for Implementing the Development of Research Functional Positions generally applied to researchers in the Constitutional Court at that time. In compliance with Presidential Regulation Number 49 of 2012 as amended by Presidential Regulation Number 73 of 2013 concerning Registrars and the Secretariat General of the Constitutional Court, as well as the amendment rules and Regulation of the Secretary General of the Constitutional Court Number 13 of 2017 as amended by Regulation of the Secretary General of the Constitutional Court Number 3 of 2019 concerning Amendments to the Regulation of the Organization and Work Procedure of the Registrar and Secretariat General of the Constitutional Court.

Based on Article 87 of the Regulation of the Secretary General of the Constitutional Court concerning Organization and Working Procedures and the Secretariat, the tasks of researchers include carrying out research; case assessment; case review; preparing the concept of legal opinion; preparation and development of scientific papers; preparation of academic draft regulations; library management and constitutional history; as well as the implementation of central administration. This rule explicitly emphasises that

¹⁷ Merit System is one of the systems in human resource management that makes qualifications, competence, and performance the main considerations in the process of planning, recruiting, paying, developing, promoting, retaining, disciplining, and retiring employees. Initially, the merit system was widely applied in private sector organizations, which later began to develop and be adopted by the public sector as well. In Indonesia, the formal legal merit system was enforced in 2014 through Law No. 5 of 2014 concerning State Civil Apparatuses. In the Civil Apparatus Law, it is stated that the management policy of the Civil Apparatus is based on qualifications, competence, and performance which are applied fairly regardless of political background, race, skin color, religion, origin, gender, marital status, age or disability condition (without discrimination).

the duties of researchers at the Constitutional Court intersect with academic activities.¹⁸

However, at this time, the nomenclature for a researcher at the Constitutional Court changed to “Assistant Expert to Constitutional Judges”. This nomenclature change is a solution resulting from the amalgamation of several state institutions whose main task is to conduct research, thereby becoming the National Research and Innovation Agency. This resulted in the nomenclature of investigators in the body of the Constitutional Court having to change. If they don't change and still want to maintain their status as researchers, then researchers who are at the Constitutional Court must immediately join as 'employees', in this context, researchers at the National Research and Innovation Agency.

This merger is the result of Central Agencies' bureaucracy being made simpler. The National Research and Innovation Agency is essentially established as the sole national research agency by Presidential Regulation Number 78 of 2021. The Indonesian Institute of Sciences, the Agency for the Assessment and Application of Technology, the National Nuclear Energy Agency, and the National Institute of Aeronautics and Space will all be replaced by the National Research and Innovation Agency, per the regulation. The National System of Science and Technology Law Number 18 of 2002 was first changed to Law Number 11 of 2019 as part of this fusion endeavor. One of the most significant institutional modifications was in Article 48 paragraph (1), which states that a national research and innovation agency must be established in order to conduct research, development, study, and application as well as integrated discoveries and innovations. Presidential Regulation Number 74 of 2019 about the National Research and Innovation Agency was created after the National Science and Technology Law, and it was subsequently modified by Presidential Regulation Number 95 of 2019. Presidential rule Number 33 of 2021 about the National Research and Innovation Agency subsequently superseded this rule, which was later modified once again to become Presidential Regulation Number 78 of 2021 concerning the National Research and Innovation Agency.

Talking about the position of expert assistant to constitutional judges, which currently replaces the term "researcher," is also not without its drawbacks. Article 6 Regulation of the Minister of State Civil Apparatus Empowerment and Bureaucratic Reform No. 40/2022 states that the task of the Functional Position of Expert Assistant to Constitutional Judges is to provide assistance and provide substantive support to Constitutional Judges. If you look at the formulation of this article, conducting research is no longer

¹⁸ Academic Is Related to Schools, Colleges, and Universities, or Connected with Studying and Thinking Rather than Practical Skills or a Person Who Teaches at a College, or Who Studies as Part of Their Job, <https://Dictionary.Cambridge.Org/Dictionary/English/Academic>.

the core of the duties of former Constitutional Court researchers. Their main task at present is to become assistants and provide substantive support to Constitutional Court Judges. Under this rule, conducting research is only part of an assistant to an expert on constitutional judges' professional development.¹⁹

Furthermore, this structure implicitly implies that the expert assistant to constitutional judges is a profession that is directly responsible to the Constitutional Court Judges and indirectly to the Constitutional Court's institutions. This means that research activities within the Constitutional Court are no longer within the framework of academic freedom, whose goal is to seek truth and knowledge freely and the right to communicate this truth and knowledge to other people, including students, academies, and the general public, without being constrained by political pressure or ideological.²⁰ From the perspective of the formulation of these rules, the expert assistants to constitutional judges are more dominant in providing substantive support to constitutional judges.

Looking at the structure of the Constitutional Court's work unit, the researcher is assigned to the Centre for Research and Study of Cases and the Library Manager of the Constitutional Court. With the change in the nomenclature of researchers from Assistant Experts to Constitutional Justices, it is not yet clear whether these assistants will be working. Besides not being regulated in detail by the Regulation of the Secretary General of the Constitutional Court, the duties of an expert assistant to a constitutional judge are pretty complex, apparently inconsistent with the Centre for Research and Study of Cases, and the Library Manager of the Constitutional Court. One of the duties of an assistant constitutional judge is to assist judges. There is no clear definition and limitation of what is meant by assistant judge, as the duty of an expert assistant to constitutional judges, this free norm creates broad interpretations down to the personal lives of the judges.

b. The Ideal Concept of Setting Career Paths for Researchers at the Constitutional Court

1) *Quo vadis Regulatory Certainty Research Assistant of the Constitutional Court of the Republic of Indonesia.*

One of the government's 2020 planning objectives is control over the State Civil Apparatus. A Technocratic Draft of the 2020–2024 National Medium-Term Development Plan, the fourth phase of the National Medium-Term Development Plan of the 2005–2025 National Long-term Development

¹⁹ Lampiran II, Peraturan Menteri Pendayagunaan Aparatur Negara Dan Reformasi Birokrasi Republik Indonesia Nomor 40 Tahun 2022.

²⁰ Tonja M Woods, "Academic Freedom Should Be Redefined: Point and Counterpoint," *American Journal of Pharmaceutical Education* 80, no. 9 (2016).

Plan, has been published by the Ministry of National Development Planning. In order to achieve internationally competitive human resources, the 2020–2024 National Medium-Term Development Plan focuses on enhancing human resource development through the public sector and empowering the non-public sector.²¹

The existence of Law Number 5 of 2014 concerning the State Civil Apparatus is a significant milestone in the process of reforming the Indonesian bureaucracy as a first step in enhancing the administration of the State Civil Apparatus. The creation of a professional State Civil Apparatus free from political interference, corruption, collusion, and nepotism, capable of delivering public services to the community and fulfilling its role as guardian of national unity and integrity based on Pancasila and the 1945 Constitution of the Republic of Indonesia, is one of the stated goals of reforming the Indonesian bureaucracy; as well as acknowledging the State Civil Apparatus as a profession and carrying out State Civil Apparatus management in accordance with good governance principles of competence, qualification, or system merit at each level of State Civil Apparatus management.²² Human resources/apparatus is a factor that plays a very important role in an organization or government in providing services to the public.²³ Human resource management is designed to encourage and develop employees so they can best serve the organization's goal.²⁴

As one of the important elements in the Constitutional Court, the existence of assistant constitutional judges must also pay attention to their duties and rights. The current status quo seems to give them quite a heavy burden, namely assisting judges as well as providing substantive support to judges. As one indicator of career development, these assistants are also required to conduct research. If viewed through the perspective of state administrative law, such an obligation is not in accordance with the instrumental basis of state administration law in the form of effectiveness and efficiency. Effectiveness must be interpreted as what the goal or function is, which must be achieved, while efficiency is to achieve all the interests that become its function, then all components must work and function properly, quickly, and sufficiently.²⁵ This task model also contradicts the Theory of

²¹ Anggita Chairah, "Implementasi Sistem Merit Pada Aparatur Sipil Negara Di Indonesia," *Jurnal Borneo Administrator* 16, no. 3 (2020).

²² Riris Katharina, "Reformasi Manajemen Aparatur Sipil Negara," *Jurnal Sprit Publik* 13, no. 2 (2018).

²³ Roy Marteen Moonti, "Pelaksanaan Pengukuran Prestasi Kerja Terhadap Aparatur Sipil Negara (ASN) Di Dinas Pertanian Provinsi Gorontalo," *Jurnal Ilmiah Kebijakan Hukum* 12, no. 2 (2018).

²⁴ Mihajj Bakator, "Impact of Human Resource Management on Business Performance: A Review of Literature," *Journal of Engineering Management and Competitiveness* 9, no. 1 (2019).

²⁵ S Prajudi Atmosudirjo, *Hukum Administrasi Negara* (Jakarta: Ghalia Indonesia, 1994).

State Institutional Design, which emphasizes the structural design of state institutions such as the Constitutional Court (MK) of the Republic of Indonesia to ensure clear mandates, optimal inter-institutional coordination, and regulatory certainty.²⁶

The unclear meaning and limitations of the nomenclature of "assistance" is a new problem that contains multiple interpretations that cannot be justified. Not only that, but embedding two essential tasks in the same position also has the potential to cause overcapacity, which results in ineffective productivity. Even though it is not a labor law regime, the similarity between employment law and labor law, which is oriented towards work productivity, must also be taken into consideration. According to Bernardin and Russell, performance is defined as the record of results achieved on a particular job function or activity over a specified time period.²⁷ Meanwhile, Henry Simamora emphasized that performance refers to the level of achievement of the duties that comprise a person's employment. Performance represents how successfully an employee satisfies the criteria of their employment. Performance is sometimes mistaken as an effort that represents the energy consumed; performance is judged in terms of outcomes.²⁸

This anomaly in the nomenclature of assistant constitutional judges also seems to have the potential to harm the constitutional rights of assistant constitutional judges in terms of guaranteeing a good and proper career path. Because one way to develop the career of an assistant to a constitutional judge is through research, of course, they carry out academic activities whose goal is to adhere to the fourth paragraph of the 1945 Constitution of the Republic of Indonesia, namely the intellectual life of the nation. Activities like this should be rewarded by awarding the highest academic title if certain conditions are met, namely, Professor of Research. Reflecting on the previous rules, through Article 2 of the Regulation of the Indonesian Institute of Sciences of the Republic of Indonesia Number 15 of 2018 Concerning the Title of Research Professor it is explained that the title of Research Professor is given to key expert researchers who have fulfilled the administrative requirements for the Functional Researcher Position and delivered a Scientific Oration in the inauguration procession of Research Professor. However, after the founding of the National Research and Innovation Agency, the giving of this title to personnel outside the Agency could not be permitted.

Based on previous researchers' statements, the researcher believes that the various anomalies in the staffing status of researchers, or what are now known as expert assistants to Constitutional Judges, stem from the

²⁶ LaCombe, S. J. (2023). Institutional Design and Policy Responsiveness in US States. *American Politics Research*, 51(2), 210-222.

²⁷ H John Bernardin and Joyce E A Russell, *Human Resource Management* (Singapore: McGraw Hill Inc., 1993).

²⁸ Henry Simamora, *Manajemen Sumber Daya Manusia* (Yogyakarta: STIE YKPN, 1997).

establishment of the National Research and Innovation Agency. The study team proposes a number of solutions to this challenge. *First*, return the nomenclature of researchers to certain state institutions, such as the Constitutional Court. Also, enforcing the previous rule adopted a researcher position of the Constitutional Court that was separate from other research institutions. Even though they are separate, the arrangements for grade and position follow the rules made by the Ministry of State Apparatus Utilisation and Bureaucratic Reform Regulation. Researchers who are outside the radar of official government research institutions are given the opportunity to obtain the title of research professor as long as the terms and conditions regarding the calculation of their rank are met. *Second*, following the job scheme previously adopted by the Supreme Court before the arrival of the National Research and Innovation Agency. The staffing scheme in the field of research at the Supreme Court is actually the same as the position scheme at the Constitutional Court, but the formulation of specific tasks creates an ideal and clear impression. Decision of the Ministry of State Apparatus Utilisation and Bureaucratic Reform Regulation Number KEP/128/M.PAN/9/2004 concerning the Functional Position of a Researcher and His Credit Score and Decision of National Civil Service Agency Head Number 3719/D/2004 and Number 60 of 2004 concerning Guidance Implementation of Research Functional Positions. This is the basis for researchers in the purview of Civil Servants who are assigned complete duties, responsibilities, authority and rights by authorized officials to carry out research and/or development of science and technology in research and development organizational units of government agencies. This regulation also requires that the research and development organisational unit be a government agency that performs the main tasks and functions of research and development. Special researchers only conduct research. In comparison, the judge assistance tasks are related to the duties, functions and powers of judges, which are carried out by judicial judges who have a term of office of 5 years and are re-elected afterwards through the internal recruitment mechanism of the Supreme Court.²⁹ Actually, there is no nomenclature of assistant judges in Law Number 14 of 1985 concerning the Supreme Court, as amended twice by Law Number 5 of 2004 and Law Number 3 of 2009. Still, the term used is Substitute Registrar,³⁰ who then more often uses the term Judicial Judge because it is indeed selected from the judges who are under the auspices of the Supreme Court. Practically speaking, the second suggestion requires that the duties of

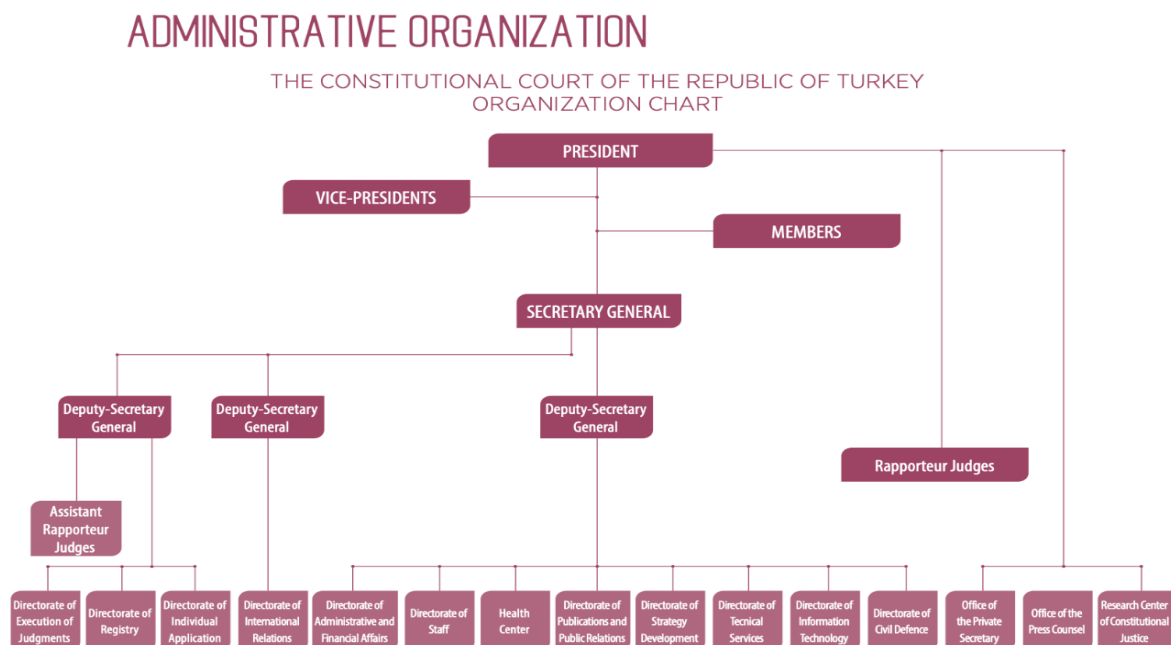
²⁹ Supreme Court of the Republic of Indonesia, Decree of the Chairman of the Supreme Court of the Republic of Indonesia Number 62/KMA/SK/IV/2021 Previously Regulated in the Decree of the Chairman of the Supreme Court of the Republic of Indonesia Number 076/KMA/SK/VI/2009.

³⁰ Hukum Online, "Menelusuri Asal Muasal Asisten Hakim Di Indonesia," <https://www.hukumonline.com/berita/a/menelusuri-asal-muasal-asisten-hakim-di-indonesia-lt60cb23844b52e/?Page=1>.

a researcher and the duties of an assistant judge are strictly separated from their respective position and functions.

Regarding the selection of assistant judges, there are several models that can be used, including internal recruitment, such as that carried out by the Supreme Court or external recruitment patterns that allow entities outside the institution to become assistant judges. The selection is made based on interviews and the selection committee, as well as Turkey, Israel, Belgium, Croatia, Austria, Germany, Georgia, Cyprus, Moldova, Portugal, Slovakia, Hungary and many other countries, which specifically separate the position of assistant judge from other positions.³¹ Germany, for example, conducted a series of election assistant judges which were open especially to legal practitioners, as well as Austria. The person employed must be an expert in the competence of the judge of the said Court. Turkey and Slovakia even expressly describe this scheme in their institutions. Turkey separates assistant judges from researchers, but both are directly under the control of the Chief Justice of the Constitutional Court. Meanwhile, Slovakia separates the positions of assistant judges and researchers, but both are under the Department for Court Administration and Analytical Research. The following is a picture of the organisational structure of Turkey and Slovakia:

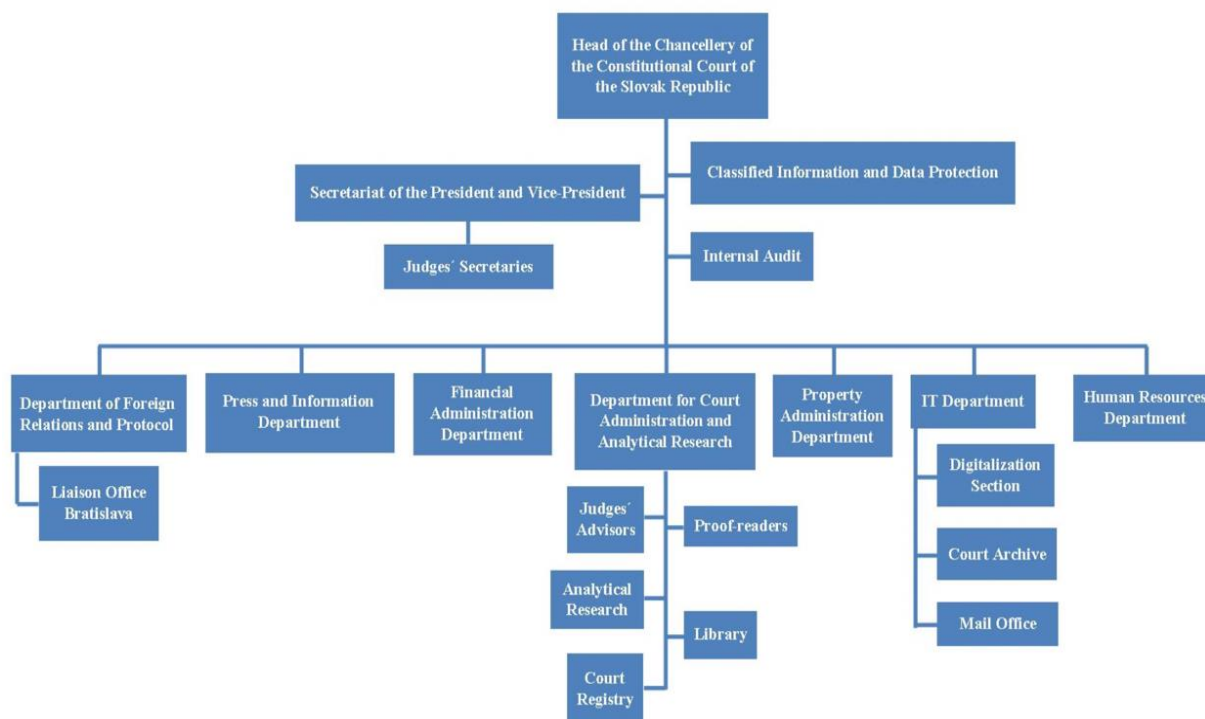
Picture 1. Administrative Organization of The Constitutional Court of The Republic of Turkey³²



³¹ Toader and Safta, “Judges and Assistant-Magistrates Within Constitutional Courts.”

³² Constitutional Court of Turkey, <https://Anayasa.Gov.Tr/Media/7365/Introductory-Booklet.Pdf>, Hlm. 16.

Picture 2. Administrative Organization of The Constitutional Court of the Slovak Republic³³



This second suggestion is an open legal policy for the Constitutional Court to implement internal or external recruitment, or even combining them and determining their institutional placement, or even this can be a separate research area in the future.

Third, return the opportunity to obtain the title of Research Professor. The existence of the National Research and Innovation Agency, which is self-exclusive, seems to be inappropriate. Although there are no specific rules that state that only researchers under the National Research and Innovation Agency can be given the title of Research Professor, the loss of the status of a researcher, *mutatis mutandis*, has eliminated that opportunity. Of course, the most dominant material losses resulting from this provision were felt by the senior researchers of the Constitutional Court, especially those who had reached the positions of Associate Researcher and Main Expert Researcher. As a result of this transition, they lose the opportunity to hold the title of Research Professor, even though they have almost fulfilled or even fulfilled the requirements for calculating performance credit scores.

³³ Constitutional Court of the Slovak Republic, <https://www.ustavnysud.sk/en/kancelaria-ussr/organizacna-schema>, Accessed on July 7, 2023.

2) *Questioning the Concept of Academic Freedom After the presence of the National Research and Innovation Agency*

In a growing country like Indonesia, national education bears a greater burden. Education's duty is not simply to impart information (as it is in industrialized nations in general), but also to facilitate acculturation in a wide range of fields. In this situation, one of the most essential things is the development of nation and character building, which is extremely significant for the process of nation building, in terms of the restoration of the Indonesian state and country.³⁴ Thus, it becomes very contextual that science in educational activities is not merely a goal, namely as a result of human development, but also a means to achieve more complete human development.³⁵

The existence of higher education institutions and research institutions occupies a strategic position to act as higher education providers and knowledge producers. However, in practice, because of the complexity of science and scholarship, this field does not only come into contact with higher education institutions with all the sovereignty they have, the academic community, academic freedom and academic culture, but also touches other broader fields. The reformation era has created widespread awareness that scientific problems, with all their complexities, also come into contact directly and indirectly with big buildings, namely basic values or democratic indexes. In other words, I would like to point out that higher education institutions as organizers of educational activities and knowledge development also play a role in the process of democratization and the realization of fundamental democratic values.³⁶

Ten years ago, an international non-governmental organization, Human Rights Watch, clearly stated that:³⁷

“Academic freedom goes beyond professors' freedom to speak and write freely in their field. But it also recognizes the role that academics play as the intellectual shaper of society. Thus, academic freedom is an important barometer of the government's respect for human rights”

According to Law of the Republic of Indonesia Number 12 of 2012, Article 9 Paragraph I defines Academic Freedom as the freedom of academics in Higher Education to investigate and develop Science and Technology in a responsible manner. The definition of Academic Freedom according to the Law of the Republic of Indonesia Number 12 of 2012 article 9 is nearly the same as Government Regulation Number 30 of 1990 article 17, which explains that

³⁴ Azyumardi Azra, *Paradigma Baru Pendidikan Nasional Rekonstruksi Dan Demokratisasi* (Jakarta: Kompas, 2002).

³⁵ Melsen, *Ilmu Pengetahuan Dan Tanggung Jawab Kita*.

³⁶ Muladi, *Demokratisasi, Hak Asasi Manusia, Dan Reformasi Hukum Di Indonesia*.

³⁷ Kalus D Beitter, “Yearning to Belong: Finding A Home For the Right to Academic Freedom in The U.N. Human Rights Covenants,” *Intercultural Human Rights Law Review* 11 (2016).

academic freedom is the freedom possessed by academics to responsibly and independently carry out related academic activities with education and development of science and technology.³⁸ Academic freedom itself cannot be separated from scientific autonomy. According to Law of the Republic of Indonesia Number 12 of 2012, Article 9, Paragraph 3, Scientific Autonomy is defined as the freedom of scholars in a field of science and/or technology to discover, develop, reveal, and/or defend scientific truth in accordance with academic culture, scientific methods, and principles. Article 20 paragraph 1 of Government Regulation No. 30 of 1990 states that Scientific Autonomy is a scientific endeavor governed by the provisions.

So Scientific Autonomy is the autonomy or independence of academics in a branch of science, technology, art, or sports, which is inherent in the peculiarities/uniqueness of the branch of science they are involved in discovering, developing, expressing, and/or defending scientific truth according to the rules of scientific and cultural methods academics to ensure the continuity of the development of science, technology, arts, and sports.

There are two ways to look at the relationship between academic freedom, scientific autonomy, and human rights: (1) in terms of human rights in education generally, as well as economic, social, and cultural rights, as well as civil and political rights; and (2) in terms of academic freedom and scientific autonomy. One way to look at the connection between education and human rights is as follows. Everyone has the right to education, according to the 1945 Constitution.³⁹ Such recognition is also contained in the National Education System Law Article 5 paragraph (1), that every citizen has the same right to obtain quality education. This recognition is at the same time, a guarantee that every citizen can obtain education. The right to education, to a certain extent, has been made an obligation for every citizen. This is specified in Article 31, paragraph (2) of the 1945 Constitution, which states that every citizen is required to attend basic education, and the government is required to fund it. The government's purpose in implementing the compulsory education movement is to raise community awareness that education is a fundamental right that must be exercised and appreciated. Meanwhile, the state is responsible for giving the community the right to education.⁴⁰ The connection between academic freedom and scientific autonomy and human rights may also be observed in the Universal Declaration of Human Rights,

³⁸ Institut Agama Islam Negeri Salatiga, *Pedoman Kebebasan Akademik, Kebebasan Mimbar Akademik, Dan Otonomi Keilmuan* (Salatiga: IAIN Salatiga, 2018).

³⁹ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Pasal 31 Ayat (1) (2002).

⁴⁰ Djaali, *Hak Asasi Manusia (Suatu Tinjauan Teoretis Dan Aplikasi)* (Jakarta: Restu Agung, 2003).

both in terms of the right to education and the ability to receive and select a work and a fair living, as well as the right to freedom of speech.⁴¹

The presence of the National Research and Innovation Agency which unites research under one roof indicates that there is a monopoly in the field of research which should be an unfettered free domain within a government agency. This indication is exacerbated by the position of the National Research and Innovation Agency which is directly responsible to the President, which has the potential to reduce the independence of researchers in viewing an object of research. Mechanisms like this actually have the potential to harm academic freedom which has experienced significant growth after the reform. Indonesia's experience, which can be a reflection of the presence of the National Research and Innovation Agency, is the deviation from academic freedom during the New Order. There are seven types of serious violations against academic freedom and scientific autonomy in Indonesia, viz⁴² (1) special research on every prospective civil servant or private person including lecturers, (2) criminalization of opposition figures, (3) censoring books, (4) ideological indoctrination through P4 upgrading, (5) normalization of campus life/student coordinating bodies, and (6) military intervention into the campus, and (7) restrictions on scientific activities/expressing opinions. The results of monitoring the practice of political control over academic life in Indonesia during the New Order, came to the conclusion that the distortion of academic life was the worst in the world. Viewed from a human rights perspective, the practice of political control during the New Order was a clear violation of the human rights of both academics and society in general. The practice of political control over academic life is a form of distortion originating from outsiders of higher education institutions, namely, from the government. In another form, violations of scientific norms can also originate from the internal environment of the tertiary institution itself. According to Albert H. Teich and Mark S. Frankel, practices that deviate from scientific norms or morals, as above, attract attention because they are considered contrary to the public image of scientific honesty in scientific development.⁴³

The deprivation of the position of researcher from an institution, especially the Constitutional Court, of course raises questions about how the climate of academic freedom is in that institution, bearing in mind that one

⁴¹ The Statement of the Right to Teaching Is Stated in Article 26 DUHAM, While the Right to Work and a Decent Income Is Stated in Article 23 of the UDHR, Meanwhile, the Right to Freedom of Holding and Expressing Opinions Is Stated in Article 19 of the UDHR. See: Peter Baehr Ed., *Instrumen Internasional Pokok Hak-Hak Asasi Manusia*, (Jakarta: Yayasan Obor Indonesia, 2001), Hlm. 285, 286, 287.

⁴² Surbakti, "Kebebasan Akademik Dan Otonomi Keilmuan Hukum Di Indonesia."

⁴³ Albert H Teich and Mark S Frankel, *Good Science and Responsible Scientists: Meeting the Challenge of Fraud and Misconduct in Science* (Washington: American Association for the Advancement of Science, 1992).

of the duties of an expert assistant to a constitutional judge is to conduct research. Law Number 11 of 2019 concerning the National System of Science and Technology recognizes three types of institutions, namely science and technology institutions, government and/or regional governments, and the National Research and Innovation Agency. Each institution is regulated in a different article. Science and Technology Institutions are regulated in Article 42, the National Research and Innovation Agency is regulated in Article 48, while the arrangements regarding the government and regional governments are scattered in 25 provisions in the National Science and Technology Law. According to Article 42 of the National scientific and Technology Law, universities, corporate entities, research and development institutions, research and application institutions, and supporting institutions are all considered scientific and technology institutions. Each of the five institutional types of science and technology has the following roles and duties:⁴⁴

Table 1. Forms of Institutional Science in Indonesia

Research and Development Institute	Institute for Assessment and Application	University	Business entity	Supporting Institutions
Function: cultivate the ability to advance Science and Technology	Function: develop mastery of technology and increase utilization of technology	Function: preparing human resources for the implementation of Science Technology	Function: nurture the capacity to generate products and/or services with added value via engineering, invention, creativity, and spread of science and technology	Function: Provide assistance and provide a suitable environment for performing research, development, study, and application to produce inventions and ideas
Responsibilities: produce inventions and explore	Responsibilities: generating innovations	Responsibilities: improve the ability of Tri Dharma	Responsibilities: Utilizing the advantages of	Responsibilities: help address issues or

⁴⁴ Fajri Nursyamsi, *Hubungan Kelembagaan Pada Organisasi Pelaksana Penelitian, Pengembangan, Pengkajian, Dan Penerapan Dengan Kementerian Riset Dan Teknologi/ BRIN* (Jakarta: PSHK, 2021).

their potential utilization stems	and driving their successful implementation	Higher Education	research outputs, development, assessment, and application of Science and Technology in the form of ideas and innovations	gaps that impede synergies and provide ongoing support for research delivery
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Ideally, the National Research and Innovation Agency will only merge the types of Research and Development Institutes and Assessment and Application Institutions, which consist of research and development institutions as well as study and application institutions, which are implemented by the Indonesian Institute of Sciences, the National Nuclear Energy Agency, National Institute of Aeronautics and Space, and Agency for the Assessment and Application of Technology. The amalgamation of these types of institutions can be rationalized by the similarity of their functions, so it becomes important to unite them in order to create budget effectiveness and efficiency. This type of institution also basically has to be under the supervision of the government because it conducts research that is mostly useful for the life of the community in general. However, the fact is that researchers who are in institutions whose functions are not compatible are also objects of amalgamation of the National Research and Innovation Agency.

As a researcher at a state institution with a high reputation and enormous duties and powers, the existence of researchers is certainly a very important supporting factor. Aside from serving as supporters by providing data and facts, researchers at the time also had the function of neutralizing and alerting to this enormous power. For example, the case of Constitutional Court researcher Abdul Ghofar reported one of the Constitutional Court judges, Arief Hidayat, to the Ethics Council. Practices like this are of course, a form of true academic freedom that should be maintained.

In administrative theory, researchers are input-helpers for judges, not deciders. Researchers can conduct independent studies (for example, academic articles on Constitutional Court decisions), but when serving officially at the Constitutional Court, their work operates within the framework of Constitutional Court policy and may fall within an internal realm not fully accessible to the public.⁴⁵

⁴⁵ Mahkamah Konstitusi RI. (2023, August 23). Petitioner Alleges Academic Freedom Under Threat Of Blasphemy Law. Mahkamah Konstitusi Republik Indonesia.

IV. CONCLUSION

Based on the description presented, it can be concluded that the presence of the National Research and Innovation Agency changed the entire staffing structure engaged in research. This affects not only research institutions, whose primary task is conducting research, but also institutions with research centres as supporting institutions, including the Constitutional Court. As a result, researchers who serve as support systems in their institutions experience dilemmas and staffing anomalies. Researchers at the Constitutional Court inevitably change their status to become expert assistants to constitutional judges. This then creates various problems, ranging from the loss of their right to hold the title of research professor, a double workload, one of which is due to the unclear meaning of "assisting" constitutional judges as one of their duties. The loss of the researcher position is also feared to erode the academic freedom of expert assistants to constitutional judges, even though they are still charged with conducting research whose results are published to contribute ideas to society in general.

Considering all aspects related to the civil service law system and state administration, returning to the position of researcher and widening the opportunity to earn the title of research professor is the most rational solution. In addition, separating the positions of assistant judge and researcher is a concept worth considering. Several options that can be used as a reference for this separation are the concepts used by the Supreme Court before the birth of the National Research and Innovation Agency, or referring to the organizational model of Turkey, Slovakia, Germany, and Austria. The researcher also suggests that the National Research and Innovation Agency (BRIN) establish institutional arrangements by taking over or merging research institutions with the same type and function, while other research institutions that clearly have different types and functions must remain outside the Research and Innovation Agency. National Innovation so that the spaces for academic freedom are not harmed.

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