Consistency of the Constitutional Court's Decisions in Resolving Disputes Over the Authority of State Institutions

Luthfi Widagdo Eddyono

Center for Democratization Studies
Corresponding author. Email: luthfi_we@yahoo.com

ABSTRACT
Based on Article 24C, paragraph (1) of the 1945 Constitution, which is reaffirmed in Article 10, paragraph (1) letters a to d Law 24/2003, one of the powers of the Constitutional Court of the Republic of Indonesia is to decide disputes over the authority of state institutions whose authority is granted by the 1945 Constitution. From 2003 until now, 26 cases of resolving disputes over the authority of state institutions whose authority is granted by the 1945 Constitution have been accepted and have been decided. The verdict results were granted one case, three cases were rejected, 16 were not accepted, five were withdrawn, and one was not the Court authorized. From the variety of decisions in those cases, it is essential to study why this happened. This study is descriptive and analytic. It uses the juridical method and desk study. This paper will focus on the analysis of the decisions of disputes over the authority of state institutions. In addition, this paper will focus on seeing the consistency of the Constitutional Court decisions from the first to the last judgment. It is concluded that the Constitutional Court's decisions in disputes over the authority of state institutions are consistent. In its previous decision 1/SKLN-XVII/2019, the Constitutional Court adhered to its prior decisions. It creates legal certainty in the disputes over the authority of state institutions.

Keywords: *State Institution, the Constitutional Court of the Republic of Indonesia, Disputes on the Authority of State Institutions.*

1. INTRODUCTION

One of the crucial changes in the amendments to the 1945 Constitution made in 1999-2002 was regarding the People's Consultative Assembly (MPR) position. Before the amendment to the 1945 Constitution, the role of the MPR was the highest state institution which was also the holder of the highest power in the state (*die gesamte staatsgewalt liegt allein bei der Majelis*) [1, p. 5]. However, after the amendment to the 1945 Constitution, the MPR was no longer the highest state institution and the holder of the highest people's sovereignty.

According to Jimly Asshiddiqie, the mechanism of relations between state institutions is now horizontal, no longer vertical. Thus, the MPR is no longer an institution with the highest rank in the Indonesian state structure but on a par with other constitutional institutions [2, p. 2].

The institutional relationship that controls and balances each other indeed allows disputes between state institutions, especially those related to constitutional authority. Therefore, according to Jimly Asshidiqqie, a Constitutional Court is needed to examine and decide disputes over constitutional authority between state institutions [2, p. 2].

Achmad Roestandi also conveyed this. According to him, the addition of state institutions and the addition of provisions due to the amendment of the 1945 Constitution causes the potential for disputes between state institutions to increase. Meanwhile, there has been a paradigm shift from MPR supremacy to constitutional supremacy. As a result, there is no longer the highest state institution (previously occupied by the MPR) that holds the dominance of power and has the authority to resolve disputes between state institutions. Therefore, a neutral institution is needed to resolve the conflict [3, p. 6].

According to I Dewa Gede Palguna, the authority to resolve such disputes is usually given to the Constitutional Court because this state institution functions as the guardian of the constitution. Therefore, such power must be presumed to exist, even though the constitution does not explicitly state it [4, p. 17].

Based on Article 24C paragraph (1) of the 1945 Constitution, which is reaffirmed in Article 10 paragraph (1) letters a to d Law 24/2003, one of the powers of the Constitutional Court is to decide disputes over the authority of state institutions whose authority is granted by the 1945 Constitution. From 2003 until now, 26 cases of resolving disputes over the authority of state institutions whose authority is granted by the 1945 Constitution have been accepted and have been decided. The verdict results were granted one case; three were rejected, 16 were not accepted, five were withdrawn, and one was not the Court authorized [5].

This paper will focus on analysing the decisions of disputes over the authority of state institutions whose authority is granted by the 1945 Constitution. In addition, this paper will focus on seeing the consistency of the Constitutional Court decisions from the first to the last judgment.

2. RESEARCH METHOD

This study is descriptive and analytic. It uses the juridical method and desk study. The juridical or formal-legal method is the main characteristic of constitutional studies because it deals with the law [6, p. 15]. The descriptive method is used to describe the resolution of disputes over the authority of state institutions whose authority is granted by the 1945 Constitution by the Constitutional Court. Then, it will be used to examine state institutions whose authority is given by the 1945 Constitution and what powers are given by the 1945 Constitution to state institutions. Thus, this study will find the consistency of the decisións of the Court.

3. FINDINGS AND DISCUSSION

Regarding the regulation of state institutions and relations between state institutions, it is necessary to consider the concept of separation of power. The idea of separation of powers has appeared in Aristotle's work in Politics. The power of a country is divided into three parts: *firs*t, the power to establish outlines of rules, which contain the principles that must be obeyed by citizens, which is called legislative power. *Second*, the power to implement these principles is known as the executive power. *The third* is the power to state whether public members behave following legislative regulations and whether the executive power in implementing legislative regulations does not deviate from the principles contained therein. This power is known as judicial power [7, p. 16].

John Locke developed the separation of powers theory in *Two Treaties of Government*. According to John Locke, the first power is the legislative power which has the right to direct the power of the association to be used for the sustainability of society and its members. The second force that enforces the law to keep it upright is executive power, separate from legislative powers. In addition, it requires power that is natural and by natural human tendencies. Finally, ts power is tasked with resolving disputes between members of society and other communities, or the power that deals with issues of peace and war, namely federative power, outside the legislative and executive powers [7, pp. 55-56].

Another theory of separation of powers, which is more used in modern democracies, is the Montesquieu theory. Power is divided into three (*Trias Politika*): legislative or law-forming power, executive power or power to administer laws, and judicial power. [8]. If the legislative and executive powers are united in the same hands or the same body of rulers, there can be no independence. Also, liberty cannot be enforced if the judicial power is not separated from the legislative and executive powers. If this judicial power is combined with the legislative power, the life and freedom of the state's subjects will be controlled by voluntary supervision because the judge will also be the person who makes laws. When the power to judge is combined with the executive power, the judge will behave with violence and oppression. Everything will end if it is the same people or the same body (whether this body is composed of aristocrats or ordinary people) who will exercise the three kinds of powers" [8, p. 36].

Montesquieu's ideal is that the three functions of state power must be institutionalized in the three organs of the state, respectively. One organ may only perform one function and must not interfere with each other's affairs in an absolute sense [9, p. 2].

Every organ that carries out one of the functions of the state has an equal or equal position. No one branch of power is higher than other branches of power, and there is no domination by one branch of power over other branches of power. Apart from carrying out their respective functions, each branch of administration must also balance each other and carry out mutual supervision of different branches of power. A system of control and supervising between the branches of power (checks and balances system) is necessary so that there is no abuse of authority [3, pp. 106-107].

Jimly Asshiddiqie argues that Montesquieu's idealized conception of the Trias Politica is irrelevant. According to him, it is no longer possible to maintain that the three organizations only deal exclusively with one of the three power functions. The mature reality shows that the relationship between these branches of power can not touch each other. All three are equal and control each other according to the principle of checks and balances" [9, p. 2].

In its development, the authority to form law is given to the legislative branch of power and executive power in the form of state administrative regulations [10, p. 72]. H. Azhary stated that there is not a single country in the world that uses *Trias Politica* purely. In reality, it is almost impossible for every state institution to carry out only one function without interfering with the functions of other state institutions [11, p. 7].

In the context of Indonesia after the amendment of the 1945 Constitution, the powers of each state institution are regulated and detailed in such a way as to balance and limit one another based on the provisions of the constitution (*checks and balances*) [12, p. 6]. Even so, the three functions of state power are not based on the

Trias Politica. Therefore, they are not institutionalized in the three-state organs.

According to Abdul Mukthie Fadjar, the problem of resolving constitutional disputes of state institutions is that neither the 1945 Constitution nor the Law 24/2003 does not mention or explain what is meant by "state institutions whose authority is given by the constitution" so that it may invite several interpretations that is:

a. broad interpretation, so that it includes all state institutions whose names and authorities are mentioned/stated in the 1945 Constitution;
b. moderate interpretation, that is, one that only confines to what was once known as the highest and highest state institutions;
c. narrow interpretation, namely the interpretation that refers implicitly to the provisions of Article 67 of Law no. 24 of 2003 concerning the Constitutional Court [13, p. 120].

Furthermore, the Court can assess a dispute about the authority of state institutions by using Article 61 of Law of the Constitutional Court which covers the following points: (1) The petitioner is a state institution whose authority is given by the 1945 Constitution of the State of the Republic of Indonesia which has direct interest toward the disputed authority. (2) The petitioner needs to elaborate the petition related to its direct interest, elaborate the disputed authority, and elaborate the state institutions who become the respondent [14, p. 258].

3.1. Objectum Litis and Subjectum Litis Disputes on the Authority of State Institutions Based on the Decision of the Constitutional Court

According to Anna Triningsih and Nuzul Qur'aini Mardiya, in resolving disputes between state institutions, two essential things must be explored: the conception of constitutional state institutions and authority [15, p. 778].

The most important decision of the Constitutional Court in explaining what is meant by disputes over the authority of state institutions is Decision Number 004/SKLN-IV/2006, which is also applied to the decisions that follow. Based on Legal Considerations Decision Number 004/SKLN-IV/2006, to determine whether an institution is a state institution as referred to in Article 24C paragraph (1) of the 1945 Constitution, the first thing to consider is whether there are certain powers in the Law. The basis (*objectum litis*) and only then to what institution are these powers given (*subjectum litis*). The phrase "disputes over the authority of state institutions whose authority is granted by the Constitution" also means that only the powers granted by the Constitution are the objectum of disputes over the authority of state institutions by the Constitutional Court [16].

In determining the content and limits of authority which become the objectum litis of a dispute over the authority of state institutions, the Constitutional Court in Decision Number 004/SKLN-IV/2006 argues that it is not only textually interpreting the sound of the provisions of the Constitution which give authority to state institutions particular, but also considering the possibility of implicit powers contained in an essential authority as well as necessary and proper powers to carry out certain principal powers. These powers can be included in law [16].

In Decision on Case Number 002/SKLN-IV/2006 concerning the Dispute of Authority regarding the Request for Reconsideration by the KPUD of the City of Depok to the Supreme Court against the Decision of the Bandung High Court Number 01/pilkada/2005/pt.bdg that was submitted were Badrul Kamal and Syihabuddin Ahmad with the Respondent The General Election Commission for the City of Depok, the Constitutional Court, declared the petition unacceptable (*niet ontvankelijk verklaard*). In other words, its objectum litis and subjectum litis are not compliant. According to the Regional Government Law, the Constitutional Court determines that in regional head elections (Pilkada), KPUD is not part of the KPU as meant in Article 22E of the 1945 Constitution. Thus, even though KPUD is a state institution organizing Pilkada, its authority is not given by law. Basic, as referred to in the 1945 Constitution and Law 24/2003 [17].

In the Decision on Case Number 004/SKLN-IV/ 2006 concerning Disputes over the Authority of State Institutions between the Regent and Deputy Regent of Bekasi Regency and the President of the Republic of Indonesia, the Minister of Home Affairs, and the Regional People's Representative Council. The Constitutional Court declared the Petitioners' petition unacceptable (*niet ontvankelijk verklaard*). The Constitutional Court thinks that regional government is a state institution as referred to in Article 24C of the 1945 Constitution because it is given authority by Article 18 paragraph (2), paragraph (5), and paragraph (6), Article 18A paragraph (1) and paragraph (2), as well as Article 18B paragraph (1) of the 1945 Constitution. According to the Constitutional Court, the authority of the regional head is closely related to the authority of the regional government, because the regional head is the head of the regional government, of course, it would be very inappropriate if the authority of the regional head was not in the framework of exercising the authority owned by the government area. The Regent is an organ of government which is also a state institution in the process of making regional regulations regulated in Law 32/2004, but the authority of the Regent is granted by law, and in that law there is no implicit authority or necessary authority (necessary and proper) to carry out the basic authority of the Regent granted by the Constitution [16].

In Decision on Case Number 027/SKLN-IV/2006 concerning the Dispute of Authority between the Chairperson and Deputy Chairperson of the DPRD Poso Central Sulawesi Province against the Governor of Central Sulawesi Province, the Constitutional Court, stated that the Petitioners' petition was unacceptable (niet

ontvankelijk verklaard). According to the Constitutional Court, by paying close attention to the provisions of Article 18 of the 1945 Constitution, it is clear that the substance which becomes (*objectum litis*) of the petition, namely the authority to propose the appointment of district heads of regions, is the substance which the 1945 Constitution constitutes is submitted to law. Thus, according to the Constitutional Court, the object of the dispute (*objectum litis*) of the petition is not the authority granted by the 1945 Constitution. Therefore, the petition must be declared unacceptable [18].

In Decision Number 030/SKLN-IV/2006 concerning Authority Dispute between the Indonesian Broadcasting Commission (KPI) and the President of the Republic of Indonesia *q.q.* The Minister of Communications and Information Technology, the Constitutional Court, stated that the Petitioner's petition was unacceptable (*niet ontvankelijk verklaard*). According to the Constitutional Court, based on the provisions contained in Article 4 Paragraph (1), Article (5), and Article (7) of the 1945 Constitution, the President *q.q.* The Minister of Communication and Information Technology is a state institution whose authority is given by the 1945 Constitution. Therefore, the Respondent is a *subjectum litis*, but the 1945 Constitution does not mention the constitutional authority to KPI. Thus, the existence of KPI is not a state institution as referred to in Article 24C Paragraph (1) of the 1945 Constitution in conjunction with Article 61 Paragraph (1) of Law 24/2003 [19]. In Decision Number 26/SKLN-V/2007 concerning the Authority Dispute between the Independent Election Commission (KIP) at the Southeast Aceh Regency Level, the Southeast Aceh Regency People's Representative Council (DPR) Against the Independent Election Commission at the Provincial Level of Nanggroe Aceh Darussalam (NAD), the Governor of Nanggroe Aceh Darussalam Province, and the President of the Republic of Indonesia c.q. The Minister of Home Affairs of the Republic of Indonesia, the Constitutional Court, stated that the Petitioners' petition could not be accepted (*niet ontvankelijk verklaard*). According to the Constitutional Court, KIP obtained its authority from Law Number 11 of 2006 concerning Aceh Government, so that provincial/regency/city KIP was not a state institution whose authority was granted by the 1945 Constitution and was also not a national and permanent institution, but only in the Province NAD. The Constitutional Court also considers that the authority of KIP to hold regional head elections with all existing stages is not an *objectum litis* under its jurisdiction [20].

In the Decision on Case Number 1/SKLN-VI/2008 concerning Disputes on the Authority of State Institutions between the Election Supervisory Committee of the Regent and Deputy Regent of Morowali Regency against the General Election Commission (KPU) of Morowali Regency, the Constitutional Court stated that the Petitioner's petition could not be accepted (*niet ontvankelijk verklaard*). It is because according to the Constitutional Court, based on Article 22E Paragraph (5) of the 1945 Constitution, the task of the General Election Commission, which is national, permanent and independent, is to hold general elections to elect members of the DPR, DPD, President and Vice President, and DPRD. Meanwhile, the KPUD's authority in the Pilkada is not based on the order of the 1945 Constitution, but on the demands of the Regional Government Law in conjunction with Law Number 22 of 2007 concerning Election Administrators, so that according to the Constitutional Court, the KPUD cannot qualify as a state institution whose authority is given by the 1945 Constitution. Furthermore, the Constitutional Court is also of the opinion that based on Article 109 of Government Regulation Number 6 of 2005, Panwaslih is an ad hoc institution whose duties end 30 days after the pronouncement of the oath/promise of the Regional Head and Deputy Regional Head. Hence Panwaslih is not qualified as a state institution. Especially state institutions whose authority is granted by the 1945 Constitution [21].

Of the various decisions, the Constitutional Court adheres to the opinion that what is primarily to be determined first are certain powers in the Basic Law (*objectum litis*) and only then to what institution are those powers given (*subjectum litis*). However, there is a possibility that there may be implicit powers contained in an essential authority and necessary and proper powers to carry out certain principal powers. It was stated on Decision 3/SKLN-X/2012. [22]

According to Anna Triningsih and Nuzul Qur'aini Mardiya, to determine *subjectum litis*, thoroughness is needed since there are institutions whose names are explicitly mentioned in the provision and some others are only mentioned by their function. There are institutions or organs whose name, a lower-level regulation, will govern the role or authority. An authority that is not mentioned in a constitution, but it is necessary to run its constitutional authority given explicitly is an authority granted by the constitution, although it is then clearly explained in a law as the implementation of the 1945 Constitution. The regulation of a material of an authority does not automatically make it become a non-constitutional authority. On the other hand, if an authority is mentioned in law, it does not mean that the law becomes the source of that authority. The problem is whether that authority is inherent or not, and the authority needs to be realized as it is clearly assigned by the constitution. [14, p. 258]

Furthermore, it will also discuss the last decision of the Constitutional Court, which Decision Number 1/SKLN-XVII/2019. It is crucial to see the consistency of opinions in resolving disputes over the authority of state institutions from the first to the last decision.

3.2. Case 1/SKLN-XVII/2019 and Consistency of the Opinion of the Constitutional Court in Resolving Disputes on the Authority of State Institutions

The Constitutional Court has received an application dated January 8, 2019, from 1. Gusti Kanjeng Ratu Hemas, who describes herself as Deputy Chairman of the DPD RI for the 2014-2019 Period (Applicant I); 2. Prof. Dr. Farouk Muhammad described himself as Deputy Chair of the DPD for the 2014-2019 Period (Petitioner II); and 3. Hj. Nurmawati Dewi Bantilan, S.E. described herself as a DPD Member 2014-2019 (Petitioner III). The application has been recorded in the Constitutional Case Registration Book with Number 1/SKLN-XVII/2019, dated January 11, 2019, regarding the request for a Dispute Authority of State Institutions Council of Regional Representatives of the Republic of Indonesia for the 2014-2019 Period against the Regional Representative Council of the Republic of Indonesia for the April 2017 Period- September 2019 [23].

In Decision Number 1/SKLN-XVII/2019, the Constitutional Court thinks that the provisions of Article 61 of the Constitutional Court Law state: (1) 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 authorities in dispute. (2) The applicant must clearly describe in his petition the applicant's direct interests, describe the authorities in dispute, and clearly state the state institution that is the respondent. [23]

The legal considerations for the Constitutional Court Decision Number 04/SKLN-IV/2006 have given reviews in essence, between the institutions and the authorities in dispute have an inseparable four relationship because what is disputed is the authority of a state institution whose authority is given by the 1945 Constitution, not a disagreement that occurred. in internal state institutions. In their petition, the Petitioners only partially cited the legal considerations of the Constitutional Court Decision Number 04/SKLN-IV/2006, namely that it does not matter who is in dispute but what is disputed [vide Petitioners' petition page 6], even though the considerations cited at the Court discussing matters related to state institutions, especially contradicts over the authority of state institutions. However, the Petitioners did not mention the Court's consideration regarding the object of the dispute, which explicitly stated that the disputed authority was the authority granted by the 1945 Constitution [23].

Concerning the legal considerations of the Constitutional Court Decision Number 04/SKLN-IV/2006, disputes over the authority of state institutions cannot be interpreted other than state institutions and their powers are granted by the 1945 Constitution. Apart from legal considerations, the Constitutional Court Decision Number 04/SKLN-IV/2006, which followed by subsequent Court decisions, there is also a Constitutional Court decision Number 3/SKLN-X/2012 in which the institution that is the Respondent is not a state institution whose authority is given by the 1945 Constitution, in this case, the Papua People's Representative Council (DPRP) in which the DPRP as the Respondent issues Special Regional Regulations for Papua Province but not included in Special Regional Regulations related to the Election of Governors and Deputy Governors and making decisions containing the stipulation of a Schedule of 5 Stages for the Implementation of the Election for Governors and Deputy Governors of Papua Province for the 2012-2017 Period because it is based on the provisions of Article 22E of the 1945 Constitution who is authorized to hold General Elections that including the elections for regional heads and deputy regional heads is the KPU. [23]

In the legal consideration of the decision, the Constitutional Court stated that what was in dispute was the authority to organize the General Election, which was given to the KPU by the 1945 Constitution, which was taken over by the DPRP based on the Local Regulation (Perdasus). In this regard, in the legal consideration of the Constitutional Court Decision Number 81/PUU-VIII/2010 dated March 2, 2011, in essence, the Court stated that regional head elections are the authority of the KPU and are not included in the specificity of Papua Province. Because the KPU's power in organizing the General Election is determined in the 1945 Constitution, the Court requests the KPU. [23] Concerning the Petitioners' petition for case 1/SKLN-XVII/2019, according to the Court, the Petitioners are not a state institution in the sense of a state institution *in casu* DPD but, as explained in their petition, are the DPD leaders exercising the DPD's authority for the 2014-2019 period; The Respondent is also not a state institution in the sense of a state institution in casu DPD but, as explained in his petition, is the DPD leader exercising the DPD's authority for the 2017-2019 Period. [23]

According to the Constitutional Court, the object in dispute is also or not related to the authority of the DPD, whose power is given by the 1945 Constitution, which other state institutions took over, but rather an internal dispute regarding the dismissal of Petitioner I and Petitioner II as Deputy Chair of the DPD which cannot be separated from the personal dimension between warring parties. If following the arguments presented in the Petitioners' argument comparing the authority of the Constitutional Court of other countries such as Germany or South Korea, according to the Constitutional Court, such power is regulated in the constitutions of the two countries. Meanwhile, the power of the Constitutional Court has been clearly and stated in the 1945 Constitution, the Constitutional Court Law, and confirmed in the legal considerations of the Constitutional Court Decision Number 04/SKLN-IV/2006 so that it cannot be interpreted differently. [23]

According to the Constitutional Court, the petition does not include disputes over the authority of state institutions whose authority is granted by the Constitution as referred to in Article 24C paragraph (1) of the 1945 Constitution, Article 61 of the Constitutional Court Law, as well as the Constitutional Court Decision

Number 04/SKLN-IV/2006, but internal disputes between the Petitioners as the Head of the DPD for the 2014-2019 Period and the Respondent as the Chair of the DPD for the April 2017-September 2019 Period. Thus, following Article 48A paragraph (1) letter seven a of the Constitutional Court Law, the Constitutional Court is not authorized to judge the petitions of the Petitioner a quo so that by Article 48 paragraph (2) of the Constitutional Court Law, the Court issued a Decree. [23]

4. CONCLUSION

Decision Number 004/ SKLN-IV/2006 dated July 12, 2006, has tried to formulate the word "state institution whose authority is granted by the Constitution" on Article 24C paragraph (1) of the 1945 Constitution. The Constitutional Court interpreted grammatically. According to the Constitutional Court, to determine whether an institution is a state institution as referred to in Article 24C paragraph (1) of the 1945 Constitution, the first thing to pay attention to is the existence of certain powers in the Constitution and only then to what institutions are those powers is given. Because the authority is limited and for certain things, the nature of state institutions cannot be determined in general but is related to the authority given, or in other words, an institution called by any name is a state institution according to the meaning of Article 24C paragraph (1) 1945 Constitution if the institution issues or disputes the authority granted by the 1945 Constitution.

The authority granted by the Constitution can be interpreted as not only textual but also includes implicit authority contained in a primary authority and the authority required to carry out the prior authority. However, not all of the powers in the law, because it is derived from the Constitution, are automatically included in the definition of which authority is granted by the UUD as referred to in Article 24C paragraph (1) of the 1945 Constitution. It is stated in Decision 3/SKLN-X/2012.

The consistency of the Constitutional Court's decisions in disputes over the authority of state institutions is seen. In its last judgment 1/SKLN-XVII/2019, the Constitutional Court adhered to its previous decisions. This creates legal certainty in the disputes over the authority of state institutions.

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