

Development of Constitutional Interpretation by Constitutional Court of Indonesia in the Context of State Institutions' Authority Dispute Settlement

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Abstract: The interpretation of the constitution in the constitutional practices of the Republic of Indonesia is currently carried out through the authority possessed by the Constitutional Court. The authority of the Constitutional Court in interpreting the constitution was first formulated during the third amendment of the 1945 Constitution of the Republic of Indonesia in 2001. Given the authority, the Constitutional Court can interpret the authority dispute among the state institutions. Along with its development, the interpretation of the constitution by the Constitutional Court through the handling of authority disputes among the state institutions has experienced developmental dynamics that would be interesting to be examined closely. There are times when the Constitutional Court extends or narrows down the meaning of or the interpretation of the state institutions and the disputed authority granted by the 1945 Constitution. Based on this problem, this research is intended in to further analyze the development of constitutional interpretation by the Constitutional Court in the context of handling disputes over the authority of state institutions. In order to answer the problem completely, in this study, a normative juridical research is used. Normative juridical research relies on various statutory provisions and library materials as the secondary data to solve the problem under study. The results showed that the development of constitutional interpretation by the Constitutional Court is characterized by several legal problems which need serious attention related to the Indonesian constitutional system. The legal problem lies in the inconsistent attitude of the Constitutional Court in interpreting the phrases "state institution" and "authority granted by the Constitution" as determined in Article 24C section (1) of the 1945 Constitution of the Republic of Indonesia.

Keyword: Constitutional Court, State Institutions, constitutional interpretation, state administration, authority dispute.

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I. INTRODUCTION

The interpretation of the constitution is a method used in order to find the true meaning of each provision in the constitution through legal discovery efforts (*rechtsvinding*) based on the basic law of a country. Based on the prevailing practices in Indonesia, prior to the constitution amendment, there were no institutions that explicitly had the authority to interpret the intentions of each constitutional provision. As a consequence, the interpretation of the constitution is considered as part of the task of forming the constitution itself where such matters are placed under the authority of a representative institution or People's Consultative Assembly. But after the third amendment to the 1945 Constitution, the authority to interpret the constitution especially in the context of disputes over the authority of state institutions was formulated as the authority of the Constitutional Court. This is in line with the efforts to establish the Constitutional Court in 2001 which was then crystallized in 2003.

Along with the establishment of the Constitutional Court as one of the institutions that exercise judicial power, the Supreme Court is no longer a single top authority in the field of judicial power. Furthermore, based on Article 24C section (1) of the 1945 Constitution of the Republic of Indonesia, that the Constitutional Court has the authority to adjudicate at the first and last degree, whose decisions are final to examine the acts against the 1945 Constitution, decide on the state institutions' authority dispute whose authority is granted by the Constitution, decide upon the dissolution of political parties, and decide upon election result disputes. Based on these authorities, one of the crucial Constitutional Court's competences relating to the interpretation the constitution is a power to decide on state institutions' authority dispute whose authority is given by the 1945 Constitution.

Constitutionally, the authority of the Constitutional Court in resolving state institutions' authority dispute cases is classified as a new authority in the constitutional system of the Republic of Indonesia, which is known along with the establishment of the Constitutional Court. However, in the global perspective, the concept of this authority has long been raised and applied in a number of countries such as Austria which places the state institutions' authority dispute settlement under the Constitutional Court. The authority of the Austrian Constitutional Court in completing the state institutions' authority dispute is regulated in Article 138 of the Austrian Constitution, which is referred to the *Bundes-Verfassungsgesetz* (B-VG). Regulations that are more or less the same can also be seen in the German federal constitution which regulates the completion of the state institutions' authority dispute in its constitution. German federal judicial power is regulated in Article 92 Chapter IX of Judiciary of the Constitution of the Federal Republic of Germany which states "judicial power is vested in the judges; it is exercised by the Federal Constitutional Court, by the federal courts provided for in this Constitution, and by the courts of the States [Länder]".

Likewise, the practice of the South Korean state administration also accommodates the state institutions' authority dispute settlement mechanism in its constitution as stipulated in Article 111 section (1) of the South Korean Constitution in 1987. According to the provisions of Article 111 (1) (Competence, Appointment) Chapter VI of The Constitution of the Republic of Korea Amended by October 29, 1987, the South Korean Constitutional Court has the authority to adjudicate the following matters: (1) The unconstitutionality of law upon request of the courts; (2) Impeachment; (3) Dissolution of a political party; (4) Disputes about the jurisdictions between state agencies, between state agencies and local governments, and between local governments; and (5) Petitions relating to the Constitution as prescribed by law.

By this authority, the South Korean Constitutional Court defines the limits of authority granted to each agency (Jibong Lim, 2002 and Gavin Healy, 2000). Compared to the constitutional courts in East and Southeast Asia, such as the Constitutional Court in Indonesia, Taiwan, Thailand, and Mongolia, it can be concluded that the Constitutional Court of Korea is the most important and most influential constitutional court (Tom Ginsburg, 2009). Generally, in these countries, constitutional courts are formed during the transition to democracy (Tom Ginsburg, 2008). In its historical record, constitutional courts have developed throughout the world in the last few decades. It was initially understood through legal theory introduced by Hans Kelsen in the 1920 Austrian Constitution and later adopted by post-war Germany and Italy. Furthermore, it has expanded to Southern Europe, Asia and Eastern Europe (Nuno Garaupa, et.al, 2011).

The adoption of the authority to interpret the constitution through the settlement of state institutions' authority dispute cases, especially with the placement of authority through the judiciary should be welcomed as a formal mechanism in which each decision will be based more on formal juridical considerations and with the existence of a more independent judicial institution. As stated by Charles Gardner Geyh (2012), there are at least three factors justifying the independence of the judiciary. First, the independence of judges better lies in the effort to respect and determine the legal process (due process). Second, the independence of judges is better in efforts to manage justice on a case-by-case basis. Third, the independence of judges is still better in upholding the law. This form of authority can be interpreted in the context of affirming the function of the Constitutional Court in addition to other authorities such as examining laws against the 1945 Constitution and in the context of maintaining constitutional values. The state institutions' authority dispute settlement mechanism through judicial institutions is believed to have truth and justice values that can be legally accounted given the principles of independence, autonomous, and neutrality which are inherent in the judiciary. The independence and uprightness of judges are essential to the impartial administration of justice, and a great security to the rights and liberties of the people" (G. Alan Tarr, 2012).

The interpretation of the constitution by the Constitutional Court in the state institutions' authority dispute is always based on two legal considerations before entering into the substance or subject matter. The two legal considerations referred to are:

- a. Legal considerations related to whether the Constitutional Court has the authority to examine, hear, and decide upon the state institutions' authority dispute case; and
- b. Legal considerations related to whether the applicant has a legal standing to submit the intended claims.

These two legal considerations are always first studied in depth before entering the subject matter. As for legal considerations regarding the authority of the Constitutional Court in examining, hearing, and deciding cases submitted, the Constitutional Court bases its deliberations on the provisions of Article 24C section (1) of the 1945 Constitution of the Republic of Indonesia in conjunction with Article 10 section (1) letter (B) of Law Number 24 of 2003 regarding the Constitutional Court, which stated that one of the authorities of the Constitutional Court was to decide upon a state institutions' authority dispute case whose authority was granted by the 1945 Constitution of the Republic of Indonesia.

After the legal considerations are carried out, then the Constitutional Court will look further for the next legal considerations, namely regarding the applicant's legal standing. Related to legal considerations whether the applicant has a legal standing to submit an application in the state institutions' authority dispute

case or not, the Constitutional Court normally bases its consideration on the provisions of Article 61 section (1) of the Constitutional Court Regulation where it is determined that the applicant is a state institution whose authority is granted by the Constitution and has a direct interest in the disputed authority. Thus, there are two main things that must be considered to determine whether a state institution can be qualified as an applicant in the state institutions' authority dispute case. First, regarding the existence of the institution which is whether it is included in the category of state institutions whose authority is given by the Constitution or not. Second, regarding to whether the state institution has a direct interest in the disputed authority or not.

Specifically, regarding the category of state institutions that have legal standing as the applicants and the respondent is explained further in Constitutional Court Regulation Number 08/ PMK/2006. According to the provisions of Article 2 section (1), state institutions that are able to be the applicants are the People's Representative Council (Dewan Perwakilan Rakyat), Regional Representative Council (Dewan Perwakilan Daerah), People's Consultative Assembly (Majelis Permusyawaratan Rakyat), the President, Audit Board of Indonesia (Badan Pemeriksa Keuangan), Regional Government and other state institutions whose authority is granted by the 1945 Constitution of the Republic of Indonesia. These provisions are always referred by the Constitutional Court in determining a state institution that can be the applicant or respondent in every authority dispute at the Court. After the two legal considerations are completely answered by the Constitutional Court, it will be followed by an examination of the subject matter of the proposed state institutions' authority dispute.

Judging from the dynamics of handling state institutions' authority dispute cases by the Constitutional Court, so far it has been recorded that at least 25 state institutions' authority dispute cases have been handled by the Constitutional Court since it was established in 2003 until now (2019). This means, in a period of approximately 15 years, the Court has handled and decided as many as 25 cases of state institutions' authority disputes. Therefore, it can be concluded that since its establishment, the Constitutional Court has done 25 interpretations of the constitution through the handling of state institutions' authority dispute cases. Due to that, this paper is intended to further analyze the development of constitutional interpretation by the constitutional court in the context of handling disputes over the authority of state institutions.

II. RESEARCH METHODS

The research method used to address the problems in this study is normative juridical legal research with a focus on several case studies as reference materials. Normative juridical research uses secondary data as the main study material. The secondary data used consists of several Constitutional Court decisions and various related references and legislations. A number of constitutional court decisions are used as facts to relate them to the provisions of the constitutional interpretation as outlined in the constitution of the Republic of Indonesia. Furthermore, an in-depth and thorough analysis is carried out to find the most appropriate answers and conclusions as the final results of the study.

III. DISCUSSION

Theoretical Perspectives on Constitutional Interpretation

The discussion on the interpretation of the constitution will be a very urgent matter, starting with a description related to the interpretation in the legal context. Because after all, the constitution is part of the law. In this connection, Satjipto Rahardjo (2009) argues that the term interpretation in law is a function of written law to make legal constructions. It was further stated that formulation and interpretation are two sides of the same thing, which is law.

Sudikno Mertokusumo (2009) explained that interpretation in the legal context can be understood as an effort to look for law. The existence of an interpretation is needed by considering that written law, especially legislation, is not always immune from obscurity and incompleteness. Therefore, in terms of obscurity and incompleteness of the written law, there should be an interpretation mechanism to address the problems. Based on that thought, it can be explained that the interpretation from a legal perspective is a method of legal discovery (*rechtsvinding*) aimed at answering the obscurity and incompleteness of regulations to explaining a concrete event. Judging from this definition, it appears clearly that legal interpretation is to complete the shortcomings and ambiguities of law. When an existing law is incomplete and unclear to resolve the concrete event, the interpretation becomes a solution to answer the existing legal problem.

Therefore, there are a number of views that suggest the types of interpretation methods in law that are commonly known so far. According to Jimly Asshiddiqie (2010), there are at least nine types of interpretation theories that are often used in the field of legal science, namely:

- a. *Letterlijk* interpretation theory or literal interpretation, i.e. an interpretation that emphasizes the meaning of a written word or term.
- b. Grammatical interpretation theory or language interpretation, i.e. an interpretation that emphasizes the meaning of the text of a rule of law. Such meaning is generally applied to a standard text.

- c. Historical interpretation theory, i.e. an interpretation that covers the history of the formulation of the law and the history of law in general.
- d. Sociological interpretation theory, i.e. an interpretation directed in the social context when the text is formulated.
- e. Socio-historical interpretation theory, i.e. an interpretation that focuses on the historical context of society that affects the formulation of the legal text.
- f. Philosophical interpretation theory, i.e. an interpretation that emphasizes the philosophical aspects affecting the basis of the formation of legal texts.
- g. Teleological interpretation theory, i.e. an interpretation that emphasizes the decipherment or formulation of legal rules according to the purpose and the scope.
- h. Holistic interpretation theory, i.e. an interpretation that emphasizes the overall aspects of the spirit of the legal text.
- i. Holistic thematic-systematic holistic interpretation theory.

Another perspective that also provides a description related to the types of interpretation methods is the one expressed by Sudikno Mertokusumo. According to Sudikno Mertokusumo who used the term *interpretasi* (interpretation) as another term of *penafsiran* (exegesis), from the beginning, the method of interpretation can be divided into four parts which then two other types of interpretation were added. The types of interpretation according to Sudiko Mertokusumo are as follow:

- a. Grammatical interpretation;
Grammatical interpretation is an interpretation based on the language contained in a regulation.
- b. Systematic or logical interpretation;
This particular type of interpretation is an interpretation of the laws and regulations carried out by linking it with legal regulations or other laws or within the entire legal system.
- c. Historical interpretation;
This is an interpretation which bases the meaning of law according to the occurrence of the law by examining the history of the rule of law.
- d. Teleological or sociological interpretation;
This interpretation is based on the purpose and nature of the formation of the regulation.
- e. Comparative interpretation; and
This interpretation is carried out by comparing a provision with other provisions in many countries in order to seek clarification of the legal formulation.
- f. Anticipatory or futuristic interpretation.

This interpretation is done by finding a solution to a legal problem through a regulation that doesn't have a binding capacity yet or has not been officially valid. Satjipto Rahardjo stated his views on Fitzgerald's opinion, who argued that basically interpretation can be divided into two parts, namely:

- a. Literal interpretation
This interpretation is an interpretation that solely uses the sentence contained in a rule as a guide.
- b. Functional interpretation
This interpretation is a form of interpretation intended to understand the true meaning of a regulation by using various sources that are considered to be able to provide further explanation. The point is, this interpretation is free because it does not only base the interpretation solely through sentences contained in the regulation.

Referring to the description above, it can be stated that constitutional interpretation is an interpretation made for the provisions contained in the regulation or constitution of a country. Therefore, interpreting the constitution is an effort to give the meaning of a term, collection of terms, or words in the formulation of an article or section contained in a constitution to explain something that is considered unclear (Rosjidi Ranggawidjaja, 1996).

To date, the term constitutional interpretation is frequently equated with the term interpretation of the law. However, if further study is done, especially in the context of the meaning of the constitution and law, then the two terms cannot be equated just like that. The meaning of law is far broader than the constitution. The law covers both what is written and unwritten. In addition, written law also consists of several forms such as the National Constitution (*Undang-Undang Dasar*), the Acts (*Undang-Undang*), and a number of other written legal forms.

The constitution is usually interpreted as the basic law of a country, both written and unwritten. The written basic law of a country is then referred to as the National Constitution (*Undang-Undang Dasar*). Therefore, theoretically, the National Constitution is only part of the constitution. However, in practice so far, the term National Constitution has often been equated with the constitution. This is inseparable from the idea that there are no fundamental differences found between existing constitution and the National Constitution

other than because it is the written form of the National Constitution. Which then means, constitution and the National Constitution are perceived to contain the same meaning, namely the legal basis of a country.

Based on this understanding, it can be argued that the interpretation of law has a broader meaning than the interpretation of the constitution. Interpretation of law means that it is an interpretation of the law, both written and unwritten, both to the constitution and other laws and regulations. The interpretation of the constitution is only limited to the interpretation of a country's legal basis. If it is drawn in the context of Indonesia, which the constitution is often equated with the National Constitution, then the interpretation of the constitution can be defined as an interpretation of the 1945 Constitution of the Republic of Indonesia as the legal basis for the Indonesian people.

Mechanism of Constitutional Interpretation by the Constitutional Court of the Republic of Indonesia

Applicant and Respondent

All cases submitted to be settled in the Constitutional Court, including state institutions' authority disputes are submitted in a written request, not a lawsuit. Besides that, the condition of stating the requested respondent explicitly is only found in the state institutions' authority dispute case, whereas in the case of the dissolution of political parties, disputes over the results of general elections, and impeachment, the existence of the respondent was only implicitly stated. Even in the examination of the acts against the 1945 Constitution, there was no respondent party. In this case, the existence of the House of Representatives and the Government (President) is only a provider of information acting as a legislator. The mechanism of the settlement of state institutions' authority disputes at the Constitutional Court is fully regulated in Constitutional Court Regulation Number 08/PMK/2006. According to the Article 2 section (1) of the Regulation, those who can be the applicant or the respondent in state institutions' authority disputes are the People's Representative Council (Dewan Perwakilan Rakyat), Regional Representative Council (Dewan Perwakilan Daerah), People's Consultative Assembly (Majelis Permusyawaratan Rakyat), the President, Audit Board of Indonesia (Badan Pemeriksa Keuangan), Regional Government and other state institutions whose authority is granted by the 1945 Constitution of the Republic of Indonesia in which the dispute focuses on the authority granted or determined by the 1945 Constitution of the Republic of Indonesia.

Procedure for Submitting an Application

Regarding the application process and procedure for filing a request of state institutions' authority dispute case, there are two related articles that should be considered, namely Article 5 and Article 6 of Constitutional Court Regulation 08/PMK/2006. According to the Article 5, section (1), the application for the state institutions' authority dispute must be written in Indonesian language and must contain several conditions as follows: the identity of the state institution as the applicant; the name and address of the responding state institution; clear description of the disputed authority; direct interest of the applicant on the authority; and the requests that are required to be decided.

The application should be submitted with 12 (twelve) copies and signed by the President or the head of the institution who submit the request or their attorney. Besides making it in a written form, the application may also be made in digital forms stored electronically in storage media such as diskettes, compact disks, or the like. In accordance with the Article 5 section (4) of Constitutional Court Regulation Number 08/PMK/2006, the state institutions' authority dispute request is filed without being charged. This is one of the advantages of the litigation process at the Constitutional Court where the litigation fee is not charged to the parties, but rather to the state in the Constitutional Court's budget. The legal breakthrough made by the Constitutional Court related to the fee waiver can be appreciated as one of the efforts to realize a simple, fast and low-cost trial and the principle of justice for all (Janpatar Simamora, 2013).

Administrative Checking and Registration, Scheduling and Summons

The process of checking the completeness of the administration and all attachments is carried out by the Registrar of the Constitutional Court. If during the administrative checking process, a number of deficiencies were found, then the applicant is required to complete it within 7 (seven) working days from the date when the incompleteness notification is received by the applicant. However, if during the specified period, it turns out that the applicant did not complete the request, the Registrar will issue a deed stating that the request was not registered and returned to the applicant.

If the application is deemed to have fulfilled the requirements, the Registrar records the request in the Constitutional Case Registration Book accompanied by the case numbering, and then grants a Case Registration Deed to the applicant as the evidence that the case has been registered at the Constitutional Court. Furthermore, the Constitutional Court through the Summoner with an official report will inform the application that has been registered to the respondent no later than 7 (seven) working days after the request is recorded in the registration book. In the subsequent period, if the applicant withdraws the registered application but the Panel of Judges has

not yet been determined, the Registrar will issue the Registration Cancellation Deed and henceforth it must be notified to the respondent.

Preliminary Examination, Trial Examination, and Proof

According to Article 11 section (1) of Constitutional Court Regulation Number 08/PMK/2006, the preliminary examination is conducted in a hearing which is declared open to the public by a Panel of Judges consisting of at least 3 (three) judges or by a Plenary of Judges who at least consist of 7 (seven) judges of the Constitutional Court and has to be attended by the applicant and /or their attorney, unless it is a request for an interim decision, then the respondent and /or their attorney must also attend it. During the preliminary examination, the Panel of Judges do the following:

- a. Check the completeness of the application;
- b. Request the applicant's explanation about the application material which includes the authority of the Constitutional Court, the legal standing of the applicant and the main points of the application;
- c. Must provide advice to the applicant, both regarding the completeness of administration, the application substances, and the orderly implementation of the trial;
- d. Must hear the statement of the respondent in terms of request to suspend the exercise of the disputed authority;
- e. Examine the completeness of the evidence that has been and will be submitted by the applicant.

The first session of the preliminary examination is conducted to check the completeness and clarity of the application. At first glance, the inspection looks like that it duplicates the Registrar's authority in checking the completeness of the application. However, this is very different. In the Preliminary Examination conducted by the panel of judges of the Constitutional Court, it no longer concerns the completeness of the administration of the petition, but rather, it concerns the substance of the petition, in order to see the basics of the legal standing and the description of *posita* and *petitum* of the petition. In this examination phase, it will be determined whether an application is sufficiently to be continued to the plenary examination which must be attended by the respondent.

Furthermore, the trial examination mechanism is conducted in a plenary consisting of at least 7 (seven) judges in a open and public hearing. Based on the results of the Judges' Deliberation Meeting, the trial examination may be conducted by a panel consisting of at least 3 (three) judges. The objectives of the trial examination are:

- a. To examine the application substance submitted by the applicant;
- b. To listen the information and/or response of the respondent;
- c. To examine and ratify written evidences and others submitted by the applicant, the respondent, or directly related parties;
- d. To listen the statements of related parties if those exist and/or are needed by the Court, both who have direct or indirect interests;
- e. To listen the statements of experts and witnesses, both from the applicant and by the respondent.

Concerning the evidence, in principle, the burden of proof is directed at the applicant. However, if a strong reason is found, the burden of proof can also be directed at the respondent. As long as it is considered necessary by the judge, the related parties may also be asked to provide information and/or submit other evidence. The task of the judge is to assess whether a piece of evidence will be accepted or not as well as assessing the strength of the evidence according to the law. If it is then considered necessary to conduct a local examination by the panel of judges, then it can be done by inviting the parties. Regarding the costs required by the Constitutional Court in the process of local examination, it will be counted in the Constitutional Court's budget and the costs required by the parties to attend the local examination become the party's responsibility.

Judge Consultation Meeting and Decision

Judge Consultation Meeting regulated in Article 20 to Article 23 of Constitutional Court Regulation Number 08/PMK/2006. According to Article 20, Judge Consultation Meeting is conducted in a closed and confidential forum led by the Chief Justice of the Constitutional Court. If the Chief Justice of the Constitutional Court is absent, then the Meeting is led by the Vice Chairman. If both the Chief Justice and the Vice are absent, the Consultation Meeting is led by the temporary Chairman chosen from and by the judges.

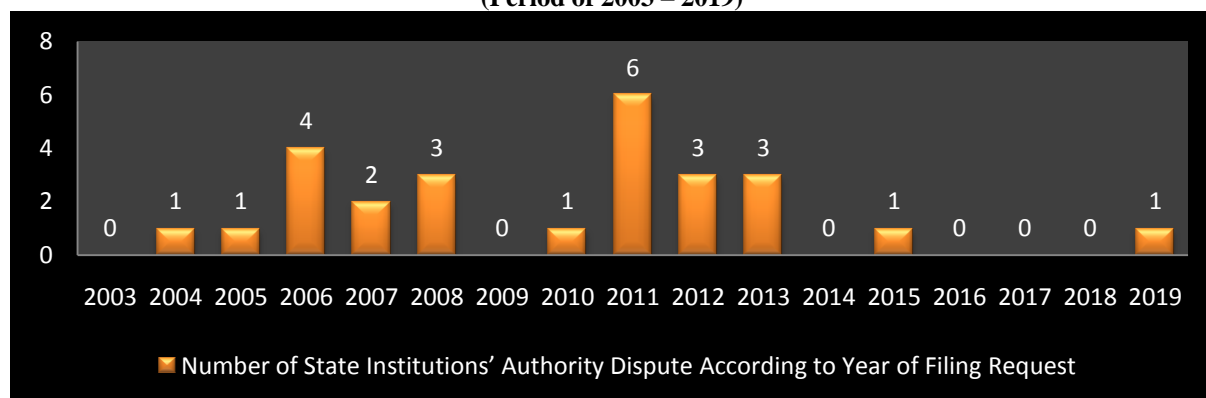
The implementation of the Consultation Meeting is intended for decision making or other purposes. The Judge Consultation Meeting is aimed at making decisions but is not limited to decisions concerning the mechanism of examination and continuation of the cases, interim decisions, and final decisions attended by at least 7 (seven) judges. Decision making is carried out using deliberations to reach consensus. This means that the Chairperson of the Assembly must first try to bring closer different opinions in the hope of to reach a unified vote and ultimately to increase the legitimacy of the decision (Maruarar Siahaan, 2008). When the consensus is not reached, the decision-making process is carried out by a voting mechanism with a majority vote and if the

voting mechanism is failed, the Chairperson of the Judge Consultation Meeting becomes the final and determinant judge to take decision.

The Dynamics of Interpretation of the Constitution by the Constitutional Court of the Republic of Indonesia

The dynamics of constitutional interpretation by the Constitutional Court in the state institutions' authority dispute case can be seen by examining the decisions issued by the Constitutional Court itself. Since the Constitutional Court was formed in 2003 until now (2019), there were 25 (twenty-five) state institutions' authority dispute cases that had been decided by the Constitutional Court. If the statistics of handling of state institutions' authority dispute cases compared with the statistics of other cases in the Constitutional Court, such as judicial review or disputes concerning the results of general elections, it can be said that state institutions' authority dispute cases are the least. If it is assessed from the number of requests for the settlement, the amount is varied. However, if it is seen from the highest and lowest number, it can be stated that the submission of application for state institutions' authority dispute settlement in 2011 was the most with 6 requests. Meanwhile in 2003, 2009, 2014, 2016, 2017 and 2018, the request was absent. More details about the statistics of state institutions' authority dispute cases from 2003 -2019 can be seen in the following matrix.

Graph 1
Number of State Institutions' Authority Dispute According to Year of Filing Request
(Period of 2003 – 2019)

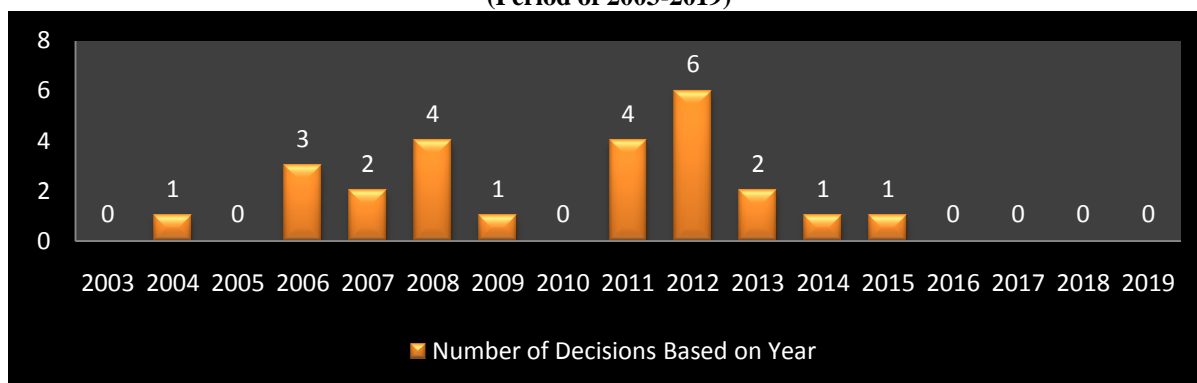


Each state institutions' authority dispute case submitted to the Constitutional Court cannot always be completed in the same year when the application was filed. It means that it is possible for the court to take decision in next year. A good example can be seen from the case in 2005 where the Constitutional Court received one request for a state institutions' authority dispute settlement, but in that year none of the Constitutional Court's decisions were found. Likewise, in 2006, the Constitutional Court received four requests, however, in that year, only three Constitutional Court decisions were made. This kind of condition can occur due to various factors, particularly because of the readiness and consideration of the Constitutional Court in completing the case.

The process of handling a case at the Constitutional Court can be quickly conducted if according to the Constitutional Court's consideration the case needs to be prioritized. On the contrary, if a case is considered to be settled in a sufficiently long time then the case does not has to be categorized as a priority to be resolved. That is why it is possible for the completion of the case more quickly or it will need more time. It fully depends on the consideration of the Constitutional Court in handling the case. The statistics of the Constitutional Court's decision in the state institutions' authority dispute case based on the year of the decision taken can be seen in the following graph.

Graph 2

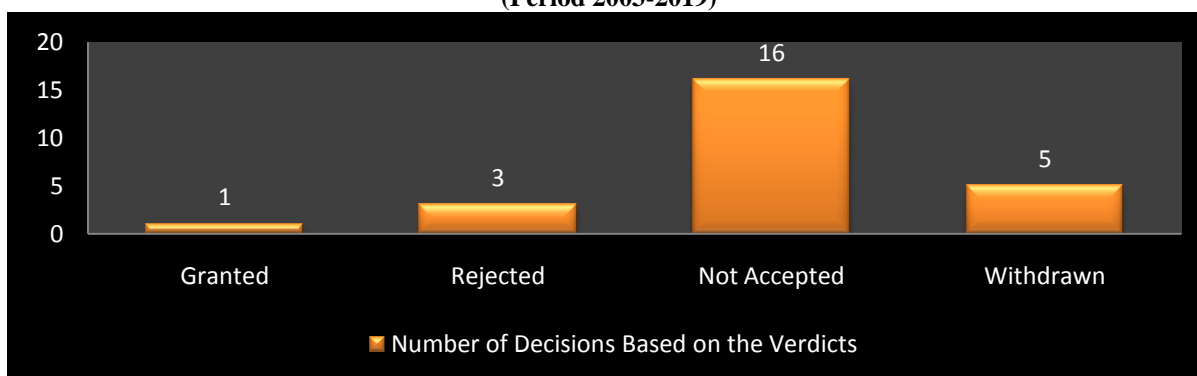
The Number of Constitutional Court Decisions in State Institutions' Authority Dispute According to the Year of the Decision (Period of 2003-2019)



Based on the judgments of all state institutions' authority dispute cases handled by the Constitutional Court so far, there is only one case which was accepted. The rest of them were rejected and 16 cases were unacceptable and the rest of five cases were withdrawn by the applicant. From these data, it is clear that decisions which cannot be accepted are more than other decisions. The only state institutions' authority dispute case which was granted by the court is the case No. 3/SKLN-X/2012. The case was submitted by the General Elections Commission against the Papua Provincial Government (People's Representative Council of Papua and the Governor of Papua).

The statistics of the Constitutional Court's decision in the state institutions' authority dispute case based on the verdicts can be seen in the following graph.

Graph 3
Number of Constitutional Court Decisions on State Institutions' Authority Dispute Based on the Verdicts (Period 2003-2019)



The implementation of constitutional interpretation by the Constitutional Court in the state institutions' authority dispute case has been running for 15 years. Along with the time, there are 25 cases handled and decided by the court. Even though a number of regulations have been established relating to the implementation of the authority, but based on the facts of handling the such cases so far, it is clear that the handling process is inseparable from the legal problems happened along with the exercise of the authority. Based on the development of constitutional interpretation by handling of state institutions' authority dispute cases, there are several legal issues that arise.

First, there is no certain definition of the term "state institution" and the criteria of institutions that can be qualified as state institutions. In essence, there has not yet been found a definite construction on which institutions that have legal standing in the cases. Based on such conditions, it is not uncommon where the applicant and the respondent, as well as the Constitutional Court judge have a different opinion to determine the legal standing of an institution to submit the request.

Secondly, there is no definite formula regarding the meaning of the phrase "the authority granted by the Constitution". Until now there has not been found any definite formulation regarding the limitation of the meaning of the phrase "whose authority is given by the Constitution" as mentioned in Article 24C section (1) of the 1945 Constitution of the Republic of Indonesia. While on the other hand, arrangements for granting authority of state institutions by the Constitution are varied. Some authorities are given directly, in the sense that

those powers are explicitly stated in the Constitution and some are not mentioned directly, but it is only regulated that the authority of the institution is regulated further in the Law (*Undang-Undang*). This is one of the issues that is no less complicated than the issue of the meaning of the term state institution in the state institutions' authority dispute case.

In the case of state institutions' authority dispute Number 030/SKLN-IV/2006 for example, one of the Constitutional Court's considerations to determine the legal standing of the applicant, namely the Indonesian Broadcasting Committee, is not stated in the 1945 Constitution of the Republic of Indonesia. Even though Indonesian Broadcasting Committee later argued that the formation of the institution was sourced from Article 28F of the 1945 Constitution of Indonesia, but the Constitutional Court held that the Indonesian Broadcasting Committee was not a state institution whose authority was granted by the Constitution, so it was considered to have no legal standing in the state institutions' authority dispute case. The firmness of the establishment of the Constitutional Court at that time was sufficient to show that the meaning of the phrase "whose authority was granted by the Constitution" was only aimed at the authority explicitly stated in the Constitution.

However, in a number of other cases, the Constitutional Court actually showed an inconsistent and ambiguous attitude. In case Number 2/SKLN-X/2012 for example, the Constitutional Court gave a different meaning when deciding other state institutions' authority dispute case, namely Number 030/SKLN-IV/2006. At that time, the Constitutional Court expanded on the meaning of the phrase "the authority granted by the Constitution" by saying that in viewing the disputed authority, it does not have to be the authority that *expressis verbis* mentioned in the Constitution.

Considering from the development of handling such state institutions' authority dispute cases, the inconsistency of MK's attitude in handling and deciding state institutions' authority dispute cases are very contrast. The development of constitutional interpretation by the Constitutional Court is sufficiently to show that there is no definite formulation that can be used by the Constitutional Court as a reference for resolving every state institutions' authority dispute case. Such facts also indicate that the Constitutional Court has not been able to provide a uniform interpretation of the provisions of the 1945 Constitution of Indonesia.

IV. CONCLUSION

Implementation of constitutional interpretation by the Constitutional Court in handling cases of dispute the authority of state institutions had lasted for fifteen years. During this period, at least twenty-five cases had been decided by the Constitutional Court. However, based on the development of the constitutional interpretation by the Constitutional Court so far, it is clear that there are a number of legal problems during the development of the interpretation. The legal problem lies in the inconsistent attitude of the Constitutional Court in interpreting the phrase "state institution" and "authority granted by the Constitution" as found in Article 24C section (1) of the 1945 Constitution of the Republic of Indonesia. Also, it can be seen through considerations on *subjectum litis* and *objectum litis* in the state institutions' authority dispute case, which in several occasions, it begins by determining the *subjectum litis* first or conversely by determining *objectum litis* in the first phase. Such a legal problem certainly has the potential to bring up an indication of the failure of the Constitutional Court in guarding and maintaining constitutional values and it can reduce the trust of the parties to the Constitutional Court as an interpreter of the constitution.

Considering that there are legal problems that have influenced the development of constitutional interpretation by the Constitutional Court in the state institutions' authority dispute case, we can recommend that the Constitutional Court has to be able to thoroughly reform the authority dispute case handling process. The improvement may include refinement of regulations relating to the procedural law and improvement through the Constitutional Court's decision in each case that can be realized in the form of consistent interpretation as outlined in each verdict. By these improvements, it is believed that the Constitutional Court will be able to confirm its existence as an authorized institution and to get trust in interpreting the constitution.

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