THE SETTLEMENT OF DISPUTE ON JURISDICTION AMONG THE STATE INSTITUTIONS IN THE CONSTITUTIONAL COURT

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ABSTRACT

The relationship between institutions is bound by check-and-balances principle. This may bring about potential dispute between state institutions. The Constitutional Court has received and decided 25 cases regarding dispute on jurisdiction among the state institutions. The research aims to analyze the decision of the Constitutional Court and to evaluate the role of Constitutional Court in settling the dispute on jurisdiction among the state institutions. The research is a normative legal research using a case law approach. The results of the research show that the Constitutional Court has given significant contribution to settle 25 cases regarding dispute on jurisdiction among the state institutions. The Constitutional Court has carried out its duty as the guardian of the 1945 Constitution. However, there is a problem about unclear definition of the subject matter regarding the scope of state institutions whose authority is mandated by the 1945 Constitution. It brings about multi-interpretation among the judges on the meaning of state institution. Some judges use broad interpretation, but the majority of judges use the narrow interpretation which implicitly refers to Article 64 of the Constitutional Court Act. The research recommends that the DPR and the President need to take initiative to revise Article 61 of Law Number 24 Year 2003 on Constitutional Court

which make a clearer definition of state institutions which have legal standing in the dispute on jurisdiction among state institutions in the Constitutional Court.

Keywords: *state institution, dispute among the state institutions, the constitutional court*

A. INTRODUCTION

Since 2003, the Constitutional Court has received and decided 25 cases regarding dispute on jurisdiction among the state institutions. There was only 1 case accepted, 3 cases rejected, 16 cases unacceptable, and 5 cases pulled back by the petitioners.

Table 1

Recapitulation of Dispute on Jurisdiction among the State Institutions Case

No.	Year	Previous Process	Accepted	Total	Decision				Total of Decision	In Process This Year
					Accept	Reject	Unacceptable	Pull Back		
1.	2003	0	0	0	0	0	0	0	0	0
2.	2004	0	1	1	0	1	0	0	1	0
3.	2005	0	1	1	0	0	0	0	0	1
4.	2006	1	4	5	0	0	2	1	3	2
5.	2007	2	2	4	0	1	1	0	2	2
6.	2008	2	3	5	0	0	2	2	4	1
7.	2009	1	0	1	0	0	1	0	1	0
8.	2010	0	1	1	0	0	0	0	0	1

9.	2011	1	6	7	0	0	4	0	4	3
10.	2012	3	3	6	1	1	3	1	6	0
11.	2013	0	3	3	0	0	2	0	2	1
12.	2014	1	0	1	0	0	1	0	1	0
13.	2015	0	1	1	0	0	0	1	1	0
14.	2016	0	0	0	0	0	0	0	0	0
15.	2017	0	0	0	0	0	0	0	0	0
Total		11	25	36	1	3	17	4	25	-

Source: see http://www.mahkamahkonstitusi.go.id/index.php?page=web.RekapSKLN&menu=5, viewed on 23 January 2018, 6.10 am.

Based on that data, it is interesting to study further the settlement of dispute on jurisdiction among the state institutions in the Constitutional Court.

The existence of the Constitutional Court as a new institution cannot be understood partially, but it must be understood as a foundation to strengthen the practice of constitutionalism in the 1945 Constitution after the amendment. The essence of the idea of constitutionalism is that every state organ has limited authority. In relation to that, the Constitution has a significant power as the supreme law in limiting the authority of the branches of the government[1].

According to Article 2 of Law Number 24 Year 2003 on Constitutional Court, it is stated that:

[1]Abdul Latif, et al, 2009, *Buku Ajar Hukum Acara Mahkamah Konstitusi*, Yogyakarta, Total Media, p, 16.

"The Constitutional Court is one of the state institutions, which independently carries out judicial powers in order to administer justice and thereby upholding the law and serving justice"

The jurisdictions of the Constitutional Court are stated in Article 24C Paragraph (1) in the 1945 Constitution and Article 10 Paragraph (1) of Law No. 24 Year 2003 on Constitutional Court as amended by Law No. 4 Year 2014. The Constitutional Court is authorized to hold trials at the first and final stage and will produce final decisions, (that it would not be any legal remedies to challenge its decisions) on the following:

1. Review of laws against the 1945 Constitution of the Republic of Indonesia;
2. To resolve disputes on jurisdiction between state institutions whose competencies are defined by the 1945 Constitution of the Republic of Indonesia;
3. To decide in the case of dissolution of political parties; and
4. To resolve disputes involving the results of the general elections."

Relevant to this provision, the jurisdiction of the Constitutional Court to settle disputes on jurisdiction among the state institutions is manifestation of the implementation of judicial power which is exercised by the Constitutional Court[2].

In general, the concept of state institution is often related to the theory of Montesquieu in the doctrine of *Trias Politica*. *Trias Politica* is the separation of powers which are divided into three branches of power in parallel position, as follows[3]:

1. Legislative organ. The duty of legislative is to make laws. In the case of Indonesia, legislative organ is the House of Representative (the DPR).
2. Executive organ. The duty of executive is to implement or execute the laws.

[2]Jimly Asshiddiqie, 2006, *Sengketa Kewenangan Konstitusional Lembaga Negara*, Jakarta, Konstitusi Press, p. 1.
[3]Kaka Alvian Nasution, 2014, *Buku Lengkap Lembaga-Lembaga Negara*, Jakarta, Saufa, p. 8.

Executive organs are president, vice president, and also ministers who appointed.

3. Judiciary. The duty of judiciary is to maintain the laws. Judiciary are the Supreme Court and the Constitutional Court.

State institution can be understood as a body regulated in the 1945 Constitution which is the authority given by the Constitution. Montesquieu differentiated that three branches, so the state institution only executes one function or in other words cannot interfere each other. However, now this concept is not relevant because the three branches are related and mutually controlling each other in accordance with principle of check and balances.

Based on the previous paragraph, it is interesting to evaluate the role of Constitutional Court in settling disputes on jurisdiction among state institutions. The researcher will analyse 5 Constitutional Court decisions, namely Constitutional Court decisions number 3/SKLN-X/2012, 068/SKLN-II/2004, 2/SKLN-X/2012, 030/SKLN-IV/2006 and 1/SKLN-IX/2011.

B. RESEARCH METHODS

1. Type of Research

The type of this research is a normative legal research. Normative legal research is the research which studies the principles of legal research, systematic of legal research, the level of synchronization legal research, legal history, and comparative law.[4] Normative legal research uses the Indonesian Law approach through the regulation and Constitutional Court decisions which is related to the

[4]Mukti Fajar ND, Yulianto Achmad, 2010, *Dualisme Penelitian Hukum Normatif & Empiris*, Yogyakarta, Pustaka Pelajar, p, 153

settlement of dispute on jurisdiction among the state institutions in the Constitutional Court.

2. Type of Data

Data used in this research is secondary data. Secondary data consist of:

a. Primary Legal Materials

Primary legal materials consist of legislation, formal treaties, court decisions and official document, such as:

1) The Indonesian 1945 Constitution
2) Constitutional Court decision
3) Law No. 24 of 2003 about Constitutional Court

b. Secondary Legal Materials

Secondary legal materials consist of several documents that are related to the primary legal materials, such as:

1) Scientific Journal
2) Books that are related to the issue of settlement of dispute on jurisdiction among the state institutions in the Constitutional Court
3) The view of jurists (doctrine)
4) Other related documents
5) Trusted internet sites

c. Tertiary Legal Materials

Tertiary legal materials consist of textbook which is not law book related to the research such as:

1) Black laws dictionary

2) English dictionary

3) Indonesian dictionary

4) Dutch-Indonesian laws dictionary

3. Research Approach

a. Statute Approach

This approach is conducted by examining all the regulations which are related to the problem or issue of law. The statute approach, can be in the form of:

1) Learning about consistency or compatibility between the Constitution and Law.
2) Learning about consistency or compatibility between one law and others law.

b. Case Approach

This approach is exercised by examining the cases or disputes which are related to the issue of law. The cases or disputes will be examined by the cases that have been decided through court decision. Consideration of judge will be analysed by the researcher to be used as argument to resolve the issue of law.

c. Analytical Approach

This approach will be conducted by finding the definition of the law term which is written in the law. So, the researcher will get new term from the law term and to examine and analysis the court decision.

The researcher will understand more about the law of settlement of dispute on jurisdiction among the state institutions in the Constitutional Court.

4. Technique of Collecting Data

The technique of collecting data in the research will be done through library research. The researcher will find the materials of the research by reading books, journals, article and also finding information in the internet concerning the settlement of dispute on jurisdiction among the state institutions in the Constitutional Court. The technique of collecting data, can be in the form of:

a. Muhammadiyah University Library
b. Gadjah Mada University Library
c. Website

5. Analysis

The data will be analysed by judicial thinking. It means that the analysis will be based on the Indonesian Law. The researcher will analyse the decision of the judges and the example of the decision. It is about the settlement of dispute on jurisdiction among the state institutions in the Constitutional Court.

C. DISCUSSION

1. Potential Dispute between State Institutions

Prior to the amendment of the 1945 Constitution, Indonesia recognized the highest state institution. People's Consultative Assembly is the highest state institution which has a higher position than other institutions. But, after the reformation, it no longer applies. There is no such title anymore as the highest state institution, so the position of one institution and other ones is equal. The relationship between institutions are bound by check-and-balances principle, where the institutions have equal position and control over each other. This may incur potential dispute between state institutions.

2. Procedure to Resolve Dispute between State Institutions in the Constitutional Court

Law on Constitutional Court has set out the procedure to resolve dispute between state institutions as referred to in Article 61 to 67. Constitutional Court also issued Regulation of Constitutional Court Number 08/PMK/2006 concerning litigation guideline in terms of constitutional authority dispute of state institution as follows:

a. Petitioner and Respondent

Petitioner and Respondent are state institutions whose authorities are mandated by the 1945 Constitution. Petitioner shall have direct interest towards the authority under dispute. In the Law of Constitutional Court, it is not clearly mentioned what institutions can have litigation process before Constitutional Court. However, it is mentioned therein that state institutions that can become either a petitioner or a respondent of the dispute between state institutions are as follows:

1) House of Representatives (DPR);
2) Regional House of Representative (DPD);
3) People's Consultative Assembly (MPR);
4) President;
5) Finance Auditor Body (BPK);
6) Regional Government (*Pemda*); or
7) Other state institutions whose authority are mandated by the 1945 Constitution.

In the regulation, it is also mentioned that the Supreme Court cannot become a party, either a petitioner or a respondent, in the dispute of authority of technical judication (*yustisial*). This is different from the Law on Constitutional Court after amendment, in that article 65 has been omitted. Supreme Court can become a litigant before Constitutional Court upon dispute between state institutions.

b. Hearing Process

1) A written application and/or its digital format is submitted to the Court through Registrar. The content of the application shall clearly explain:
2) Authority under dispute;
3) Direct interest of the petitioner upon such authority;
4) Any matter asked to be judged.
5) Any application recorded in the Registration Log of Constitutional Case to the respondent within the period no later than 7 (seven) working days since the application has been recorded in that Log.
6) Registrar submits the registered application documents to the Chief of Court for the purpose of the arrangement of the Panel of Judges. Chief of the Panel of Judges determines the first hearing session within no later than 14 (fourteen) days as of the application registration.
7) Application verification is conducted by the Panel of Judges, either in the initial checking or in the hearing session.
8) In the hearing session, there is investigation upon evidence, the parties' testimony and if necessary any related parties' testimony.
9) If deemed necessary, in accordance with Article 63 of Law on Constitutional Court, the Court may issue interlocutory judgment in the

form of decree which order the petitioner and/or respondent to temporary suspend the implementation of authority under dispute until the issuance of award by the Constitutional Court.

(According to Article 63, "the implementation of authority is any action, either real or legal, which constitutes the implementation of the authority under dispute." In issuing the decree, the Court considers any impact incurred by the implementation of the authority under dispute.

c. Decision

The ruling may state:

1) The application cannot be unacceptable (*niet ontvankelijk verklaard*) if the petitioner and/or its application does not meet Article 61 of the Law on Constitutional Court;
2) The application is accepted if the application is reasonable;
3) In the event the application is accepted, the ruling explains firmly that the petitioner is authorized to implement its authority under dispute and/or the respondent is not authorized to implement the authority under dispute;
4) The application is rejected when the application is not reasonable.

3. Decision of State Institution Dispute in the Constitutional Court

From 25 cases regarding dispute on jurisdiction among state institutions in the Constitutional Court, the researcher will analyse 1 case that was accepted, 2 cases that were rejected, and 2 cases that were unacceptable.

a. Constitutional Court's Decision Number 3/SKLN-X/2012 with Accepted Decision

Decision Number 3/SKLN-X/2012 constitutes dispute between General Election Commission (Petitioner) and Papua's House of Representatives (Respondent I), Governor of Papua (Respondent II).

Objectum litis is regarding the takeover of the constitutional authority of the Petitioner and Papua's General Election Committee which was conducted by Respondents in arranging and setting technical guideline concerning stages of General Election of Governor and Vice Governor of Papua, i.e. by issuing Special Regional Regulation of Papua Province Number 6 of 2011 concerning General Election of Governor and Vice Governor and Papua's House of Representatives' Decision Number 064/PimDPRP-5/2012, dated 27 April 2012.

In its ruling, the Court declared to reject the Respondent I exception. In the substance, the Court accept the Petitioner's petition.

Petitioner and Respondents met *subjectum litis* as the party to the *a quo* case. The three institutions are regulated under the 1945 Constitution. General Election Commission is regulated under Article 22E paragraph (5) of the 1945 Constitution. Papua's House of Representatives and Papua Governor are regulated under Article 18 paragraph (5) of the 1945 Constitution.

Upon the dispute object (*objectum litis*), the court considered that the disputed authority in State Institution Authority Dispute case does not only have to be the explicit authority (*expressis verbis*) mentioned in the 1945 Constitution, but also delegation authority sourced from the attributed authority referred to in the 1945 Constitution.

The disputed authority object in this case is the general election organizing process, including among others arranging and determining technical guideline of general election, as well as accepting and verifying the candidates of Governor and Vice Governor of Papua which are the derivative authority of attributed authority in Article 22E paragraph (5) of the 1945 Constitution. Therefore, the disputed authority in the *a quo* application is the authority which can be a disputed object in the State Institution Authority Dispute.

b. Constitutional Court's Decision No. 068/SKLN-II/2004 with Rejected Decision

Decision No. 068/SKLN-II/2004 constitutes the decision of state institution authority dispute case between Regional House of Representatives (Petitioner) with President (Respondent I) and House of Representatives (Respondent II). Petitioner on behalf of its legal representatives, i.e. I Wayan Sudirta S.H, Ir. Ruslan Wijaya, S.E.,M.Sc, Anthony Charles Sunarjo, Muspani, S.H., Ir. H. Marwan Batubara, M.Sc. In the application, Respondent only refers to President; however, the Court deems that the House of Representatives is also Respondent since the issuance of Presidential Decree *a quo* cannot be separated from the House of Representatives authority.

Objectum litis[5] of the case about Presidential Decree Number 185/M of 2004 dated 19 October 2004 concerning the termination of Finance Auditor Body's members for the period of 1999-2004 and appointment of Finance Auditor Body's member for the period of 2004-2009 had waived the

[5]*Objectum Litis* is object of the dispute among state institution

constitutional authority of the Regional House of Representatives as specified in Article 23F of the 1945 Constitution.[6]

In this case, the petition of the Petitioners is rejected in its entirety. In its decision, Constitutional Court declared that the Constitutional Court is authorized to investigate, adjudicate and judge the application filed by the Regional House of Representatives. In regard to the statement of Respondent II that Constitutional Court is not competent to investigate Presidential Decree, Constitutional Court declared that the issuance of argued Presidential Decree was related to the authority of the House of Representatives. Constitutional Court also stated that the Regional House of Representatives met the requirement as legal standing in this case, and so did the House of Representatives and President as the Respondent in the case of state institution authority dispute.

Thenceforth, according to Constitutional Court, at the time of Finance Auditor Body's members selection for the period of 2004-2009, there was fundamental amendment to the 1945 Constitution, particularly Finance Auditor Body in the Article 23F and Article 23G. However, the Constitution amendment cannot immediately prevail since in the selection of Finance Auditor Body's members, there shall be a proper law and that also cannot be immediately implemented due to lengthy legislation process. Therefore, the House of Representatives acts on the basis of Law No. 5 of 1973 and the authority of the House of Representatives in the selection of Finance Auditor Body's members for the period of 2004-2009 does not contravene the Constitution. In addition, President is not proven to waive the Petitioners constitutional authority as

[6]Article 23 F of the 1945 Constitution declares that Member of Finance Auditor Body is appointed by House of Representatives by considering Regional House of Representatives' opinion and inaugurated by President.

postulated by the Petitioners. Therefore, Constitutional Court decided that the Petitioners application was rejected.

Generally, in the above-mentioned case, both *subjectum litis* and *objectum litis* are met. *Subjectum litis* in this case is state institution whose authority is mandated by the constitution. Either the Regional House of Representatives as the Petitioners or the House of Representatives and President as Respondent constitute state institution regulated in the 1945 Constitution of the Republic of Indonesia. *Objectum litis* in this case is about selection and appointment of Finance Auditor Body's members which shall ask for the Regional House of Representatives's view as regulated in Article 23F, so such authority is a constitutional authority. However, in the aforementioned case, the matter tested is not only the fulfilment of *subjectum litis* and *objectum litis*. In that case, Constitutional Court actually also observe the time, process and legal standing used by the House of Representatives and President to appoint the Finance Auditor Body's members for the period of 2004-2009 and according to Constitutional Court, that selection did not contravene the Constitution.

c. Constitutional Court's Decision Number 2/SKLN-X/2012 with Rejected Decision

Decision No. 2/SKLN-X/2012 constitutes a dispute between Dr. H. Susilo Bambang Yudhoyono acting as the President (Petitioner) and House of Representatives (Respondent I), Finance Auditor Body (Respondent II).

The subject matter of this dispute is about the purchase of 7% divested share of PT. Newmont Nusa Tenggara (PT NNT). The Petitioner stated its opinion as the head of government that holds authority of managing such

authority to the Minister of Finance as the fiscal manager and the government representative in terms of separated state wealth ownership, as set forth in Article 6 paragraph (1) and paragraph (2) of Law of State Finance. In exercising such fiscal management authority, the Minister of Finance also exercises the function as State General Treasurer. As the State General Treasurer, the Minister of Finance has an authority to do government investment management. Such function and authority are regulated under Article 7 paragraph (1) and paragraph (2) point h of State Treasury Law. The objective of government investment implementation is to gain benefit in economy, social and others. Provisions concerning the government investment is regulated in Article 41 paragraph (1), paragraph (2), and paragraph (3) of State Treasury Law.

According to the Court, the purchase of 7% divested shares of PT. NNT is the constitutional authority of the Petitioners in running the state government which can only be done by: (i) the approval of Respondent I either through the mechanism of the APBN Law or specific agreement; (ii) be carried out openly and responsibly for the greatest prosperity of the people; and (iii) implemented under the supervision of Respondent I. Because of the purchase of 7% shares of PT. Newmont Nusa Tenggara has not been specifically published in the APBN and has not yet received specific approval from the DPR, therefore the Petitioner petition has no legal.

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d. Constitutional Court's Decision Number 030/SKLN-IV/2006 with Unacceptable Decision

Decision Number 030/SKLN-IV/2006 constitutes the dispute between Indonesian Broadcasting Commission as Petitioner and the President of the Republic of Indonesia qq. the Minister of Communication and Information as Respondent, in this matter represented by the Minister of Law and Human Rights, the Minister of Communication and Information.

Objectum litis of the case regarding (1) a dispute of authority to grant broadcasting permit and (2) preparation of regulations concerning broadcasting Indonesian Broadcasting Commission as an independent state institution is fully responsible for enhancing, upholding and fulfilling citizen's rights based on Article 28F of the 1945 Constitution, i.e. *"every individual is entitled to communicate and obtain information to develop their personal matters and social environment, as well as to seek, gather, own, keep, manage and disseminate information using any available distribution channels"*, particularly through broadcasting. In fact, those two matters should be conducted by the Petitioner; however, it is taken over by the Respondent.

The Petitioner's application cannot be acceptable by the Court. If it is viewed from *subjectum litis*, according to the provision prescribed in Article 4 paragraph (1), Article (5), and Article (7) of the 1945 Constitution, the President of the Republic of Indonesia qq. the Minister of Communication and Information is the state institution whose authority is mandated by the 1945 Constitution. Meanwhile, Indonesian Broadcasting Commission as the Petitioner is the state institution that is established under and whose authority is mandated by the laws, not by the 1945 Constitution. Therefore, the existence of Indonesian Broadcasting Commission does not constitute a state institution as referred by Article 24C paragraph (1) of the 1945 Constitution in conjunction with Article

61 paragraph (1) of the Constitutional Court Law. Indonesian Broadcasting Commission as the Petitioner does not have any legal standing as prescribed in Article 61 paragraph (1) of the Constitutional Court Law to file an *a quo* application.

e. Constitutional Court's Decision Number 1/SKLN-XI/2011 with Unacceptable Decision

Decision Number 1/SKLN-XI/2011 constitutes a dispute between Dr. Stepanus Malak, Drs., M.Si., who acted as Regent of Sorong (Petitioner) and Drs. J. A. Jumame, M. M., who acted as the Mayor of Sorong (Respondent).

Petitioner's Constitutional Authority was taken over, reduced, hindered and ignored by Defendant, i.e. Respondent had entered and occupied the Petitioner government region at least more than 4 km from the border of Klasaman Village which is the last border and adjoins the protected forest and the Agriculture Office land of Sorong Regency which constitutes an asset of the Petitioner, which belongs to the Petitioner's Government Region.

Objectum litis of the *a quo* application is not the constitutional authority of the Petitioner whose authority is mandated by the 1945 Constitution, so, even though there may be possibility of fulfillment of *subjectum litis* by the Petitioner, it is no longer relevant to be judged. The Court considers that the Petitioner does not have legal standing to file an *a quo* application, so the Petitioner's application cannot be accepted.

4. The Role of the Constitutional Court in Settling Dispute on Jurisdiction among the State Institutions

In validating and deciding the application of authority dispute between state institutions, there are some matters that should be ascertained by the court, i.e.:

a. Whether it is true that the application is regarding authority issue;
b. Whether the authority is mandated by the 1945 Constitution;
c. Whether it is true that there is dispute on authority mandated by the 1945 Constitution;
d. Whether the litigating party is a state institution that has legal standing.

Considering the above-mentioned statement, the first matter the Court should note in terms of judging the authority dispute between state institutions is regarding the key issue or *objectum litis*. The judge sees whether such an authority is mandated by the 1945 Constitution or not. Why does the judge first consider the *objectum litis* in judging the authority dispute between state institutions? Description regarding that matter has been explained by the Constitutional Court in Judgement No. 004/SKLN-IV/2006. The position of the term "authority dispute" before "state institution" have an important meaning, since basically what is meant by Article 24C Paragraph (1) of the 1945 Constitution is "authority dispute" per se or about "what is disputed" and not about "who is litigating." Judgement No. 004/SKLN-IV/2006 constitutes a significant judgement since it becomes the reference in judging the dispute between state institutions.

According to Constitutional Court's Judgement No. 1/SKLN-IX/2011 between the Regent of Sorong and the Mayor of Sorong, in the judgement, the Petitioner's application cannot be accepted since the *objectum litis* of the petitioner is

not the authority mandated by the 1945 Constitution. Although the litigating parties may fulfil the requirements as *objectum litis.* That is absolutely no longer relevant to be judged by the Court since the Court will first judge the *objectum litis.*

Objectum litis, subjectum litis and *legal standing* are the key matters in judging the dispute between state institutions. If one of them is not eligible, then the dispute shall not be accepted by the Constitutional Court.

At another part, it is also regulated regarding the authority of the Constitutional Court which is *ultra petita*. Amendment to Act Number 24 of 2003 concerning the Constitutional Court is to prohibit the Constitutional Court to produce *ultra petita* judgements. That is defined in Article 45A of Act Number 8 of 2011 concerning Amendment to Act Number 24 of 2003 concerning the Constitutional Court which states "the Judgement of the Constitutional Court shall not contain the ruling which is not asked by the petitioner or exceed what the Petitioner applies, except against certain matters not related to the key Application." To affirm the prohibition against the *ultra petita* conducted by the Constitutional Court, especially in the formation of a new norm as a alternate norm, then in Article 57 paragraph (2a) point C of Act Number 24 of 2003 concerning the Constitutional Court, it is stated that "the Judgement of the Constitutional Court does not specify the norm draft as the alternate norm of the act which is declared in contrast to the 1945 Constitution."

Prohibition for the Constitutional Court to release *ultra petita* judgment is as set out by Article 45A and 57 paragraph (2a) of Act Number 8 of 2011 concerning Amendment to Act Number 24 of 2003 concerning the Constitutional Court; and then by the Constitutional Court, it is declared to contravene the 1945 Constitution and does not have binding legal force. Annulment of Article 45A and 57 paragraph

(2a) is firmly declared in the Constitutional Court's Judgment Number 48/PUUIX/2011, dated 14 October 2011.

Therefore, generally the authority dispute between state institutions which can be resolved before the Constitutional Court is dispute involving the state institutions whose constitutional authority is mandated by the 1945 Constitution. The enactment of the regulation regarding the dispute resolution between state institutions does not mean not raising any issues. Based on formal jurisdiction, the Constitutional Court is only authorized to resolve the dispute between state institutions whose authority is mandated by the 1945 Constitution, but how should it be in terms of the dispute between state institutions whose authority is only mandated by legislation? This is necessary since there may be authority dispute in implementing the function of such state institutions. That should also be noted since the broadened state functions to improve society welfare will align with the emergence of independent agencies which have functional relationship over each other. By such functional relationship, there may be authority dispute between those state institutions. By referring to modern rule of law, it is necessary to develop resolution channel for authority dispute of state institutions founded based on legislation, so it remains to be based on due process of law.

Of 25 cases filed to the Constitutional Court, only 1 case is accepted, i.e. the Constitutional Court's Judgment No. 3/SKLN-X/2012 between General Election Commission and Papua's House of Representatives and Governor of Papua. Although the Constitutional Court emphasizes that only state institutions whose authority is mandated by the 1945 Constitution can become the litigating parties. Why do many independent state institutions file State Institution Authority Dispute

to the Constitutional Court? Is there any unclarity in understanding the meaning of "authority mandated by the 1945 Constitution?"

The issue is multi-interpretation of the meaning "state institution" per se in the dispute between state institutions. There is no absolute explanation regarding the definition of state institution and the authority mandated by the 1945 Constitution. Therefore, the litigating parties may have their own interpretation regarding the meaning of state institution. It can be seen from the fact that many independent state institutions filed an application of dispute between state institutions to the Constitutional Court.

According to Abdul Muktie Fadjar, the issue is that either the 1945 Constitution or Act on the Constitutional Court does not specify or explain what is meant by "state institutions whose authority is mandated by the 1945 Constitution," so it can raise several interpretations, i.e.:

a. Broad interpretation which includes all state institutions whose name and authority are stated in the 1945 Constitution;
b. Moderate interpretation which only limits what was known as the highest-level institution and high-level institutions;
c. Narrow interpretation which implicitly refers to Article 67 of Act on the Constitutional Court.

In this case, the role of the Constitutional Court is highly significant in judging the authority dispute between state institutions since the judge is the party who decides which state institution can become a litigating party before the Constitutional Court. According to H. Abdul Latif, although the Constitutional Court is authorized to judge the dispute between state institutions, it does not mean that the

Constitutional Court is hierarchically higher. It is more of a check and balance effort for the purpose of upholding the Constitution. Otherwise, no state institution can annul the Constitutional Court's judgment. This is solely to guarantee its independency from other state institution's power, so the Constitutional Court can always act as the guard of the 1945 Constitution.

D. CONCLUSION AND RECOMMENDATION

1. Conclusion

Based on the previous discussion, it may arrive at conclusion that the Constitutional Court has given significant contribution to settle 25 cases regarding dispute on jurisdiction among the state institutions. The Constitutional Court has carried out its duty as the guardian of the 1945 Constitution. However, there is problem about unclear definition of the subject matter regarding the scope of state institutions whose authority are mandated by the 1945 Constitution. It brings about multi-interpretation among the judges on the meaning of state institution. Some judges use the broad interpretation, but the majority of judges use the narrow interpretation which implicitly refers to Article 64 of the Constitutional Court Act.

2. Recommendation

The Constitutional Court Act should be amended in order to avoid multi-interpretation of the meaning "state institutions" and "authority" which are mandated by the 1945 Constitution in the dispute among the state institutions. Therefore, the DPR and the President need to take initiative to revise Article 61 of Law Number 24 Year 2003 on Constitutional Court which make a clearer definition of state

institutions which have legal standing in the dispute on jurisdiction among state institution in the Constitutional Court.

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