CHAPTER IV

FINDING AND ANALYSIS

A. Potential Dispute between State Institutions

In the history of Indonesian's constitutional practice prior to the (third) amendment of the 1945 Constitution in 2001, there was not yet any rules on mechanism to settle authority dispute between state institutions. The institution authorized to judge the authority dispute between state institutions is not mentioned either. Therefore, during such period, there was not yet any precedent on Indonesia's constitutional practice concerning the resolution of dispute between state institutions. After the third amendment of the 1945 Constitution, which adopts the establishment of Constitutional Court whose authority is to judge the dispute between state institutions whose authority are mandated by the 1945 Constitution, Indonesia's constitutional system has the settlement mechanism in the event of authority 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.

B. 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. Petitioner is a state institution which deems its constitutional authority is taken, reduced, avoided, ignored and/or harmed by other state institutions, meanwhile respondent is a state institution which is deemed to take, reduce, preclude, ignore, and/or harm the petitioner.

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:

a. House of Representatives (DPR);
b. Regional House of Representative (DPD);
c. People's Consultative Assembly (MPR);
d. President;
e. Finance Auditor Body (BPK);
f. Regional Government (*Pemda*); or
g. 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

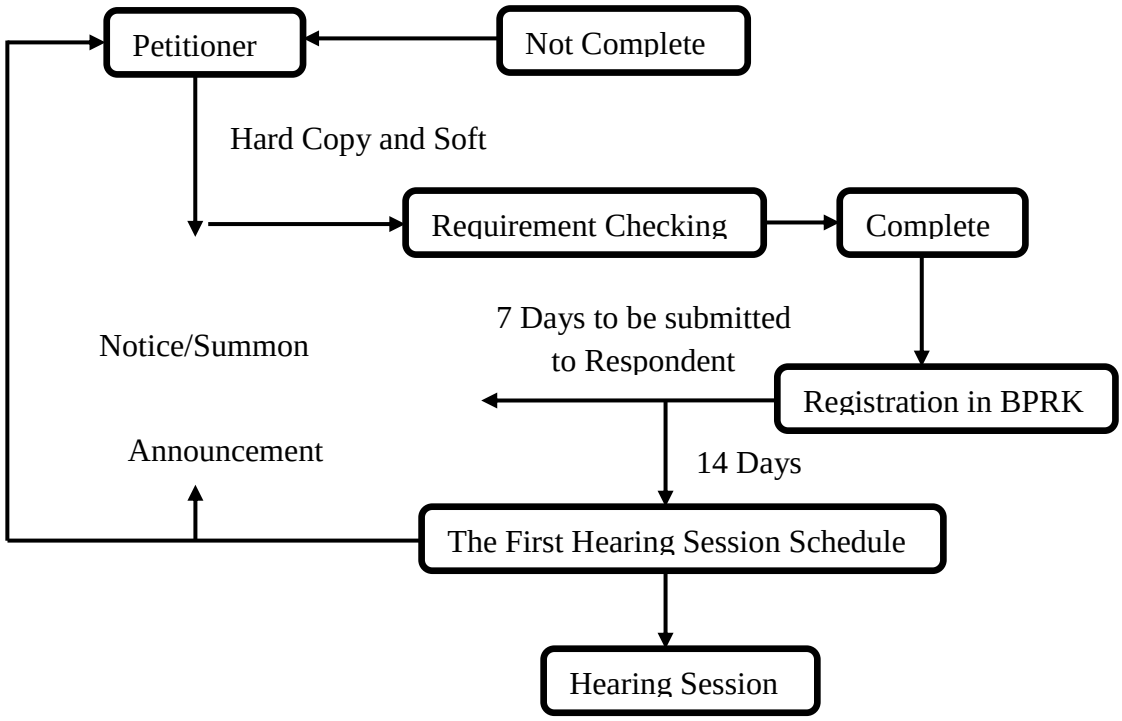

Figure 4.1.
The Procedures to Resolve Dispute between State Institutions

a. A written application and/or its digital format is submitted to the Court through Registrar. The content of the application shall clearly explain:
   1) Authority under dispute;
   2) Direct interest of the petitioner upon such authority;
   3) Any matter asked to be judged.
b. 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.
c. 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.

d. Application verification is conducted by the Panel of Judges, either in the initial checking or in the hearing session.

e. In the hearing session, there is investigation upon evidence, the parties' testimony and if necessary any related parties' testimony.

f. 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:

a. 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;

b. The application is accepted if the application is reasonable;

c. 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;

d. The application is rejected when the application is not reasonable.

C. Decision of State Institution Dispute in the Constitutional Court

Potential of dispute among state institutions emerge due to relationship among them which are bound by check and balances principal, where those institutions have equal position and control over each other. Due to their equal position, conflict may arise in their implementing authority and interpreting the Constitutional mandate. Therefore, there shall be an independent institution to settle the dispute among state institutions. The dispute may be filed to the Constitutional Court.[1]

Table 2
Dispute on Jurisdiction among the State Institution in the Constitutional Court

No.	Decision of Constitutional Court	The Parties to the Dispute	Decision
1.	Decision Number 068/SKLN-II/2004	Regional House of Representatives with President & House of Representatives	Rejected
2.	Decision Number 025/SKLN-III/2005	Governor of Lampung Province with the DPRD of Lampung Province	Pulled back
3.	Decision Number	The Mayor Candidate of	Unacceptable

[1] Miriam Budiarjo, *Dasar-Dasar Ilmu Politik*, Jakarta, PT. Gramedia Pustaka Utama, 2006, hlm. 152

	002/SKLN-IV/2005	Depok with the KPUD of Depok	
4.	Decision Number 004/SKLN-IV/2006	Regent and Vice-regent with President of the Republic of Indonesia, Minister of Home Affairs and the DPRD	Unacceptable
5.	Decision Number 027/SKLN-IV/2006	Chairman and Vice-chairman of DPRD of Poso Central Sulawesi Province with Governor of Central Sulawesi Province	Unacceptable
6.	Decision Number 030/SKLN-IV/2006	Indonesian Broadcasting Commission with President of the Republic of Indonesia qq. the Minister of Communication and Information	Unacceptable
7.	Decision Number 32/SKLN-V/2007	The KPUD of North Maluku Province with the KPU	Pulled Back
8.	Decision Number 26/SKLN-V/2007	Independent Election Commission of Southeast Aceh Regency with the DPRD Southeast Aceh Regency	Unacceptable
9.	Decision Number 7/SKLN-VI/2008	Bank Indonesia with the Corruption Eradication Commission	Pulled Back
10.	Decision Number 1/SKLN-VI/2008	Election Supervisory Committee for Regent and Vice Regent of Morowali Regency with Election Commission of Morowali Regency	Unacceptable
11.	Decision Number 27/SKLN-VI/2008	The KPUD of North Maluku Province with President of the Republic of Indonesia	Unacceptable
12.	Decision Number 1/SKLN-VIII/2010	The DPRD of Central Maluku Regency with Minister of Home Affairs	Unacceptable
13.	Decision Number 1/SKLN-IX/2011	Regent of Sorong with Mayor of Sorong	Unacceptable
14.	Decision Number 2/SKLN-IX/2011	Regent of North Penajam Paser, Chairman of DPRD	Unacceptable

		of North Penajam Paser with Minister of Forestry	
15.	Decision Number 4/SKLN-IX/2011	National Movement Corruption Eradication (GN-PK) with Ministry of Religion	Unacceptable
16.	Decision Number 6/SKLN-IX/2011	The DPR of Aceh with KPU and KIP Aceh	Pulled Back
17.	Decision Number 3/SKLN-IX/2011	Local Government of East Kutai Regency, east Kalimantan Province with President *casu quo* Minister of Energy and Mineral Resources	Unacceptable
18.	Decision Number 1/SKLN-X/2012	Minister of Home Affairs with the KPU, the KIP Aceh	Unacceptable
19.	Decision Number 5/SKLN-IX/2011	The KKAI with Supreme Court	Unacceptable
20.	Decision Number 2/SKLN-X/2012	President with the DPR & the BPK	Rejected
21.	Decision Number 3/SKLN-X/2012	The KPU with the DPR of Papua and Governor of Papua	Accepted
22.	Decision Number 1/SKLN-XI/2013	Advocate with Ministry of Law and Human Rights *in casu* National Law development Agency	Unacceptable
23.	Decision Number 2/SKLN-XI/2013	General Election Supervisory Committee of North Sumatra Province with Election Supervisory Body (Bawaslu), General Election Commissions (KPU)	Unacceptable
24.	Decision Number 3/SKLN-XI/2013	Election Supervisory Body (Bawaslu) with the DPRD of Nanggroe Aceh Darussalam & Governor of Nanggroe Aceh Darussalam	Unacceptable
25.	Decision Number 1/SKLN-XII/2015	General Election Commissions (KPU) of South Labuhan Batu Regency with General Election Commissions	Pulled Back

		(KPU) of North Sumatera Province	

Source: processed by the researcher from the Decision of 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.

1. 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 such a case, Defendant I files an exception, i.e.: (i) the Petitioner's application is blurred and unclear since the *objectum litis* is not obvious; (ii) the Petitioner does not have any legal status since the disputed authority is not the authority mandated by the constitution; and (iii) the Court does not have any authority to judge the *a quo* case since the disputed authority is not the constitutional authority.

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

a. Declaring that the Petitioner is authorized to organize all stages of General Election of Governor and Vice Governor in Papua, including asking the Papua's People Assembly to provide consideration and approval upon the candidate of Governor and Vice Governor of Papua;

b. Declaring the validity of all candidates that are verified and determined by Papua's House of Representatives;

c. Ordering the Petitioner to accept the candidate that has been verified and determined by Papua's House of Representatives to follow the stages in Papua's People Assembly;

d. Ordering the Petitioner to reopen the registration of candidates within 30 (thirty) days as of the promulgation of the decision and

to continue the stages of General Election for Governor and Vice Governor in accordance with the prevailing laws and regulations.

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.

That by the fulfillment of *subjectum litis* and *objectum litis* in this case, and the existence of direct interest of the Petitioner in the *a quo* case, then the Petitioner and Respondents have the status in the *a quo* case.

2. 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[2] 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 constitutional authority of the Regional House of Representatives as specified in Article 23F of the 1945 Constitution.[3]

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-

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

[3]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.

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 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.

3. 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 Petitioner, the purchase of 7% divested shares of PT. NNT 2010 had incurred interpretation dispute between Petitioner and the House of Representatives (Respondent I) and Finance Auditor Body (Respondent II) that consider that in implementing such an authority, an approval from the House of Representatives should be procured based on the conclusion of Finance Auditor Body's Audit Report. Petitioner assumed the different interpretation between Petitioner and the House of Representatives (Respondent I) and Finance Auditor Body (Respondent II) had caused the Petitioner's constitutional authority to be taken over, reduced, prevented, ignored and/or harmed by the House of Representatives (Respondent I) and Finance Auditor Body (Respondent II). The Petitioner considered its function is obstructed in exercising its constitutional authority as the holder of government authority in State Finance management, i.e. the investment in the form of purchase of 7% divested shares of PT NNT

in 2010 so the State cannot immediately gain the benefit which is aimed for the welfare of Indonesian society.

According to the Petitioner, there was *objectum litis* in State Institution Authority Dispute in the form of letter from the House of Representatives (Respondent I) Number PW.01/9333/DPR RI/X/2011 dated 28 October 2011 and Number AG/9134/DPR RI/X/2011 dated 28 October 2011 as well as Finance Auditor Body's Audit Report (Respondent II). According to the Petitioner, due to a letter from the House of Representatives (Respondent I) and Finance Auditor Body's Audit Report (Respondent II), Petitioner's constitutional authority had been taken over, reduced, prevented, ignored and/or harmed by the House of Representatives (Respondent I) and Finance Auditor Body (Respondent II).

Petitioner assumed that the House of Representatives (Respondent I) and Finance Auditor Body (Respondent II) misinterpreted the meaning of "approval of the House of Representatives" in Article 24 paragraph (7) of State Finance Law, which states: "*In certain conditions in terms of securing national economy, central government may provide loan and/or capital placement with private companies after procuring House of Representatives' approval.*"

In its decision, the Petitioner's petition against Respondent II cannot be accepted. The Court considers that there is no dispute over authority between the Petitioners and the Respondent II, so that Respondent II has no legal standing to be submitted as the Respondent. The petition of the Petitioners to the Respondent I was rejected in its entirety;

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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4. 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.

5. 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.

From the perspective of authority, regional government has two capacities. The first capacity is as the institution performing government administration in the region (*bestuur organ*), i.e. regional government which is the representative of central government in performing government administration. From this perspective, both parties, i.e. Petitioner and Respondent are the institutions performing the authority of central government so according to the Court, this application is directly a dispute between central government against its own element. That matter could not be justified since the dispute requires two parties having an opposite interest.

The second capacity is capacity from the perspective of regulating power (*regelen*). Regional Government consisting of regional government and the Regional House of Representatives constitute state institutions authorized to perform regulating power (*regelling organ*) in certain limits. From this perspective, it should be noticed whether regional government as *regeling organ* has an authority which can be a dispute object among state institutions.

According to the court, the authority of regulating power (to determine) borders is not the authority of the Regional Government. This can be observed in:

Article 18 paragraph (5) of the 1945 Constitution states, "*Regional Government implements the autonomy as widely as*

possible, excluding government affair which, based on the laws, is set out as Central Government affair."

Article 4 paragraph (1) of the Law Number 32 of 2004 concerning Regional Government stated, "*The region establishment as referred to in Article 2 paragraph (1) is set out by the laws.*"

Article 4 paragraph (2) of the Law Number 32 of 2004 concerning Regional Government stated, "*The region establishment law as referred to in paragraph (1) includes among others name, region coverage, border, capital city, authority to perform government administration, appointment of acting regional head, recruitment of Regional House of Representatives members, assignment of employment, funding, equipment and documents as we as regional working unit.*"

In accordance with Article 18 paragraph (5) of the 1945 Constitution as well as Article 4 paragraph (1) and paragraph (2) of Law No. 32 of 2004 concerning Regional Government, the Court considers that due to the border set out by the laws, in this regard the legislation process is the authority of the House of Representatives and the President, and the authority to determine or to set the border is the authority of the law maker and not the authority of the Petitioner or Respondent.

Based on such consideration, *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.

D. 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.:

1. Whether it is true that the application is regarding authority issue;
2. Whether the authority is mandated by the 1945 Constitution;
3. Whether it is true that there is dispute on authority mandated by the 1945 Constitution;
4. 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.:

1. Broad interpretation which includes all state institutions whose name and authority are stated in the 1945 Constitution;
2. Moderate interpretation which only limits what was known as the highest-level institution and high-level institutions;
3. 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.