
Analysis of the Dispute Settlement of the Authority of State Institutions Based on the Constitution of the Republic of Indonesia

Arifin Tumuhulawa¹⁾, Roy Marthen Moonti²⁾, Yusril Katili³⁾
^{1,2,3)} Faculty of Law, Gorontalo University

Corresponding Author
Email : rovmoonti16@gmail.com

Abstract

Objective of study is to identify and analyze dispute resolution on the authority of state institutions whose authority is granted by the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) by the Constitutional Court as regulated in the constitution, the fourth amendment to Article 24C paragraph 1 UUD 1945. By using a normative juridical research method and analytical descriptive, with a statutory approach, a conceptual approach, and a casuistic approach. Disputes on authority between state institutions are caused by the first; an inadequate system to regulate and oversee relations between existing institutions, secondly; Different interpretations of a provision, third; The mechanism of checks and balances on an equal relationship is possible in the implementation of the authority of each state institution, differences and/or disputes arise in interpreting the mandate of the Constitution, fourthly there is overlapping authority, and fifthly, there is authority of state institutions whose authority is obtained from the constitution or the 1945 Constitution carried out by other state institutions. Disputes involving state institutions that are not the main state organs (constitutional state organs) can be resolved at the Constitutional Court on the condition that the state institutions have constitutional importance.

Keywords: *Constitutional Court; Dispute resolution; Disputes on the Authority of State Institutions*

INTRODUCTION

After the fourth amendment to the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), changes occurred in the form of state institutions that previously existed known as the highest state institutions and high state institutions, now completely changed only become a high state institution. This provision equalizes power between existing state institutions and is regulated in the 1945 Constitution of the Republic of Indonesia. According to Jimly Asshiddiqie, the mechanism for relations between state institutions is horizontal, no longer vertical, which can trigger state institutions to be involved in authority disputes. And with it, the amendment to the 1945 Constitution of the Republic of Indonesia added one of the institutions whose task was to resolve disputes regarding the authority of state institutions, namely the Constitutional Court. Based on the 1945 Constitution of the Republic of Indonesia Article 24C paragraph (1), the Constitutional Court has the authority to resolve disputes between state institutions, but only state institutions whose authority is granted by the 1945 Constitution of the Republic of Indonesia.

State institutions whose names and authorities are regulated in the 1945 Constitution of the Republic of Indonesia are a form of power-sharing in the Indonesian constitutional system. The power-sharing theory adopted by the Indonesian constitutional system is *Trais Politica*, whose teaching content is that state power is divided into 3 (three) kinds of power, namely legislative power (rulemaking function), executive power (rule application function), and judicial power (rule adjudication). functions). *Trias Politica* is a normative principle that these powers are not handed over to the same person so as not to abuse power by those in power.

The Constitutional Court exists to protect constitutional rights in the life of the state, be it individuals or state institutions so that the Constitutional Court is referred to as (the guardian of the constitution). One of the important powers of the Constitutional Court is to settle or decide cases related to disputes over authority between state institutions granted by the 1945 Constitution of the Republic of Indonesia. Disputes between state institutions can occur due to disputes over authority, administration, and do not rule out positions or personal. Definitively, what is meant by disputes of authority between state institutions are differences of opinion followed by disputes and claims between one state institution and another regarding the authority possessed by each of these state institutions.

In resolving disputes over the authority of the Constitutional Court based on a legal basis, Article 24C Paragraph (1) of the 1945 Constitution of the Republic of Indonesia as the highest legal basis (the Constitution), Law Number 24 of 2003 concerning the Constitutional Court as amended by Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court in One Manuscript, and Regulation of the Constitutional Court (PMK) Number 8 of 2006 concerning Guidelines for Proceeding in Disputes on the Constitutional Authority of State Institutions. However, in terms of resolving disputes over the authority of state institutions, not all state institutions, which, if in dispute with other state institutions, can be resolved by the Constitutional Court. If it is based on the existing regulations, then the applicant and the respondent in the case of a dispute over the authority of a state institution are; 1) House of Representatives (DPR); 2) Regional Representative Council (DPD); 3) People's Consultative Assembly (MPR); 4) President; 5) the Supreme Audit Agency (BPK); 6) Local Government (Pemda); or 7) Other state institutions whose authority is granted by the 1945 Constitution of the Republic of Indonesia. Apart from institutions that are explicitly or implicitly regulated in existing regulations, they cannot be parties to SKLN cases, including the Constitutional Court and the Supreme Court. Article 65 of the Law on the Constitutional Court, explains that the Supreme Court cannot be a party to disputes over authority between state institutions. Luthfi Widagdo Eddyono also divides state institutions/state organs:

1. State institutions/state organs whose authority is given by attribution (by the 1945 Constitution);
2. State institutions/state organs whose authority is delegated by the legislators [including independent regulatory agencies] who are not responsible to anyone.
3. State institutions/state organs whose authority is delegated to legislators [including executive branch agencies] who are responsible to the President or minister and/or are part of the executive.

State institutions/state organs of the first category can have litigation in the Constitutional Court. State institutions/state organs of the second category can also have cases in the Constitutional Court, while state institutions/state organs of the third category have neither *subjectum litis* nor *objectum litis* for litigation in the Constitutional Court because it is clear that state institutions/state organs in the third category are hierarchical in nature with the president or the president. minister and/or are part of the executive. According to Jimly Asshidiqqie, there are two conditions that must be met by state institutions that wish to have a case in the Constitutional Court in terms of resolving disputes over the authority of state institutions. For *subjectum litis*, it is required that the state institution must be a state institution directly mentioned in the 1945 Constitution of the Republic of Indonesia or an institution commonly referred to as a constitutional organ and the second condition is *objectum litis* which requires that "the authority of the state institution must be the authority granted by the 1945 Constitution of the Republic of Indonesia." It is clear that state institutions that can litigate in the Constitutional Court with cases of disputes over the authority of state institutions are the

only institutions that meet the requirements, namely institutions that are listed and whose authority is described in the 1945 Constitution of the Republic of Indonesia.

The Constitutional Court only granted 1 (one) case, namely Case Number 03/SKLN-X/2012, namely the dispute over authority between the KPU and the Papua Regional Government, namely the Papuan DPR (Respondent 1) and the Governor of Papua (Respondent 2). And seeing this case, the judges of the Constitutional Court have an interpretation that the KPU fulfills the subjectum litis.

Based on the description above, the authority of the Supreme Court of the Constitution is to resolve disputes over state institutions, so what needs to be seen or discussed are the factors causing disputes and their impact on law enforcement in Indonesia, and then based on the provisions in disputes over the authority of state institutions in the Constitutional Court, conditions, namely objectum and subjectum litis, it is also necessary to pay close attention to what kind of institution the subjectum litis requirement is and what is the philosophical explanation of subjectum litis.

RESEARCH METHODS

According to Soerjono Soekanto, normative legal research is an approach based on the main raw materials, examining theoretical matters concerning legal principles, legal conceptions, views and legal doctrines, regulations and legal systems using secondary data, including: principles, rules and regulations. , norms and legal rules contained in laws and regulations and other regulations, by studying books, laws and regulations and other documents closely related to research

RESULTS AND DISCUSSION

Factors that Cause Disputes and Impact of Disputes on Law Enforcement

Article 1 Number 7 of the Regulation of the Constitutional Court Number 08/PMK/2006 stipulates that “a dispute is a dispute or difference of opinion related to the exercise of authority between two or more state institutions”. Disputes on authority between state institutions clearly have limitations that state institutions are only state institutions that have their authority according to the 1945 Constitution of the Republic of Indonesia, so it is clear that although there can be multiple interpretations, it can be seen in the 1945 Constitution of the Republic of Indonesia which state institutions obtained their authority directly from the 1945 Constitution of the Republic of Indonesia. 1945. Disputes on the authority of state institutions that have been regulated in the 1945 Constitution are a preventive measure sought by the state to resolve a dispute between institutions. However, in the event of a dispute, we need to understand the factors that can lead to disputes between state institutions.

The emergence of disputes in the administration of government can occur due to several things, namely as follows: first; an inadequate system to regulate and overshadow relations between existing institutions, so that different interpretations can occur. Second; Different interpretations of a provision that serves as a guideline for the administration of state government often create disputes. There are many interpretations used to understand a problem context. Third; The mechanism of checks and balances in an equal relationship is possible in the implementation of the authority of each state institution, differences and/or disputes arise in interpreting the mandate of the Constitution. Why do state institutions have disputes? Because according to Jimly Asshiddiqie in the constitutional system adopted in the provisions of the 1945 Constitution after the First Amendment (1999), Second (2000), Third (2001), and Fourth

(2002), the mechanism of relations between state institutions is horizontal, no longer vertical. If previously we knew of the existence of high institutions and the highest state institutions, now there are no higher state institutions. Fourth; The MPR is no longer the institution that has the highest position in the structure of the Indonesian state administration, but is on an equal footing with other constitutional institutions, namely the President, DPR, DPD, MK, MA, and BPK.

Based on practice, disputes over the constitutional authority of these state institutions can occur for several reasons:

1. There is overlapping authority between one state institution and another state institution as regulated in the constitution or the 1945 Constitution;
2. The existence of the authority of state institutions whose authority is derived from the constitution or the 1945 Constitution which is ignored by other state institutions; and
3. The existence of the authority of state institutions whose authority is obtained from the constitution or the 1945 Constitution which is carried out by other state institutions, etc.

The existence of constitutional authority as stipulated in the 1945 Constitution and differences in interpretation between institutions of the 1945 Constitution. Constitutional authority means, the authority based on the law which is determined explicitly or implicitly in the 1945 Constitution. For example, the Central Bank whose authority is not specified in the 1945 Constitution, in Article 23D of the 1945 Constitution. determines that "The state has a central bank whose structure, position, authority, responsibility, and independence are regulated by law." So there is no specific and detailed explanation of the authority of the Central Bank. However, the 1945 Constitution guarantees the central bank as an independent institution, so that its authority to be regulated by law is independent. Differences in interpretation of the institutions contained in the 1945 Constitution can also lead to disputes over authority between state institutions.

Authority disputes that occur between state institutions certainly have their own impacts, both on law interpretation and law enforcement itself. Seeing the description above about several main things that are factors causing disputes between state institutions, one of which is the difference in interpretation, this clearly illustrates that the existing law in Indonesia, including the contents of the 1945 Constitution, is not very specific, especially in regulating efforts to prevent the occurrence of accidents. authority disputes between state institutions and their resolution. In addition, the existence of disputes that occur can hinder law enforcement in Indonesia if those involved in the dispute are institutions that are part of law enforcement efforts. Based on Article 63 of Law Number 24 of 2003 concerning the Constitutional Court as amended by Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court (hereinafter referred to as the Constitutional Court Law) states, "The Constitutional Court may issue a decree ordering the applicant and/or the respondent to temporarily suspend the exercise of the disputed authority until there is a decision of the Constitutional Court.

With this provision, there is a high possibility that law enforcement or even national development will be hampered due to disputes over the authority of state institutions that occur. One example is the dispute over the authority of state institutions that occurred between the KPU and the Papuan DPR and the Governor of Papua with Register Number 3/SKLN-X/2012, in its provisions which stopped the entire process of holding the general election for the Governor and Deputy Governor of Papua. This can lead to unattainable development in the legal and political fields. The political system in a country according to Gabriel Almond in a book entitled "The Politics of Developing Areas", the first, inputs (political socialization, interest articulation, interest aggregation, and political communication), second, the "box" a political system is named conversion function alias conversion function, third, outputs, in the

form of three functions owned by the three institutions in the trias politica (legislative, executive, and judicial institutions), namely the policy-making function, policy implementation function, and policy testing/judgment function. maximum due to a dispute over the authority of this kind of state institution. The influence of the political aspect also has an impact on the existing legal aspects, because the law is a political product, as expressed by Prof. Dr. Moh. Mahfud MD in his book on the point "Basic Assumptions" that law is a political product with the view that law is a dependent variable (variable affected) and politics is placed as an independent variable (variable with influence) and also Prof. Dr. Achmad Ali, S.H., M.H. who quoted the opinion of Mac Iver who said that the highest Law above Politics is only the Constitution, while what is under the Constitution is the law which is under Politics seen from the Laws which are the work of politicians. As well as the inefficiency of using the budget which can lead to potential corruption. In addition to several factors and impacts in disputes over the authority of state institutions, the lack of understanding of state institutions in the 1945 Constitution of the Republic of Indonesia can also cause problems of its own regarding which state institutions actually have legal standing in cases of disputes regarding the authority of state institutions. is one of the factors that can cause delays in law enforcement in Indonesia. One example of this is the problem that occurred between the KPK and the National Police which cannot be decided by the Constitutional Court but by the President himself. However, according to Jimly, state institutions that have constitutional importance can resolve disputes over their authority in the Constitutional Court.

Based on this description, it can be concluded that the factors that cause disputes over the authority of state institutions are first; an inadequate system to regulate and oversee the relations between existing institutions, so that there may be differences in interpretation; Second; Different interpretations of a provision that serves as a guideline for the administration of state government often create disputes. Third; The mechanism of checks and balances in an equal relationship, it is possible that in the exercise of the authority of each state institution, differences and/or disputes arise in interpreting the mandate of the Constitution. Fourth, there is overlapping authority between one state institution and another state institution which is regulated in the constitution or the 1945 Constitution, and fifthly, there is the authority of state institutions whose authority is derived from the constitution or the 1945 Constitution which is carried out by other state institutions. And there are several impacts that can arise from disputes over the authority of state institutions on law enforcement, namely; The first is based on Article 63 of the Law on the Constitutional Court that the disputed authority can be temporarily suspended by the Constitutional Court, and this allows for enforcement or also the implementation of the law to be delayed, the same as with disputes over the authority of state institutions that occurred between the KPU and the Papuan DPR and the Governor of Papua with Register Number 3/SKLN-X/2012, in which there is a provision (interim decision) from the Constitutional Court regarding the temporary suspension of the general election for the Governor and Deputy Governor of Papua. can disrupt several political systems in the country described by Gabriel Almond inputs (political socialization, articulation of interests, aggregation of interests, and political communication), second, the "box" of a political system is named conversion function, third, outputs, in the form of three selected function iki by three institutions in the trias politica.

Settlement of Disputes on the Authority of State Institutions by the Constitutional Court against State Institutions whose Subjectum Litis is not fulfilled.

By considering the law contained in Decision Number 004/SKLN-IV/2006, to determine whether an institution can be called a state institution as referred to in Article 24C paragraph (1) of the 1945 Constitution, the first thing to consider is whether there is a certainty of authority in the Constitutional Law. (objectum litis) and only then to what institution is this

authority given (subjectum litis). The diction "disputes regarding the authority of state institutions whose powers are granted by the Constitution" also means that only the powers granted by the Constitution are objects of disputes over the authority of state institutions by the Constitutional Court. In dispute resolution by the Constitutional Court, the condition is that the state institution is fulfilled subjectum litis and also objectum litis. For subjectum litis, it is required that the said state institution must be a state institution that is mentioned directly in the 1945 Constitution of the Republic of Indonesia or an institution commonly referred to as a constitutional organ. While the objectum litis requires that "the authority of the state institution must be the authority granted by the 1945 Constitution of the Republic of Indonesia".

Article 2 of the Regulation of the Constitutional Court Number 08/PMK/2006 concerning Guidelines for Proceeding in Disputes on the Constitutional Authority of State Institutions, which states:

1. State institutions that can become applicants or defendants in cases of disputes over the constitutional authority of state institutions are:
 - (a) The House of Representatives;
 - (b) Regional Representative Council;
 - (c) People's Consultative Assembly;
 - (d) The President;
 - (e) The Supreme Audit Agency;
 - (f) Local Government; or
 - (g) Other state institutions whose authority is granted by the 1945 Constitution.
2. The disputed authority as referred to in paragraph (1) is the authority granted by the 1945 Constitution.
 - a) The Supreme Court cannot be a party, either as an applicant or a respondent in a dispute on the technical authority of the court (judicial).

In dispute resolution, the Constitutional Court has several times accepted or granted applications for dispute resolution by state institutions whose subjectum litis conditions still have question marks. Case Number 3/SKLN-X/2012, the dispute involved the General Election Commission with the Papuan People's Representative Council and the Papuan Governor. In the decision, the element of subjectum litis of the applicant and the respondent was declared fulfilled by the Constitutional Court, although there were differences of opinion between the judges regarding the subjectum litis of the General Elections Commission-if we define subjectum litis as a requirement that regulates the name of the institution in the 1945 Constitution-, which is not explicitly stated in the Constitution. Explicitly stated in the 1945 Constitution. According to Achmat Roestandi, the General Election Commission (KPU) is a state institution that is included in the class of state institutions whose form/name is not determined by the 1945 Constitution so the KPU's subjectum litis should not be fulfilled. However, with the decision of the Constitutional Court on a dispute case involving the KPU stating that the KPU has fulfilled the conditions for subjectum litis, we need to re-examine what is meant by subjectum litis itself.

In Article 2 paragraph (1) of the Regulation of the Constitutional Court, the subjectum litis has indirectly been explained that state institutions whose authority is granted by the 1945 Constitution can be both the applicant and the respondent. Article 2 paragraph (2) of PMK No.08/PMK/2006 also explains that related to objectum litis, namely the authority in dispute is the authority that must be regulated in the 1945 Constitution. From this, we can see that the existing provisions regarding subjectum litis are not just state institutions whose names are explicitly stated in the 1945 Constitution, but the consideration of them (subjectum litis) is a

matter of authority which is the responsibility of the institution and is an attribution of the 1945 Constitution.

The above argument is in line with the opinion of Jimly Asshiddiqie who stated that disputes involving state institutions that are not the main state organs (constitutional state organs) can be resolved in the Constitutional Court provided that the state institutions have constitutional importance. The one who can determine whether the state institution has constitutional importance or not is the constitutional judge. This is because the Constitutional Court is the enforcer, the guardian, or the interpreter of the constitution.

CONCLUSION

Closing this article, the conclusion that can be drawn is that disputes over the authority of state institutions are the duty of the Constitutional Court as regulated in the 1945 Constitution in Article 24C paragraph (1), and regulated in more detail in a derivative regulation, namely Law Number 24 of 2003 concerning the Court. The Constitution as Amended by Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court in One Text, and Constitutional Court Regulation (PMK) Number 8 of 2006 concerning Guidelines for Proceeding in Disputes on the Constitutional Authority of State Institutions. Disputes on authority between state institutions are differences of opinion followed by disputes and claims between one state institution and another regarding the authority possessed by each of these state institutions.

Disputes on authority between state institutions are caused by the first; an inadequate system to regulate and oversee relations between existing institutions, secondly; Different interpretations of a provision, third; The mechanism of checks and balances on an equal relationship is possible in the implementation of the authority of each state institution, differences and/or disputes arise in interpreting the mandate of the Constitution, fourthly there is overlapping authority, and fifthly, there is the authority of state institutions whose authority is obtained from the constitution or the 1945 Constitution carried out by other state institutions. Then the disputes that occur according to the author's analysis will have an impact on law enforcement and the country's political system.

REFERENCES

- Anna Triningsih and Nuzul Qur'aini Mardiyah, "Interpretation of State Institutions and Disputes of State Institutions in Settlement of Disputes on the Authority of State Institutions", *Journal of the Constitution*, Volume 14, Number 4, December 2017
- Achmad Ali, S.H., M.H., "Revealing the Veil of the Law", second printing, PT Toko Gunung Agung Tbk. Jakarta 2002
- Adrianus Bawamenewi, The Authority of the Constitutional Court in Deciding Disputes on the Constitutional Authority of State Institutions, *Journal of Warta Edition* 63, Volume 14, Number 1: 1-208 January 2020 | Issn: 1829-7463.
- Alfiano I. Suak, Maarthen Y. Tampanguma, Susan Lawotjo, "Normative Review of the Existence of the Constitutional Court in Resolving Authority Disputes Between State Institutions", *Lex Administratum*, Vol. IX/No. 4/Apr/EK/2021

Haikal Maarif Joba Oksefa, "Settlement of Disputes on the Authority of State Institutions whose Authority is Not Sourced from the 1945 Constitution of the Republic of Indonesia", (Thesis, Umsu Medan, 2021)

Registrar and Secretariat General of the Constitutional Court of the Republic of Indonesia, 1945 Constitution of the Republic of Indonesia, Article 24C paragraph (1)

Kosariza, Netty, Meri Yarni, "Analysis of Dispute Settlement in the Authority of State Institutions by the Constitutional Court", *Journal of Socio Humanities Science*, (Volume 4 Number 2 December 2020)

Kelik Iswandi, Nanik Prasetyoningsih, "Dispute Resolution of the Authority of Independent State Institutions in Indonesia", *SASI Vol. 26 No. 4*, October-December 2020

Kevin Jovan Aldo Joseph, Audi H. Pondaag, Carlo A. Gerungan, "A Study on the Authority of the Constitutional Court According to Article 24c of the 1945 Constitution concerning Disputing Disputes on the Authority of State Institutions", *Lex Administratum*, Vol. Ix/No. 7/Jul-Sep/Ek/2021

Mochammad Hilmi Alfarisi, S.H., C.Me., "Optimization of the Settlement of Authority Disputes between State Institutions by the Constitutional Court", (*Journal of Panorama Hukum* Volume 5, No. 2, December 2020)

Moh. Mahfud MD, *Political Law in Indonesia*, (PT RajaGrafindo Persada. Depok)

Nanang Sri Darmadi, Sh., Mh, "The Position and Authority of the Constitutional Court in the Indonesian Constitutional Law System", (*Journal of Law*, Volume Xxviii, No. 2, Year 2012)

Nyoman Mas Ayani & Bagus Hermanto, "The Idea of Expansion of State Institutions as Petitioners in Disputes on Authority Between State Institutions at the Constitutional Court of the Republic of Indonesia", *Indonesian Legislation Journal* Vol 16 No.2 - June 2019

Ni'matul Huda, "Potential Disputes on the Authority of State Institutions and Their Resolution in the Constitutional Court", (*Journal of Law IUS QUIA IUSTUM* NO. 2 VOL. 24 APRIL 2017)

Sulistiyani Eka Lestari, "Settlement of Authority Disputes between State Institutions by the Constitutional Court", *DIH, Journal of Legal Studies* February 2014, (Vol. 10, No. 19)

Winasis Yulianto, "Reconceptualization of Dispute Settlement in the Authority of State Institutions", (*Scientific Journal of Phenomena*, Volume XII, Number 1, May 2014)

Yuli Heriyanti, "The Influence of Legislative and Judicial Institutions on the Political System in Indonesia (Book Study on Analysis of the Indonesian Political System, Author Ikhsan Darmawan)", *Journal of Heroes* Volume 3 Number 2 of 2020 ISSN:2615-5583