

REFORMULATION OF THE POSITION OF AUXILIARY STATE INSTITUTIONS AS LEGAL STANDING RELATED TO AUTHORITY DISPUTES OF STATE INSTITUTION

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ABSTRACT

This research aims to examine the reformulation meaning of legal standing of state institutions in authority disputes cases between state institutions and the juridical implications of the legal standing of auxiliary state institutions as parties in the authority disputes cases of state institutions. Authority disputes may arise along with the development of state institutions based on their needs and interests in dealing with certain legal issues. This approach uses a normative method with descriptive analytical specifications. The results of the study show that the meaning of state institutions which can be the legal standing in the authority disputes cases between state institutions is not only interpreted by state institutions that are formed and given authority according to the 1945 Constitution. Auxiliary state institutions, which on the one hand carry out their functions as a form of derivation from the 1945 Constitution, can become state institutions litigating at the Constitutional Court. Regarding the implications of determining legal standing for state institutions that are formed by laws to litigate at the Constitutional Court, in fact it does not change the authority of the Constitutional Court itself according to Article 24c of the 1945 Constitution. The state institutions that become the legal standing at the Constitutional Court must of course be able to prove that their *objectum litis* is a derivation of the constitution.

Key Words: structural reformulation; legal standing; authority dispute; state institutions.

INTRODUCTION

In general, the development of state institutions in Indonesia is currently growing and increasing rapidly. The need to deal with a state problem requires the establishment of an independent state institution as well as an ad-hoc institution. The complexity of state institutions in Indonesia sadly follows the development of existing problems, so it can be said that the formation of a state institution is based on certain needs that cannot be handled by existing state institutions.

One of the most important phenomena after the amendment to the 1945 Constitution of the Republic of Indonesia was the spread of state auxiliary agencies in the Indonesian constitutional

system. These institutions were formed with different legal bases, both with the constitution and laws, as well as some were even formed by presidential decrees (Asshiddiqie, 2003).

The various legal bases for the formation also have implications for the authority possessed by these independent state institutions. Referring to the basis for the formation of state institutions based on statutory regulations, state institutions can be divided into several groups, i.e. state institutions formed based on the constitution, state institutions formed based on laws and state institutions formed based on the rules under the law. This has resulted in the commissions running independently and not complementing each other, so that in further implications it may result in the effectiveness of the existence of the commissions in the constitutional structure still not applied in accordance with the noble goal of forming an extra-legislative institution, the extra-executive, and the extra-judicial.

The above fact has at least two consequences as follows: 1) the juridical legitimacy of the existence of these auxiliary state institutions is so weak that constantly faced obstacles in implementing its authority; 2) the auxiliary state institutions operated independently without any synergistic work systematics and can support one another so that the results of the work of an auxiliary state institution are often less beneficial for other auxiliary state institutions (Sepriyono, 2014).

Referring to the above statement, disputes might occur between state institutions, which can also result from the existence of the same contra-authority between state institutions. This is of course very detrimental to a state institution in exercising its authority. These disputes can be resolved through the legal recourse stipulated by the constitution, that is in the provisions of Article 24C of the 1945 Constitution of the Republic of Indonesia.

Based on Article 24C of the 1945 Constitution of the Republic of Indonesia, it has mandated the Constitutional Court to become a court in the authority disputes cases between state institutions. The Constitutional Court established based on the 1945 Constitution of the Republic of Indonesia has four kinds of authority and one obligation. One of the powers possessed by the Constitutional

Court is to resolve disputes over the authority of state institutions whose authority is given by the 1945 Constitution of the Republic of Indonesia (Asshiddiqie, 2006). From 2004 to 2016, applications for disputes over the authority of state institutions (*SKLN*) were submitted to the Constitutional Court as many as 25 cases with a variety of disputed issues and also filed by various applicants (Huda, 2017). Ni'matul Huda in his writing stated that although the Constitutional Court had heard 25 cases of state institution dispute applications, the Constitutional Court only granted 1 case; Case No. 03/SKLN-X/2012, that is the dispute over authority between General Election Commission (*KPU*) and Papua Regional Government, Papua House of Representative (Respondent 1) and the Governor of Papua (Respondent 2).

As data is obtained from the website of the Constitutional Court regarding the resolution of authority disputes of state institutions, the total number of Constitutional Court decisions on State Institution Authority Disputes is 19. From these 19 cases, one was granted, two decisions were rejected, 12 were not accepted, and four were withdrawn.

It is interesting to pay attention to the data on disputable cases that have been resolved by the Constitutional Court related to only one case resolved by the Constitutional Court. The focus of this study is regarding the discussion orientation of understanding legal standing in the authority disputable cases between state institutions and the authority of the Court to resolve them. This study also intends to elaborate on the reasons why all state institutions that have to litigate at the Constitutional Court have only one case successfully decided.

The Constitutional Court in examining the dispute case settlement shall refer to the Constitutional Court Regulation Number 08/PMK/2006 concerning Guidelines for Conducting Disputes on Constitutional Authority of State Institutions. Article 2 of the regulation outlines the aims and criteria of the parties: (1) State institutions that can become applicants or defendants in cases of disputes over constitutional authority of state institutions are: (a) the People's Representative Council (DPR); (b) Regional Representative Council (DPD); (c) the People's

Consultative Assembly (MPR); (d) President; (e) Supreme Audit Agency (BPK); (f) Regional Government (Pemda); or\Other state institutions whose authority is granted by the 1945 Constitution. (2) The disputed authority as referred to in paragraph (1) is the authority granted or determined by the 1945 Constitution.

In the context of point 2 it can be understood that the state institutions that can be the applicant and the respondent are state institutions that are disputing over the authority where this authority is only given and determined by the 1945 Constitution of the Republic of Indonesia. Therefore, referring to the provisions of the regulations of the Constitutional Court as well, it has limited the criteria for the applicant and the respondent. which is only devoted to state institutions specified by the constitution. Such restrictions are felt to be detrimental to several state institutions that are formed and given authority according to the laws and regulations under the Constitution, so that an idea is needed to reformulate the scope of legal standing (the parties) in the procedural law of the Constitutional Court.

Based on the description above, there are two problems to be discussed: 1) How is the reformulation of the meaning of the legal standing of state institutions in the disputes authority cases between state institutions? 2) What are the juridical implications of the legal standing of supporting state institutions as parties in the authority disputes cases of state institutions?

RESEARCH METHODS

The method is used to emphasize how the research was conducted (Sulaiman, 2018). This study applies the normative legal method (Ibrahim, 2013), by using legal norms in statutory regulations, both those are currently in force and those are no longer valid. The study only used secondary data (Soekanto & Mahmudji, 2001). This research was conducted by applying a positive legal inventory as an initial and fundamental activity (Sunggono, 1997), related to research and

study of reformulation of the position of auxiliary state institutions as legal standing regarding disputes over the authority of state institutions.

DISCUSSIONS AND ANALYSIS OF RESULTS

1) Reformulating the Meaning of Legal Standing of State Institutions in Authority Disputes

Before discussing further, first, we will discuss several theories and concepts related to the above two problems, the concept of legal standing and disputes over authority. In general, it can be understood that legal standing means the legal position. The definition of legal position is a condition in which a person or party is determined to meet the requirements and therefore has the right to file a petition for a dispute or case before a court (Harjono, 2008). In some procedural law references stated that legal standing is a further adaptation of the term *personae standi in judicio*, which means a person's right to file an application/lawsuit to court (2008).

There are two types of rights filed as the basis for a lawsuit/petition, first rights claims that contain disputes called "lawsuits", and then rights claims that do not contain disputes called "petitions" (Mertokusumo, 1981). Maruarar Siahaan stated in his book that "Legal Standing is a concept used to determine whether an applicant is sufficiently affected so that a dispute is brought before the court. The requirements for legal standing have met the requirements if the applicant has a real interest and is legally protected" (Siahaan, 2006).

In the context of proceeding at the Constitutional Court, not everyone can become a party and may submit an application to the Constitutional Court, even though that person has legal interests as it is known in civil procedural law. In civil procedural law, there is an *adagium point d'interet point d'action*, that is, if there is a legal interest, it is possible to file a lawsuit. Standing or *personae standi in judicion* is the right or legal position to file a lawsuit or petition before the court (standing to sue) (Siahaan, 2006). That Standing is a concept used to determine whether one party is sufficiently affected so that a dispute is brought before the court. It is a right to take steps to

formulate legal issues in order to obtain a final decision from the court. (Ramdan, 2006). The concept of legal standing as follows: legal standing is a condition in which a person or party is determined to meet the requirements and therefore has the right to submit a request for disputes settlement or cases before the Constitutional Court. Applicants who do not have legal standing will accept the Constitutional Court's decision which stated that their petition cannot be accepted (*niet ontvankelijk verklaard*) (Siahaan, 2006).

Regulations regarding legal standing also contained in Law Number 8 Year 2011 concerning Amendments to Law Number 24 Year 2003 on the Constitutional Court, particularly in Article 51 Paragraph (1) stated that the criteria for legal standing at the Constitutional Court: "The Applicant is a party who considers that his constitutional rights and / or authorities have been impaired by the enactment of the law: (a) Individual Indonesian citizens; (b) Customary law community units as long as they are still alive and in accordance with the development of society and the principles of the Republic of Indonesia which are regulated in law; (c) Public or private legal entities; or (d) State institutions".

The above provisions are also stipulated in Article 3 of the Constitutional Court Regulation Number 8 Year 2006 which stated: (1) Applicant is a state institution that considers his constitutional authority to be taken, reduced, obstructed, neglected, and/or aggrieved by other state institutions. (2) The applicant must have a direct interest in the dispute authorities. (3) Respondent is a state institution deemed to have taken, reduced, obstructed, neglected and/or harmed the applicant.

The *dictum* "direct interest in the disputed authority" in paragraph (2) is the basis for the emphasis that every applicant who feels aggrieved is an applicant who has a direct interest in the disputed authority, even though it has been limited the authority is the authority that given and stated in the 1945 Constitution.

Therefore, according to Jimly Asshiddiqie, in addition to approaching the problem in terms of the subject of the institution, it also can be approached in terms of the object of constitutional disputed authority between the state institutions concerned. The main issue is whether what is regulated and determined in the 1945 Constitution is the function of an organ referred to in the 1945 Constitution and whether the exercise of its authority is hampered or disturbed due to certain decisions from other institutions. The important thing is that it can be clearly proven whether the Applicant's institution has the authority granted by the 1945 Constitution and whether the said constitutional authority has been harmed by certain decisions of the requested institution (Asshiddiqie, 2005).

Scope of disputed authority of state institutions. A state institution is a legal entity that has the authority to exercise its authority in accordance with the rules of its formation. Many definitions of state institutions have been discussed, both books and other scientific articles. Janpatar Sinamora explained in his writing that “state institutions are divided into several types which in principle have the following general duties: maintaining stability or stability in security, politics, law, human rights and culture; create an environment that is conducive, safe, serene and harmonious; become an association body between the state and its people; be a source of inspiration or inspiration for all people; eradicating criminal acts of corruption, collusion and nepotism as well as various other forms of crime; and help run the state government ” (Simamora, 2016). In simple terms, the term state organs or state institutions can be distinguished from the words private organs or institutions, community institutions or what is commonly referred to as NGOs (non-governmental organizations) (Asshiddiqie, 2005). Hendra Nurtjahjo in his writing stated that in general, these state equipment can be classified into: 1) Institutions (organs) that come directly from the constitution; 2) Institutions (organs) that do not come directly from the constitution (derivatives). (Nurtjahjo, 2005). The term "source" in the above sentence refers to the source of institutional authority, whether it is given directly by the constitution or not. The two types of institutions

mentioned above are authorized to form other institutions/organs (state equipment), some are not granted the right to do so. Some institutions are required to be independent, some are bound and have functional linkages with other institutions.

The logic that can be built is that a state institution has one function, by analogy with that one institution only to carry out one function as determined. However, based on developments that have occurred, the functions of a state institution have evolved where the functions of state institutions have been integrated into state tasks. As a result, there are many concrete functions in state duties.

Meanwhile, the definition of dispute can be seen in the Indonesian dictionary which means: 1) Something that causes differences of opinion, quarrel, conflict; 2) Contention, disputes; and 3) Case (in court) (Ali, 1995). In English, there are two words that have a parallel meaning with the definition of the word dispute above, i.e. the words conflict and dispute. Both words are meaningful as nouns and as intransitive verbs. The word conflict as a noun means quarrels, strife and contradictions. Meanwhile, as an intransitive verb, conflict means contradiction. While, the word disputes as a noun means a dispute, quarrel. Whereas, as an intransitive verb means to refute (Echols & Shadily, 2003).

So that the stratification meaning of the word "dispute", disputes in a low, medium and disputes in a high level. The first definition, namely disagreements, quarrels, and arguments is a dispute in a low level. Thus, differences of opinion, paralleled by quarrels and arguments, are disputes to a lesser degree. In this case there has been no physical contact, but only a different point of view on a problem which then creates a difference of opinion.

A dispute to a moderate degree means contention or conflict. In this case, it is not just a difference of opinion, but physical contact can occur as an expression of the difference in opinion. Dispute resolution sometimes cannot be done immediately, but required the intervention of a third party as a mediator, even through the competent authorities, or through reconciliation efforts. This

dispute can escalate to a high-level dispute, known as a case. In this case, the dispute is resolved through the court (Nurmawati, 2016).

The above description shows that the definition of conflict is the same as the definition of contradiction, but it is not the same as the definition of dispute. The word dispute has a broader meaning than the word conflict and contradiction. A dispute can be interpreted as a case, whereas a conflict and contradiction explicitly cannot be interpreted as a case.

Black's Law Dictionary used the word conflict in the same sense as a dispute, in the meaning of dispute. It also explains about disputes of authority (Conflict of authority) as a type of dispute, but only limited to disputes of authority between judicial bodies, especially general courts, both regarding absolute and relative competence.

Regarding authority, it can be equated with competency, that is a right or power to act. Robert Bierstedt stated that authority is institutionalized power (Arifin, 2005). The regulation and term authority are known in the People's Consultative Assembly (MPR) Decree No.V/MPR/2000 concerning the Rules of Procedure for the MPR RI, which in this provision distinguishes the meaning of authority from the meaning of duties. Authority is defined as a function that may not be performed. According to Philipus M. Hadjon, the said duties and authorities in the MPR Decree were meant as power. The differentiation of power over duties and authorities is an effect of the concept of private law, where duties are associated with obligations, while authority is associated with rights. This is actually an unclear and difficult concept; because, the criteria for differentiation are not clear. Thus, the word authority essentially means power (Hadjon, 1993).

Ridwan HR in the book *State Administrative Law* explained that along with the main pillar of a rule of law, the principle of legality, based on this principle it is implied that government authority comes from statutory regulations, meaning that the source of authority for the government is statutory regulations (Ridwan, 2016). Theoretically, the authority that comes from these laws and regulations is obtained in three ways, as defined by HD van Wijk/Willem Konijnenbelt, as follows:

1. Attribution is the granting of governmental authority by legislators to government organs; 2. Delegation is the delegation of governmental authority from one organ of government to another organ of government; and 3. A mandate is applied when an organ of government allows its authority to be exercised by another organ on its behalf (Indroharto, 2000)

To understand state institutions which include their definition, conception and institutionalization, they must be based on a new paradigm of the constitutional system that has been embodied in the amendment of the 1945 Constitution as a manifestation of the will of the people and democratic ideals. In the framework of discussing state organizations and institutions the discussion can be started by questioning the nature of power which is institutionalized or organized into the state building.

Formulation of the meaning of legal standing in procedural law. Constitutional Court Regulation Number 8 Year 2006 about Procedure for Dispute Resolution in State Institutions is the basic reference for the Constitutional Court in conducting its procedural law both formally and materially. The basis for the formation of this Constitutional Court regulation is Law Number 24 Year 2003 concerning the Constitutional Court, and until now there has been no fundamental change from the guidelines for this procedural law even though the Constitutional Court law itself has undergone amendments.

As previously discussed regarding legal standing, it can be understood that legal standing is the legal position of the applicant and the respondent in the litigation process at the trial. So that the legal standing of the applicant and respondent is required to comply with the conditions that have been determined.

Like other cases under the authority of the Constitutional Court, legal standing is an important part of examination at the Constitutional Court, so it can be concluded that legal standing is the key factor to a case to enter the subject matter of the petition submitted. The Applicant and the Respondent both have the right to declare an authority whose object of the dispute is the contested

authority as a state institution. Referring to the provisions of Article 61 of Law Number 24 Year 2003, in the disputed authority cases of state institutions, legal position requirements must be met including the parties in the dispute (*subjectum litis*). The applicant and the respondent are state institutions whose authority is given by the 1945 Constitution, the authorities in dispute (*objectum litis*) must be the authority granted by the 1945 Constitution, the applicant must have a direct interest in the disputed authority. The provisions of Article 61 above, are strengthened by Article 3 of the Regulation of the Constitutional Court Number 8 Year 2006 with the same statement, on the one hand, it makes it difficult for state institutions formed under the 1945 Constitution of the Republic of Indonesia to be able to sue in the Constitutional Court. This can of course be seen in the recapitulation of the SKLN case on the page of the constitutional court, which resulted in only 1 case being decided.

Below will discuss the legal standing of several decisions of the Constitutional Court regarding SKLN that have been decided by the Constitutional Court. The decisions that will be reviewed in this paper:

Constitutional Court Decision Number 3/SKLN-X/2012 concerning Disputes between KPU and Papua House of Representative. In its consideration, the Constitutional Court outlines that regarding the object of authority in dispute (*objectum litis*), the Court is of the opinion that the disputed authority in the state institutions does not have to be an authority explicitly stated (*expressis verbis*) in the 1945 Constitution, but also includes the authority of delegates which sourced from the attribution authority stated in the 1945 Constitution.

The request of the General Election Commission (applicant) regarding the takeover of its constitutional authority and the Papua General Election Commission conducted by the Regional Government of the Papua Province (the Respondents) in preparing and establishing technical guidelines regarding the stages of the General Election for the Governor and Deputy Governor of Papua, by issuing a Special Provincial Regulation Papua Number 6 Year 2011 on General Election

for the Governor and Deputy Governor and the Decree of the Papua People's Representative Council Number 064/Pim DPRP-5/2012, dated April 27, 2012 (Eddyono, 2019).

Constitutional Court Decision Number 030/SKLN-IV/2006 on Disputes between *Indonesian Broadcasting Commission (KPI)* and the Minister of Communication and Information Technology. As seen from the institutional point of view, *KPI* is a state institution established by law. Disputes occurred due to broadcasting problems which on the one hand are the authority of *KPI* according to Law 32 Year 2002 on Broadcasting, but conducted by the government. However, in decision Number 030/SKLN-IV/2006 it was confirmed that the *KPI* did not have legal standing.

It is interesting to note that the *subjectum* and *objectum litis* statements of the two institutions. *KPI* feels that its constitutional authority has been compromised by the policies taken by the government. According to Suwoto Mulyosudarmo, in his book, *KPI* believed that constitutional losses that are harmed by the government are derived from the concept of granting power. Basically, the power given can be distinguished from the attributive acquisition of power and the derivative acquisition of power in nature. The acquisition of attributive power leads to the formation of power. Because it comes from a state that does not yet exist. Thus, the characteristics of power attribution are the formation of power that created new powers and must be conducted by an agency whose formation is based on statutory regulations (authorized organs) (Mulyosudarmo, 1997).

Furthermore, Suwoto also added that the Constitution as *reglement van attributie* is understood as the legal basis for the formation of various powers which are then given to State institutions whose formation is based on the Constitution (Mulyosudarmo, 1997).

Provisions regarding Disputes Authority of State Institutions are strengthened in the regulation of the Constitutional Court Number 8 / PMK / 2006. The term "authority granted by the 1945 Constitution of the Republic of Indonesia" as referred to Article 61 Paragraph (1) of Law Number 24 Year 2003 on the Constitutional Court contained the meaning of "attributable authority", that is the authority created and granted by the Law. The 1945 Constitution of the

Republic of Indonesia and not the authority created and granted by the Legislation under the Constitution. Based on this analysis, the basis for the *KPI* application in case 030 / SKLN-IV / 2006 should be grounded and can be declared as having legal standing.

2) Legal Standing Implications of State Institutions in Authority Disputes

State institutions that mentioned in the guidelines procedure of authority dispute for State institutions can be the applicant or the defendant make it very difficult to resolve authority disputes of State institutions that are confronted with cases of independent State institutions and also that are not mentioned in the guidelines procedure with authority disputes of State institutions.

The interpretation of State Institutions can be litigated in the Constitutional Court in various debates on the amendments to the 1945 Constitution of the Republic of Indonesia, there is no direct mention of which State institutions can be parties to authority disputes between State institutions. There is also no authority disputes settlement of State institutions to divide State institutions theoretically, such as based on their functions determined by Montesquie, or based on their positions, as George Jellinek stated direct State institutions (*unmittenbare organs*) and indirect State institutions (*mittenbare organs*), or any other classification based on their position according to George Jellinek, the main State institutions or primary state institutions or supporting State institutions. Therefore, the Constitutional Court can make interpretation and legal findings in the settlement of the case (Loudoe, 1985).

According to Bambang Purnomo in the book Principles of Criminal Law stated that in science there are several methods or systems of interpretation i.e.: a) Grammatical Interpretation (*granmatiche interpretatie*) as an awakening interpretation of everyday words; b) Logical interpretation (*Logische interpretative*) as an interpretation that provoking to an objective mind, which is usually by looking for comparisons between several laws; c) Systematic interpretation (*systematische interpretatie*) as an interpretation that bases the system in that Law, by connecting

one part to another part of the Law; d) Historical interpretation (*historiche interpretatie*) as an interpretation based on the history of its formation, which is distinguished by the growth of the law regulated in the Law and the formation referred to by the Law; e) Interpretation of teleologics (*teleologische interpretatie*) as an interpretation based on what purpose the formation of the Law intended when making the Law; f) Extensive interpretation (*extensieve interpretatie*) as an interpretation based on the way to expand the regulations referred to in a Law; g) Interpretation of analogy (*analogische interpretatie*) as an interpretation based on analogy, the existing regulations are treated against actions that are not strictly regulated in law (Eddyono, 2008).

Determining *subjectum* and *objectum litis* in the authority disputes cases of State institutions whose authority is granted by the 1945 Constitution of the Republic of Indonesia, the Constitutional Court conducted grammatical interpretation (*grammatische intrerpretatie*). According to the Constitutional Court, the placement of the word "dispute of authority" before the word "state institution" has a very important meaning because in essence what is meant by Article 24C Paragraph (1) of the 1945 Constitution is indeed a "dispute of authority" or about what is being disputed is not about "who is disputing". The word state institution in article 24C Paragraph (1) of the 1945 Constitution must be closely relate and not separate from the phrase "whose authority is given by the constitution". There is an implicit recognition that there are "State institutions whose authority is granted by the constitution". For this reason, in determining *subjectum* and *objectum litis* in the authority disputes cases of State institutions whose authority is granted by the 1945 Constitution, the authorities granted in the Constitution first determine then the institution.

Supporting state institutions (*auxiliary organs*) tend to be formed based on statutory regulations under the 1945 Constitution. A large number of supporting state institutions that are formed is due to two things; needs and interests. However, it is not uncommon for contradictions of authority between each of these supporting state institutions and the main state institutions established according to the 1945 Constitution.

The contradiction that occurred could be the result of fighting over one or more of the powers of each of these state institutions which are regulated in statutory regulation. Differences of opinion and the respective interpretations of an authority regulated in a certain legal rule cause two or more state institutions to dispute, so that legal remedies are required to resolve it.

However, the constitution has determined and limited "state institutions" that can be handled in the authority disputes cases by the Constitutional Court. This limitation is due to the orientation of the amendment of the 1945 Constitution at the beginning of the reformation which tends to look at the institutions that implement state power. Nevertheless, we do not see further that in the future there will be more and more supporting institutions formed by the rule of law under the 1945 Constitution.

To determine the derivation powers of authority from the 1945 Constitution, it is necessary to understand the concept of granting power. Basically, the power granted can be distinguished from the acquisition of power which is attributive in nature and the acquisition of power which is derivative in nature. The power that comes from a state that does not yet exist into existence, the power that arises with attributive formation is original (*oorsponkelijk*). Thus the characteristics of power attribution are the formation of power to create new powers and must be conducted by an agency whose formation is based on statutory regulations (authorized organs) (Mulyosudarmo, 1997).

According to Henk Van Marseven stated that: "if examined carefully, the Dutch Basic Law, as well as the Basic Laws of other countries are an attribution regulation (*reglement van attributie*)". Suwoto Mulyosudarmo also explained that: "The Basic Law as *reglement van attributie* is understood as the legal basis for the formation of various powers which are then given to State institutions whose formation is based on the Basic Law" (Mulyosudarmo, 1997).

After having the authority, the State institution (legal subject) can carry out the formation of power (attribution) or delegate its authority to other legal subjects. The delegation of authority is

derivative (*afgeleid*). *Aflageid* power is power handed down or delegated to other parties which can be in the form of a delegate (Mulyosudarmo, 1997).

In a dispute that has legal standing is a State institution. Where the condition of a person or a party is determined to meet the requirements and therefore has the right to submit requests for settlement of disputes or cases before the Constitutional Court (Harjono, 2008).

Requirements can be interpreted in the criteria for legal standing of State institutions to be able to file cases of authority disputes of State institutions that are also a causal relationship of losses experienced in exercising their authority with the authorities exercised by other institutions. To assess whether a State institution has legal standing or not, the below criteria can be used: (1) Is the State institution which submitted the application really one of the State institutions as defined in the Constitution. (2) Whether the authority being questioned by the applicant's agency is the authority granted by the Constitution. (3) Whether his constitutional authority is really disturbed. (4) The aforementioned disturbance or obstacle has a causal relationship with the authority or implementation of other State institutions. (5) To what extent the potential case submitted is acceptable to the mind, not in the form of reasons for other purposes. (6) Has positive value for the applicant in the effort to enforce and harmonize the Constitution (Triningsih & Mardiya, 2017).

Discussing supporting state institutions (*staats auxiliary organ*) can of course be understood based on their formation. Even so, the reasons for its formation are based on the particular needs and interests of the government itself. However, in the context of implementing checks and balances, of course it also has its own impact on these state institutions in exercising their authority.

However, if reviewed Article 2 Paragraph (1) letter g PMK Number 8 Year 2006 has determined and provided a broader interpretation of State institutions that can become applicants or defendants in cases of disputes over constitutional authority of State institutions. With the formulation of "other State institutions whose authority is granted by the 1945 Constitution of the Republic of Indonesia" as the subject of authority disputes of State institutions, this shows that the

subject of disputes over the authority of State institutions is not limited to the House of Representatives, the Regional Representative Council, The People's Consultative Assembly, the President, the Authority Audit Board, and the Regional Government.

The broaden meaning of State institutions has also been confirmed in Decision Number 004 / SKLN-IV/2006 dated July 12, 2006 which stated that "in determining the content and limits of authority which become *objectum litis* of a dispute over the authority of a State institution, the Court does not merely interpret textually from the provisions of the Constitution granting authority to certain State institutions, but also considering the possibility of implicit powers contained in a basic authority as well as the necessary powers (necessary and propet) to carry out certain basic authorities, these powers may be just published in the Law ". Under PMK No. 8/2006 State institutions that can submit disputes of authority have expanded not only to main State institutions but also have expanded to other State institutions whose powers are granted by the 1945 Constitution of the Republic of Indonesia. The Basic Law is something that is still open-ended and opens up space for interpretation according to the context and dynamics experienced in the life of the nation and state, before obtaining its final form (Asshidiqie, 2005).

The decision of the Constitutional Court is meaningful and has an impact on the loss of the authority of independent State institutions. In this case, no classification clearly regulated State institutions whose authority is born based on the 1945 Constitution and State institutions whose authority is born from legal rules that are under the 1945 Constitution, resulting in multiple interpretations regarding the definition of State institutions.

Related to the interests of the initial determination of the authority of State institutions, as well as an understanding of the derivative nature of authority, the division of State institutions / State organs can be based on the form of granting power to these institutions. First, State institutions / State organs whose authority is attributed to by law. Second, State institutions / State organs whose powers are delegated by legislators including independent commissions that are not

accountable to anyone. Third, State institutions/State organs whose authority is delegated by legislators including State commissions executives (executive branch agencies) that are responsible to the president or minister and/or are part of the executive branch. The first and second categories of state institutions/state organs can litigate in the Constitutional Court. The second state institution/state organ can also sue in the Constitutional Court, while the third category state institution/state organ does not have a *subjectum litis* or *objectum litis* to litigate at the Constitutional Court because it is clear that the third category State institution/state organ is hierarchical with the President or Minister and/or are part of the executive (Eddyono, 2010).

Maruar Siahaan also stated that State institutions that have legal standing are State institutions that have the authority from the 1945 Constitution of the Republic of Indonesia but also State institutions as auxiliary institutions which in practice are mostly formed by law. In his opinion that the authority which is not explicitly mentioned in the constitution but which is necessary and appropriate to exercise its constitutional authority constituted the authority granted by the Basic Law even though it is clearly and firmly described in the Law (Siahaan, 2010). The author also agrees with Maruarar Siahaan's opinion that there needs to be an interpretation that provided an expansion to see the real authority inherent and implied in the authority written explicitly in the 1945 Constitution of the Republic of Indonesia which can be seen as the principal authority.

Thus, the measure to determine whether the institution in question is a State institution or not, it is not only based on the structural position of the institution concerned in the 1945 Constitution of the Republic of Indonesia and not its official name but also must see the function of the State institution in this regard based on the 1945 Constitution of the Republic of Indonesia.

CONCLUSIONS

The meaning of state institutions that become legal standing in the authority disputes cases between state institutions is not only interpreted as state institutions that are formed and given

authority according to the 1945 Constitution. Supporting state institutions, which on the one hand carry out their function as a form of derivation from the 1945 Constitution, can become state institutions that can litigate at the Constitutional Court. In addition, the Constitutional Court in resolving cases of disputes over state institutions, of course, is more careful in focusing on the objective elements requested by the parties, in this case, state institutions formed by statutory regulations under the 1945 Constitution.

Regarding the implications of determining legal standing for state institutions that are formed by laws to litigate at the Constitutional Court, in fact it does not change the authority of the Constitutional Court itself according to Article 24c of the 1945 Constitution. The supporting state institutions that become the legal standing at the Constitutional Court must be able to prove that their *objectum litis* is a derivation of the constitution in addition to the loss of authority regulated in the legal basis of its own formers.

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