

REGULATION OF OPPOSED PARTIES IN A CONFLICT OF AUTHORITY BETWEEN STATE INSTITUTIONS AND THE CONSTITUTIONAL COURT OF INDONESIA

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ABSTRACT

Indonesia is a rule of law country as stipulated in Article 1 paragraph 3 of the 1945 Constitution. This article also prescribes that the Unitary State of the Republic of Indonesia is a rule of law country based on Pancasila to achieve an organized society and a clean, prosperous and just state. The main principle of the rule of law is the existence of legislative principles, free regulations and protection of human rights. This means that the actions of state administrators must be based on law. To help promote the rule of law and democracy in Indonesia after decades of authoritarian regimes, a constitutional court was created on August 16, 2003. However, as one of the state highest institutions and a second holder of the judicial power granted by the 1945 Constitution of the Republic of Indonesia, the Constitutional Court sometimes faces conflicts of authority with other state institutions. This paper discusses the nature of these conflicts of authority.

Keywords: Regulation, Conflict of Authority, State Institutions, Constitutional Court of Indonesia.

INTRODUCTION

The 1945 Constitution states that Indonesia is a country based on law (*rechtstaat*) and not based on mere power (*machstaat*). However, this goal can be realized if there is a judicial organizing institution that can expressly implement the concept of the rule of law to enforce law and justice based on Pancasila for the implementation of the Unitary State of the Republic of Indonesia. This has been reflected in the provisions of Article 24 paragraph (1) which states

"Judicial power is an independent power to hold a judiciary to uphold law and justice".

Furthermore Article 24 paragraph (2) of the 1945 Constitution says

"The authority of the judiciary is carried out by a Supreme Court and a court that is under it in the general court environment, military court environment, State Administrative court environment and by a Constitutional Court".

But in practice it tends to show that the judicial process since Indonesia's independence until the end of the New Order era, often influenced by the power of the government and finally

reform. Hartono Marjono argues that “*the reforms we need are not only in politics, but also in law and economics*”. In the field of law, many elements can be seen as weaknesses which have fatal consequences, among others; the absence of a Constitutional Court which has the authority to test, determine and state whether or not the Law violates the Constitution. The right to test the judicial review of the Supreme Court, which is only carried out against regulations under the Law, can only be carried out through a cassation process, not a proactive action by the Supreme Court Mukti (2001).

With the many weaknesses found in the past, it caused unclear position of the State of Indonesia as a Law State which at the same time was Hamdan (2007) a Democratic State Fakhurohman & Dan-Sirajudin (2004). Therefore, it is important for us to carry out fundamental reforms to the justice system, not only concerning institutional arrangement (institutional reform) or concerning instrumental regulatory mechanisms (Instrumental or procedural reform), but also concerning the personality and work culture of judicial authorities and legal behavior our society as a whole ethical and even cultural reform (Mukti 2001). In an effort to uphold the principles of the rule of law and at the same time a democratic state and efforts to create a good government system, in line with constitutional principles, one important substance in the amendment to the 1945 Constitution is the existence of a new judicial institution that can carry out judicial power in a broad, intact and independence, as a tool of the rule of law. In its development, in addition to changes and additions to the provisions of these provisions, changes to the 1945 Constitution also resulted in changes in the position and relationship of several state institutions, the abolition of certain state institutions, and the formation of new state institutions. Changes are indeed aimed at improving the position and authority of each state institution. This is indeed intended to improve and improve the administration of the state so that it is more democratic, such as the improvement of a system of checks and balances.

The Constitutional Court is present in the constitutional authority of amendments I, III and IV of the 1945 Constitution which also indicate that the judicial power is no longer solely held by the Supreme Court and the judicial body under it. Both of these judicial powers (MA and MK) have equal positions with different functions and roles as stated in Article 24 paragraph (2) of the 1945 Constitution. Furthermore Article 24 C paragraph (1) states:

"The Constitutional Court has the authority to try at the first level and finally, the verdict is final in order to test the law against the Constitution, decide on the authority of the state institution whose authority is granted by the Constitution, decide on the dissolution of political parties, and decide on disputes over general election results."

Then, the Constitutional Court is obliged to give a decision on the opinion of the House of Representatives regarding alleged violations by the President and/or Vice President according to the Constitution as stated in Article 24 C paragraph (2).

The authority of the Constitutional Court can also be seen in Article 10 paragraph (1) and paragraph (2) of Law Number 24 of 2003 which was later amended by Law Number 8 of 2011 wherein the Constitutional Court can conduct testing of the Law against the 1945 Constitution, also completing authority agreements between State institutions, dissolving political parties, deciding disputes over election results. The Constitutional Court also has the authority to decide on the impeachment efforts of the DPR-RI because of alleged violations committed by the President and the Vice President. Clearly here the Constitutional Court has important and strategic authority. The constitutional court has the authority to settle the authority cycle that

occurs between State institutions. The constitutional court has the authority to dissolve political parties that do not meet the requirements for the establishment of a political party. Even the Constitutional Court also has the authority to give decisions on the opinion of the House of Representatives if there is an alleged release by the President and or the Vice President according to the Constitution. This strategic authority was added to the nature of the final verdict, meaning that the decision could not be appealed with any effort.

In practice, it is not uncommon to find disputes or disputes between one institution and another state institution, or between state institutions and state commissions, or between local governments and the central government. In the history of Indonesian constitution prior to the change (third stage) of the 1945 Constitution in 2001, there were no rules regarding the mechanism for resolving disputes over authority between state institutions. Institutions that have the authority to give decisions on disputes over authority between state institutions do not yet exist. Therefore, during this period there was no precedent in the Indonesian constitutional practice regarding the handling of disputes over authority between state institutions. It was only after the amendment to the third phase of the 1945 Constitution, which adopted the establishment of a Constitutional Court state institution whose authority was to decide on an authority dispute between state institutions whose authority was granted by the 1945 Constitution, that the Indonesian constitutional system had a settlement mechanism in the event of an authority dispute between state institutions (Jimly, 2005 & 2008) Based on practice, constitutional authority disputes of state institutions can occur due to several things:

1. There is overlapping of authority between one state institution and another state institution stipulated in the constitution or the Constitution;
2. The authority of a state institution whose authority is obtained from the constitution or the Constitution which is ignored by other state institutions;
3. The authority of state institutions is prescribed in the Constitution or basic laws carried out by other state institutions, and so on.

From requests for disputes over authority of state institutions that were submitted to the Constitutional Court from 2004 to August 10, 2016 there were 19 (nineteen) cases. Of the 19 (nineteen) cases, there are 5 (five) decisions that grant the applicant to withdraw his petition; 1 (one) case the application is completely rejected; 13 (eighteen) cases of an applicant's request cannot be accepted (*niet ontvankelijk verklaard*/NO); and there is only 1 (one) request granted, namely Case No. 03/SKLN-X/2012, namely an authority dispute between the KPU and the Papua regional government, namely the Papuan Parliament (Respondent 1) and the Governor of Papua (Respondent 2). There is something interesting for the author regarding the authority of the Constitutional Court in resolving disputes over authority between state institutions, namely how is the arrangement of the parties to the dispute in the authority dispute between state institutions regulated in the 1945 Constitution and Law No. 24 of 2003 which have been amended by Law No. 8 of 2011.

DISCUSSION

The Birth and the Authority of the Constitutional Court

The Constitutional Court of the Republic of Indonesia is the second holder of the judicial power in addition to the Supreme Court. The idea of making the Constitutional Court in Indonesia emerged and strengthened in the reform era when changes were made to the 1945 Constitution. However, the idea of the importance of the Constitutional Court in Judicial review In its development, the idea of forming a Constitutional Court received a positive response and became one of the material changes to the Constitution which was decided by the MPR, after going through a deep, careful and democratic discussion process, finally came true with the adoption of the idea of the Constitutional Court in the constitutional amendments made by the People's Consultative Assembly (MPR) in 2001 as formulated in the provisions of Article 24 paragraph (2), Article 24C, and Article 7B of the Third Amendment to the 1945 Constitution which was ratified on November 9, 2001. With legalized these two articles, then Indonesia became the 78th country to form a constitutional court and became the first country in the 21st century to form the judicial authority institution.

As a follow up to arrangements regarding the Constitutional Court in the Constitution, the government and the House of Representatives discussed the formation of the Law concerning the Constitutional Court. This law was completed and ratified on August 13, 2003 to U Law No 24 of 2003 concerning the Constitutional Court. August 13, 2003 became the time when the Constitutional Court was established and every August 13 was designated as the Anniversary (HUT) of the Constitutional Court. The first nine constitutional justices in Indonesian history were established on 15 August 2003 by Presidential Decree Number 147/M of 2003. The oath pronouncement of the nine judges was carried out at the State Palace on 16 August 2003 witnessed by President Megawati Soekarnoputri. In accordance with the provisions of the Constitution, three constitutional justices came from the DPR's proposal, three constitutional justices came from the Supreme Court's proposal, and three constitutional justices came from the President's proposal. The configuration of the constitutional judge's recruitment source from the three branches of state power reflects the balance and representation of the three branches of state power within the body of the Constitutional Court as the executing agency of judicial power which strengthens the system of checks and balances between branches of state power (executive, legislative and judicial). Jimly (2007) argues that:

"Along with the changes to the 1945 Constitution which replaced the Supremacy of the MPR with the Supremacy of the Constitution, the highest position in the Indonesian state is not the MPR institution but the 1945 Constitution".

So that each state institution has an equal or equal position and is no longer known as the State Highest Institution and State High Institution. Thus, even though the Constitutional Court was only formed in the reform era, this state institution has an equal position with other existing state institutions, such as the President, Parliament, and MPR and the Supreme Court. With the equal position of the Constitutional Court and the similarity of position between state institutions, the implementation of constitutional duties of the Constitutional Court becomes much easier and more smooth in strengthening the system of checks and balances between branches of state power.

Until now, the Constitutional Court has implemented three powers of the four powers that exist in itself, namely testing the Law against the Constitution (judicial review), deciding disputes over election results, and deciding disputes over authority between state institutions

regulated by the Constitution. Whereas the authority of the Constitutional Court has not been implemented because there is currently no application regarding this matter that has entered the Constitutional Court, which is to decide the dissolution of political parties. Along with that, the obligation of the Constitutional Court has not been implemented because until now there has not been a request from the DPR regarding the opinion of the legislative body regarding the impeachment of the President and/or Vice President. The Constitutional Court in the context of constitutionality, according to Jimly (2004) Asshiddiqie was constructed as a guardian of the constitution which functions to uphold constitutional justice in the midst of people's lives, 1 so that the Constitutional Court also functions as a guardian of the democracy, protector of citizens' constitutional rights (the protector of the citizen's constitutional rights), as well as protecting human rights. In the 1945 Constitution clearly stated about the Constitutional Court. This can be seen in Chapter IX concerning Judicial Power, especially Article 24 paragraph (2) which mentions the Environment of Religious Courts, Military Courts, State Administrative Courts, and by a Constitutional Court. Article 24 paragraph (2) of the 1945 Constitution says that judicial power is carried out by a Supreme Court and a judicial body under it in the general court environment, the state administrative court environment, and by a Constitutional Court.

Article 24C also specifically describes various matters relating to the Constitutional Court which cover the various authorities it has and its membership. Article 24C Paragraph (1) the third amendment to the 1945 Constitution specifies that the Constitutional Court has the authority to adjudicate at the first and final level whose decisions are final in order to examine the Law against the 1945 Constitution, decide on disputes between State institutions whose authority is granted by the Constitution, decide upon the dissolution of political parties, and decide disputes about election results. Then, according to Article 24 C Paragraph (1) Third Amendment to the 1945 Constitution as mentioned above, which is authorized to conduct a material test of the legislation under the Law against the Law is the Supreme Court. In addition, Article 24 Paragraph (2) The Third Amendment to the 1945 Constitution gives assignments to the Constitutional Court that are different from the Supreme Court. In fact, the Constitutional Court is obliged to give a decision on the opinion of the DPR regarding alleged violations by the President and / or Vice President according to the 1945 Constitution. This task is indeed related to the possibility of conducting an Impeachment of the President and Vice President. The task inherent in the Constitutional Court is indeed very different when compared to the Supreme Court which only intersects with the jurisdiction and the judiciary. This is because the function of the Constitutional Court will not only intersect with the jurisdiction, but also politics and power. So it is very reasonable if the composition of judges in the Constitutional Court is proposed from various parties. Based on the provisions of Article 24 C Paragraph (1) Third Amendment to the 1945 Constitution above, the Constitutional Court is the second holder of judicial power besides the Supreme Court. Judicial power is an independent power to hold justice to enforce justice law.

Thus the Constitutional Court is a judicial institution, as a branch of judicial power, which hears certain cases which are its authority based on the provisions of the 1945 Constitution.

Article 24C paragraph (1 and 2) of the 1945 Constitution regulates the functions of the Constitutional Court, namely:

1. The Constitutional Court has the authority to adjudicate at the first and final level, whose decisions are final in order to examine the Law against the Basic Law, decide on disputes over the authority of State institutions granted by the Constitution, decide upon dissolution of political parties and decide upon disputes over election results;
2. The Constitutional Court is obliged to give a decision on the opinion of the DPR regarding the alleged violation by the President and / or Vice President according to the 1945 Constitution.

From the Article, it can be seen that the Constitutional Court has 5 (five) duties/authority which are very vital, especially in Indonesian state administration. As perpetrators of judicial power, the constitutional functions possessed by the Constitutional Court are a judicial function to uphold law and justice. However, the constitutional court of the Republic of Indonesia states that:

"But the function has not been specific in nature that is different from the function carried out by the Supreme Court".

The function of the Constitutional Court can be traced from the background of its formation, namely to uphold constitutional supremacy. Therefore the measure of justice and law enforced in the court of the constitutional court is the constitution itself which is interpreted not only as a set of basic norms, but also in terms of constitutional principles and morals, including the principles of state law and democracy, protection of human rights, and protection of citizens' constitutional rights Mahkamah (2010) The authority of the Constitutional Court as mentioned above confirms the function of the Constitutional Court as the sole interpreter of the constitution. The constitution as the highest law regulates the administration of the state based on the principle of democracy and one of the constitutional functions is to protect human rights guaranteed in the constitution so that it becomes the constitutional rights of citizens Mahkamah (2010). The authority of the Constitutional Court as referred to above is further elaborated in Law No.24 of 2003 jo. Law No 8 of 2011 on the Constitutional Court.

Based on the description above there are at least 5 (five) functions that are inherent in the existence of a constitutional court and carried out through its authority, namely:

1. As the guardian of the constitution;
2. Final interpretation of the constitution (the final interpreter of constitution);
3. Protection of human rights (the protector of human rights);
4. Protection of citizens' constitutional rights (the protector of the citizen's constitutional rights); and
5. Democratic protection (the protector of democracy).

Disputes over the Authority of the Constitutional Court

The dispute over authority of state institutions clearly limits that a state institution is an institution that obtains its authority from the 1945 Constitution. After amendments to the 1945 Constitution, many shifts occurred in the Indonesian constitutional system, one of which was a shift in the state institutional paradigm. This shift was marked by the reduction in the status of the People's Consultative Assembly, which is now no longer the full perpetrator of popular sovereignty. Thus, the term High State Institution is no longer known, which is only a State institution. This paradigm has been practiced in Law Number 22 of 2003 concerning SUSDUK (Structure and Position of the People's Consultative Assembly, House of Representatives, Regional Representative Council and Regional People's Representative Council).

Besides that, there are several state institutions that were previously part of executive power, but after the Amendment to the 1945 Constitution, the institution is guaranteed by the 1945 Constitution, for example the General Election Commission (KPU) and Bank Indonesia (BI). In carrying out its functions, state institutions often establish cooperation or relations between state institutions to enable conflict, namely when a State institution that is part of a government system works not as it should. In order for the system to work in accordance with the intended, the conflict must be resolved. This is where the role of the Constitutional Court is very much needed. As an institution of the State which has the authority to decide disputes, the authority of State a institution whose authority is granted by the Constitution in the framework of the Checks and Balances mechanism in carrying out State power Hasan (1985).

Based on Article 24C Paragraph (1) of the 1945 Constitution, the Constitutional Court has the authority to adjudicate at the first and final level, whose decisions are final in order to decide on disputes over the authority of state institutions whose authority is granted by the Constitution. Regarding the constitutional court disputes of state institutions there are several points, namely first, the subject of the dispute (*subjectum litis*) must be a state institution according to the 1945 Constitution. Second, the object in dispute (*objectum litis*) is the executor of the authority granted by the 1945 Constitution. According to article 61 paragraph (1) of Law No. 24 of 2003, the applicant is a state institution whose authority is granted by the 1945 Constitution of the Republic of Indonesia which has a direct interest in the disputed authority. Thus the claim must be made by a state institution that is in accordance with its interests towards other state institutions. In this case the Supreme Court cannot be a party in the dispute over the authority of state institutions which are authorized by the 1945 Constitution of the Republic of Indonesia to the Constitutional Court (Article 65 of Act Number 24 of 2003).

As for the decision of the Constitutional Court whose verdict stated that the respondent did not have the authority to carry out the disputed authority, the respondent must carry out the decision within a maximum period of 7 (seven) working days after the decision was received (Article 66 paragraph (1)). Then in Article 66 paragraph (2) of Law Number 24 of 2003 it is determined if the decision is not carried out within the period referred to in paragraph (1), the implementation of the said authority is null and void by law. Thus if it has been decided by the Constitutional Court, the decision obtains a definite and binding legal force (*erga omnes*). Among the state institutions mentioned in the 1945 Constitution, some can be categorized as primary or primary organs (*primaty constutisional organs*), and some are supporting or supporting organs (*auxiliary state organs*). To understand the differences between the two, these state institutions can be distinguished in three domains (i): executive or executive power, (ii) legislative power and supervisory functions, (iii) judicial power or judicial functions Abdul (2006).

According to Abdul (2006), if interpreted broadly, from 13 state institutions referred to in the 1945 Constitution, only the central bank whose authority will still be regulated by law, while 12 other state institutions have constitutional authority. Supreme Court Regulation No 02 of 2002 concerning Procedures for Administering the Authority of the Constitutional Court by the Supreme Court includes the central bank as a state institution which is the subject of constitutional authority disputes of state institutions, in addition to the MPR, President, DPR and BPK (*vide* Article 1 point 12). Based on this broad interpretation that could be the subject of the constitutional authority dispute law of state institutions there are 10 (after deducting the Supreme Court and the Constitutional Court), namely the MPR, President, DPR, DPD, KPU, Regional

Government, Judicial Commission, BPK, TNI and Police, or 11 institutions country if the central bank is entered. If interpreted moderately, then only the MPR, President, DPR, DPD, BPK, MA, and MK are referred to as state institutions that have constitutional authority, so that they can be subject to dispute after deducting MA (vide Article 65 uu MK) and MK (as the judiciary that has the authority to resolve disputes is only the MPR, the President, the DPR, the DPD, and the BPK. If interpreted narrowly, the subject of the dispute law is only the DPR, DPD, and the President (interpretation of Article 67 of the Constitutional Court Law).

According to Mukhtie Fadjar, the right interpretation is a broad minus interpretation or moderate plus interpretation, namely that State institutions that can be the subject of disputes include the MPR, President, DPR, DPD, BPK, Regional Government (Province and District/City). So it does not include the KPU, Judicial Commission, TNI, and Polri, because the four institutions even though they have constitutional authority, are not right if they are the subject of a dispute with other institutions and the authority is more of a technical operational nature. Also the central bank whose authority is not regulated in the 1945 Constitution does not include the parties to the dispute Mahkamah (2010) Terlepas dari pendapat para ahli tersebut di atas, Mahkamah Konstitusi melalui Lodewijk (2007) Putusan Mahkamah Konstitusi dalam Perkara Nomor 05/PUU-IV/2006 tentang Pengujian Undang-Undang Nomor 4 Tahun 2004 (tentang Kekuasaan Kehakiman) dan Undang-Undang Nomor 22 Tahun 2004 (tentang Komisi Yudisial) berpendapat bahwa ada 2 (dua) macam lembaga negara menurut UUD 1945, yaitu : lembaga-lembaga negara Ni'matul (2011) utama (main state organs, principal state organs) dan lembaga-lembaga negara pendukung (auxiliary state organs atau auxiliary agencies).

Thus, based on what has been described above, it might be argued that the understanding and qualifications of state institutions in the Indonesian constitutional system turned out to vary Ni'matul (2017). The experts turned out to also have different opinions about which state institutions obtained authority from the 1945 Constitution. The Constitutional Court in its decision Number 05/PUU-IV/2006 stated that the 1945 Constitution clearly distinguishes branches state power in the legislative, executive, and judicative fields reflected in the functions of the MPR, DPR and DPD, the President and Vice President, and the Supreme Court, the Supreme Audit Agency, and the Constitutional Court as the main state institutions.

CONCLUSION

The 1945 Constitution, as well as Law Number 24 Year 2003 which has been amended by Act Number 8 of 2011 concerning the Constitutional Court does not explain the details of the implementation of the authority to resolve authority disputes between State institutions, so that the Constitutional Court is given the authority to regulate matters needed for smooth implementation of duties and authorities.

In addition, the Constitutional Court can interpret the constitution because the Constitutional Court functions as the guardian of the constitution which has the consequence that the Constitutional Court also functions as the sole interpreter of the constitution. To provide a procedural guideline, the Constitutional Court establishes Constitutional Court Regulation Number 08/PMK/2006 concerning Procedure Guidelines in the Constitutional Authority's Constitutional Authority Dispute dated 18 July 2006 which determines state institutions that can be applicants or defendants in cases of constitutional authority disputes, namely the House of Representatives (DPR), the Regional Representative Council (DPD), the People's Consultative

Assembly (MPR), the President, the Supreme Audit Agency (BPK), the Regional Government and other state institutions.

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