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# Expanding the Authorities of the Constitutional Court in Dispute Settlement of the Authority of State Institutions

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## ABSTRACT

*Article 24 C paragraph (1) of the 1945 Constitution of the Republic of Indonesia which gives authority to the Constitutional Court to decide disputes over the authority of state institutions whose authority is granted by the Constitution. So that disputes over the authority of state institutions that are not granted by the Constitution are not the authority of the Constitutional Court to decide. This research is normative juridical research with statutory approaches, comparative approaches, case approaches, and conceptual approaches. This study found that the authority of the Constitutional Court in resolving disputes over the authority of state institutions is a dispute over the authority of state institutions whose authority is granted by the 1945 Constitution of the Republic of Indonesia. Expansion/ addition of authority to the Constitutional Court to decide on disputes over the authority of state institutions need to be carried out, namely not only state institutions whose authorities are granted by the Constitution but also state institutions whose authorities are granted by law.*

**Keywords:** Expansion, Authority, Constitutional Court.

## I. INTRODUCTION

One of the powers of the Constitutional Court as emphasized in Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia is to decide disputes over the authority of state institutions whose powers are granted by the Constitution [1]. The formulation of Article 24C paragraph (1) of the 1945 Republic of Indonesia Constitution uses the term "Disputes on the Authority of State Institutions". The term state institution is a substitute for the term "state agency" which was previously known in the 1945 Constitution. Article II of the Transitional Rules of the 1945 Constitution states: All existing bodies and regulations are still in effect immediately, as long as new ones have not been created according to this Constitution.

In the provisions of the Transitional Rules Article II of the 1945 Republic of Indonesia

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Constitution it is stated: "All existing state institutions continue to function as long as they carry out the provisions of the Constitution and have not created new ones according to this Constitution". Thus, the 1945 Republic of Indonesia Constitution no longer uses the term "state agency" but replaces it with the term "state institution". The term state institution is used 2 (two) times in the 1945 Republic of Indonesia Constitution, namely in Article 24C paragraph (1) and the provisions of the Transitional Rules Article II.

Law No. 24 of 2003 separately regulates matters relating to disputes over the authority of state institutions. In the general provisions of Law Number 24 of 2003 it is stated that an application is a request submitted in writing to the Constitutional Court regarding a dispute over the authority of a state institution whose authority is granted by the 1945 Constitution of the Republic of Indonesia, hereinafter Article 61 paragraph (1) of Law No. 24 of 2003 confirms: The Petitioner is a state institution whose authority is granted by the 1945 Constitution of the Republic of Indonesia which has a direct interest in the authority in dispute;

Furthermore, the Constitutional Court issued Constitutional Court Regulation Number 08/PMK/2006 dated 18 July 2006 concerning Guidelines for Proceeding in Disputes of the Constitutional Authority of State Institutions. The Constitutional Court Regulation (which will be written as PMK) explains that a state institution is a state institution whose authority is granted by the 1945 Constitution. referred to in this PMK are disputes or differences of opinion relating to the exercise of authority between two or more state institutions [2].

State institutions that can become applicants or respondents in cases of disputes over the constitutional authority of state institutions are: a. People's Representative Council, b. Regional Representative Council, c. People's Consultative Assembly, d. President; e. The Supreme Audit Agency, f. Regional Government, or g. Other state institutions whose authority is granted by the 1945 Constitution. The authority in dispute is the authority granted or determined by the 1945 Constitution [3].

If we look at the data from cases of disputes over the authority of state institutions from their establishment until 2021, it is recorded that 29 (twenty-nine) cases have been examined in relation to disputes over the authority of state institutions and 24 (twenty-four) cases have been successfully decided by the Constitutional Court. Of all the disputes over the authority of state institutions handled by the Constitutional Court so far, only 1 (one) case has been granted. The rest, namely 2 (two) cases were declared rejected, 18 (eighteen) cases were declared unacceptable and 7 (four) cases were withdrawn by the applicant and 1 (one) case was not under the authority of the Constitutional Court [5]. Judging from the legal flow of the Constitutional

Court's considerations as the basis for the Constitutional Court arriving at its decision, generally cases were declared inadmissible due to non-fulfillment of the requirements in an application.

Changes in the Indonesian constitutional structure that occur require adjustments in the mechanism of relations between state institutions, the authority to decide authority disputes between state institutions is necessary to prevent these disputes from becoming political disputes. If this happens, it will have a negative impact on the mechanism of institutional relations between state institutions and the implementation of the functions and performance of the disputing state institutions [6].

Based on the provisions governing disputes over the authority of state institutions, it is proposed that in the future it can provide an expansion of the subject matter of state institutions as parties to disputes over the authority of state institutions in order to be able to resolve existing problems.

#### **(A) Literature review:**

The petitioner is a state institution that considers that its constitutional authority has been taken away, reduced, hindered, ignored, and/or harmed by other state institutions [4]. And the applicant must have a direct interest in the authority in dispute. Meanwhile, the respondent is a state institution deemed to have taken, reduced, obstructed, ignored, and/or harmed the applicant.

Even though a number of regulations have regulated mechanisms for resolving disputes over the authority of state institutions by the Constitutional Court, both those stipulated in the 1945 Constitution of the Republic of Indonesia, as well as other derivative regulations such as the Constitutional Court Law and Constitutional Court Regulations, however, the case settlement process still raises its own problems which have the potential to complicate its implementation in concrete cases. This is increasingly complicated along with the growth and development of institutions, especially since the reform era. There are various state institutions with different regulatory patterns and levels of legal basis. Based on the level of regulation that forms the legal basis for its formation, there are state institutions formed based on the Constitution, some are formed based on laws and there are also institutions formed based on a presidential decree.

#### **(B) Research methodology:**

This study uses normative legal research, namely legal research that portrays law as a prescriptive discipline [7] where only see the law from the point of view of its norms [8] or as a system of norms [9].

The approach used in this study is a statutory, comparative, case and conceptual approach

related to disputes over the authority of state institutions which are the authority of the Constitutional Court to decide, so that they can meet scientific criteria and can approach the truth.

The specification of the research used is analytical descriptive, namely research that describes the applicable laws and regulations associated with positive legal theories concerning the problem being studied.

The data used in this study is secondary data, which comes from primary legal materials, secondary legal materials and tertiary legal materials. Data collection through library research. The data obtained were analyzed using qualitative methods [10], which is then studied by the method of thinking deductively connected with theories from literature studies (secondary data). The results of the analysis are presented descriptively then conclusions are drawn to answer problems.

## **II. RESEARCH RESULTS**

### **(A) The Authority of the Constitutional Court in Resolving Disputes on the Authority of State Institutions**

Article 24 C paragraph (1) of the 1945 Constitution of the Republic of Indonesia defines the powers of the Constitutional Court: The Constitutional Court has the authority to adjudicate at the first and final levels whose decisions are final to review laws against the Constitution [11], to decide disputes over the authority of state institutions whose powers are granted by law -The Constitution, decides the dissolution of political parties, and decides disputes about general election results.

Furthermore, what will become the subject of discussion in this matter is the authority of the Constitutional Court according to article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia which stipulates that the Constitutional Court has the authority to try at the first and last levels whose decision is final to decide on disputes over the authority of state institutions whose authority is granted by law Base.

The meaning of the dispute over the authority of state institutions whose authority is granted by the Constitution, Asshiddiqie argued that disputes over the constitutional authority of state institutions are differences of opinion accompanied by disputes and claims between one state institution and another regarding the authority possessed by each institution. the country [6].

Harjono argued that disputes over the authority of state institutions should be interpreted as disputes over constitutional authority. This means that what is the subject of the dispute or

objectum litis is the authority granted by the Constitution. Such an approach will have the consequence that the Constitutional Court needs to first consider whether there is an objectum litis in the form of constitutional authority in the case being examined. If in the subject matter in dispute there is no constitutional authority, either principal authority or implicit authority, then the examination does not need to be continued because the conditions for *objectum litis* have not been met [12].

Siahaan argued that disputes over the authority of state institutions that obtain their authority from the 1945 Constitution can be defined as disputes that arise in the field of state administration as a result of one state institution exercising its authority granted by the 1945 Constitution, has eliminated, harmed or disrupted the authority of other state institutions [13].

Furthermore, to be able to understand what is meant by Article 24 C paragraph 1 of the 1945 Constitution of the Republic of Indonesia concerning disputes over the authority of state institutions whose authority is granted by the Constitution because the 1945 Constitution of the Republic of Indonesia does not clearly explain this matter, it will be seen in several statutory regulations. related to this matter.

Law Number 48 of 2009 concerning Judicial Power in article 29 paragraph 1 letter b stipulates that the Constitutional Court has the authority to try at the first and last levels whose decision is final to decide disputes over the authority of state institutions whose powers are granted by the Constitution of the Republic of Indonesia Year 1945. This law regarding judicial power also does not clearly decipher what is meant by article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

Law Number 24 of 2003 concerning the Constitutional Court regarding disputes over the authority of state institutions whose authority is granted by the Constitution is regulated in articles 61 to 67. This Constitutional Court Law also does not regulate what is meant by disputes over the authority of such state institutions. This law only regulates the application procedure regarding disputes over the authority of state institutions which are regulated more specifically in section nine of this law.

Constitutional Court Regulation No. 08/PMK/ 2006 concerning Guidelines for Proceeding in Disputes of the Constitutional Authority of State Institutions in Article 1 point 5 to number 7 it is explained, first, regarding further confirmation that what is meant by a state institution is a state institution whose authority is granted by the 1945 Constitution, second, the constitutional authority of the institution State authority is authority which can be in the form of authority/rights and duties/obligations of state institutions granted by the 1945 Constitution, and

thirdly, the definition of a dispute is a dispute or difference of opinion relating to the exercise of authority between two or more state institutions.

From the provisions of article 1 of the Constitutional Court Regulation No. 08/PMK/2006 concerning Guidelines for Proceedings in Disputes of Constitutional Authority of State Institutions, the formulation of "a dispute over the authority of a state institution whose authority is granted by the Constitution, according to the Constitutional Court, must be understood that what is at the heart of the formulation is the issue of "authority". So that from this formulation the *objectum litis* of the dispute over authority referred to as "authority regarding what matter". Meanwhile, regarding "who holds the authority" or who is given the authority will be seen in the provisions of the constitution.

From the explanation above, it can be related to disputes that can be submitted to the MK as stipulated in article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the UUD has regulated and provided strict boundaries, namely, first the main dispute submitted to the MK is a dispute over authority and authority in dispute is an authority that comes from the Constitution of the Republic of Indonesia. The two parties to the dispute are state institutions whose powers are granted by the Constitution of the Republic of Indonesia.

Meanwhile, disputes over the authority of state institutions whose powers are granted by the 1945 Constitution of the Republic of Indonesia are regulated in Law Number 24 of 2003 concerning the Constitutional Court. The law stipulates that those who can apply to the Constitutional Court in disputes over the authority of state institutions are state institutions whose powers are granted by the 1945 Constitution of the Republic of Indonesia and these institutions have a direct interest in the authority in dispute. Thus the criteria specified by Law Number 24 of 2003 for advancing disputes over the authority of state institutions at the Constitutional Court are that the case being petitioned must involve a dispute over authority,

From the article 24 C paragraph (1) of the 1945 Constitution of the Republic of Indonesia it can be interpreted that there are two kinds of state institutions, namely state institutions whose authority is granted by the Constitution and state institutions whose authority is not granted by the Constitution, but by laws, presidential decrees or other statutory regulations.

In the 1945 Constitution of the Republic of Indonesia there are many institutions mentioned, so the question arises whether all the state institutions mentioned are state institutions which are not state institutions and which institutions have their authority granted by the Constitution and which institutions whose authority does not come from the Constitution. This is especially important for parties to disputes over the authority of state institutions at the Constitutional

Court.

Natabaya said that the organs/ institutions/state bodies, both those whose authorities were granted by the Constitution and by law, which were expressly contained in the 1945 Constitution after the amendment were: the People's Consultative Assembly, the People's Representative Council, the Regional Representatives Council, the President, the Supreme Court, the Court Constitution, Audit Board, Judicial Commission, Election Commission, Central Bank, Regional Government[14].

Then HAS Natabaya stated that there was a development of opinion regarding the classification of the intended state institutions, including [14]:

a. Based on their authority

This classification is carried out considering the existence of the Constitutional Court's authority to resolve disputes between state institutions whose authority is granted by the constitution.

1) the authority of state institutions granted by the Constitution (MPR, DPR, DPD, President, MA, MK, BPK, Judicial Commission, KPU, and Regional Government)

2) the authority of state institutions that are not granted by the Constitution but by law.

b. Based on division which refers to groupings based on the teachings of trias politica (Montesquieu and John Locke) and the teachings of Van Vollenhoven's chess praja.

1) the main state organs (main state's organs) are the MPR, DPR, DPD, President, MA and MK

2) auxiliary state's organs.

The term state institution has been known since the MPR VI/MPR/1973 Decree which distinguishes:

a. The highest state institution: MPR

b. State High Institutions: President, Supreme Advisory Council, People's Representative Council, Supreme Audit Agency, Supreme Court

MPR Decree No. VI/MPR/73 was later amended through MPR Decree No. III/MPR/78. State institutions according to MPR Decree No. III/MPR/78 is the same as MPR Decree No. VI/MPR/73. With MPR Decree No. I/MPR/2003, MPR Decree No. III/MPR/78 is revoked and declared invalid (Article 1). With this revocation, the classification of the highest state institutions and state high institutions is no longer recognized. The MPR is no longer the highest state institution as a result of the shift in parliamentary supremacy that used to be in the hands

of the MPR to switch to adhering to the ideology of constitutional supremacy, sovereignty is in the hands of the people and implemented according to the Constitution.

The Constitutional Court, which is given the authority to decide and resolve disputes over the authority of state institutions, has an important role in resolving disputes over the authority of state institutions. As a logical consequence of changes in the constitutional system in Indonesia, where state institutions have an equal position that adheres to the idea of checks and balances. With the position of state institutions being equal, this could lead to disputes over authority between these state institutions which are caused by various matters that need to be resolved.

Settlement of disputes over the authority of state institutions needs to be resolved through mechanisms and carried out by judicial institutions so that legal certainty can be achieved from the litigants. The Constitutional Court as an institution that has the authority to resolve disputes over the authority of these state institutions in the exercise of their authority has exercised its authority properly as stipulated in the 1945 Constitution of the Republic of Indonesia [15]. However, from the decisions issued by the Constitutional Court there are still state institutions that Disputes cannot be accepted by the Court because they are not state institutions whose authority is granted by the Constitution.

For this reason, it is necessary to resolve problems with state institutions that cannot bring cases to the Constitutional Court, so that disputes over the authority of state institutions that are not within the authority of the Constitutional Court to decide can be resolved through a legal mechanism.

### **(B) Expansion of the Authority of the Constitutional Court in Resolving Disputes on the Authority of State Institutions**

Until 2016, the Constitutional Court had submitted 29 requests for disputes over the authority of state institutions to the Constitutional Court with very diverse issues. state institutions submitting authority disputes to the MK are not limited to the main state institutions (main organs), namely the People's Consultative Assembly (MPR), the People's Representative Council (DPR), the Regional Representative Council (DPD), the Judicial Commission (KY), the Examining Agency Finance (BPK), the President, and the Supreme Court (MA). Cases of disputes over authority that have arisen in constitutional practice have spread to independent institutions as well as institutions in the regions.

From requests for disputes over the authority of state institutions that were submitted to the Constitutional Court from 2004 to August 2022, there were a total of 29 (twenty nine) cases. Of the 29 (twenty nine) cases, there were 7 (seven) decisions that allowed the applicant to withdraw

his application; 2 (two) cases the application was rejected; 18 (eighteen) cases of the applicant's application cannot be accepted (niet ontvankelijk verklaard/NO); 1 (one) case which stated that the Court had no authority and only 1 (one) request was granted, namely Case No. 03/SKLN-X/2012, namely a dispute over authority between the KPU and the Papua regional government, namely the Papuan DPR (Respondent 1) and the Governor of Papua (Respondent 2).

Given the extraordinary dynamics of the development of post-reform state institutions and the need to solve national problems, the urgency of expanding the parties to disputes over the authority of state institutions at the Constitutional Court is to provide a clear legal umbrella for cases of disputes over the authority of state institutions through legal channels and not through channels. politics so as to achieve legal certainty for the litigants.

There are several justification reasons related to the ideal concept of expanding the definition of state institutions as parties to disputes over the authority of state institutions that can have cases before the Constitutional Court, namely:

a. Constitutional Court Decision

- 1) MK Decision Number 030/SKLN-IV/2006 regarding disputes over the authority of state institutions between KPI and the Ministry of Communication and Information.

In its decision, the Court could not accept this petition, with the reason that it rejected the legal position of KPI as a constitutional organ dealing with the government. This means that KPI is not considered as part of a state institution that can dispute in the Constitutional Court, due to the absence of a constitutional basis for KPI [16].

- 2) Decision of the Constitutional Court Number 3/SKLN-XI/2013 concerning Disputes on the Authority of State Institutions between the Election Supervisory Body (BAWASLU) and the Aceh Regional People's Representative Council (DPRA)

The Court in its legal considerations stated that the General Election Supervisory Body is a state institution that fulfills its legal status as an applicant in disputes over the authority of state institutions. According to the Bawaslu Court, it is an independent state institution formed under Law Number 15 of 2011 concerning General Election Organizers, but has the same constitutional importance as the KPU based on the formulation of Article 22 E paragraph (5) of the 1945 Constitution of the Republic of Indonesia.

b. Constitutional Court in several countries

The Constitutional Courts of Italy, Hungary and the Russian Federation, the Constitutional Courts of South Africa, South Korea, the German federation also have the authority to decide

on authority disputes between state institutions without being limited to state institutions whose powers are granted by the constitution.

The authority of the Constitutional Court of the Republic of Indonesia is the same as that of the Constitutional Court of Thailand and the Council of Grand Justice in Taiwan, which is limited to state institutions whose powers are granted by the constitution.

The formulation of Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, specifically the phrase "decide disputes over the authority of state institutions whose powers are granted by the Constitution" sufficiently reflects the existence of restrictions, so only institutions belonging to the category of state institutions can become parties. in cases of disputes over the authority of state institutions. In accordance with the term used, namely a state institution, the term referred to can be interpreted as an institution that carries out the main tasks of state power. This means that only institutions that carry out the main tasks of state power can become applicants or respondents in cases of disputes over the authority of state institutions.

If this kind of affirmation model is carried out, then by itself not all institutions can be categorized as state institutions in cases of disputes over the authority of state institutions in the Constitutional Court. In this regard, it is very urgent to think about how to arrange a mechanism for resolving disputes over the authority of institutions outside the category of state institutions, both related to procedures and related to the institution authorized to handle the said dispute.

The author is of the opinion that adding/ expanding the authority of the Constitutional Court in resolving disputes over the authority of state institutions is more possible to do, this is because at least there are several arguments:

- a. The Constitutional Court already has the authority to decide disputes over the authority of state institutions as referred to in Article 24 C paragraph (1) of the 1945 Constitution of the Republic of Indonesia. It only requires an expansion of the authority of the Constitutional Court to decide disputes on the authority of state institutions, not only limited to state institutions whose authority is granted by the 1945 Constitution of the Republic of Indonesia, but also by law.
- b. Through the Constitutional Court, disputes over the authority of state institutions are resolved in order to avoid resolution through political or cultural processes.
- c. The level of public trust in the Constitutional Court is still relatively good.
- d. Disputes over the authority of state institutions do not have high intensity, so they will not affect the other powers of the Constitutional Court.

Expanding or adding the authority for the Constitutional Court to decide on disputes over the authority of state institutions that have been regulated and determined in a limited way in the 1945 Constitution of the Republic of Indonesia, especially in Article 24C paragraph (1) to make this happen is not an easy matter. However, this must be done so that the performance of state institutions undisturbed and for legal certainty in the administration of the state.

That is, legally formally, if you want to add authority to decide on disputes over the authority of state institutions whose authority does not originate or is implicitly not mentioned in the 1945 Constitution of the Republic of Indonesia to the Constitutional Court, this must be done by amending the limitative formulation in Article 24C of the 1945 Constitution. Meanwhile at this time, to be able to make changes to the 1945 Constitution of the Republic of Indonesia is not an easy matter, both procedurally and politically

### **III. CONCLUSION**

Based on the research discussion in the chapters above, it can be concluded that settlement of disputes over the authority of state institutions into the authority of the Constitutional Court to decide is the right choice, this is because the function of the Constitutional Court as the guardian of the constitution means that the Constitutional Court has the authority to protect and uphold the constitution. Settlement of disputes over the authority of state institutions which are the authority of the Constitutional Court is intended so that disputes over the authority of state institutions can be resolved through the judiciary to avoid settlement outside the legal channels.

There are two models of the authority to decide disputes over the authority of state institutions in constitutional practice in various countries, namely the United States model which was given to the Supreme Court and the German model which was given to the Constitutional Court. In addition, in deciding disputes over the authority of state institutions, the Constitutional Court in various countries limits disputes over the authority of state institutions to state institutions whose authority is granted by the constitution and there are those which are limited to state institutions whose authority is granted by the constitution.

The authority of the Constitutional Court in resolving disputes over the authority of state institutions needs to be redesigned to provide legal protection for every state institution to pursue a fair and legal settlement process. It is necessary to expand/add to the authority of the Constitutional Court to decide on disputes over the authority of state institutions, namely not only state institutions whose powers are granted by the Constitution but also state institutions whose powers are granted by law.

Additional authority to the Constitutional Court in resolving disputes over authority between

state institutions in the future can be carried out by amending or amending Article 24 C of the 1945 Constitution of the Republic of Indonesia, Article 10 paragraph (1) of the Constitutional Court Law and Article 2 paragraph (1) and paragraph (2) Regulation of the Constitutional Court Number 08/PMK/2006 concerning Guidelines for Procedures for Disputes of Authority between state institutions.

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