

CHAPTER ONE

INTRODUCTION

A. Background of Research

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

Table 1
Recapitulation of Dispute on Jurisdiction among the State Institutions Case

No.	Year	Previous Process	Accepted	Total	Decision			Total of Decision	In Process This Year
					Accept	Reject	Unacceptable		
1.	2003	0	0	0	0	0	0	0	0
2.	2004	0	1	1	0	1	0	0	1
3.	2005	0	1	1	0	0	0	0	1
4.	2006	1	4	5	0	0	2	1	3
5.	2007	2	2	4	0	1	1	0	2
6.	2008	2	3	5	0	0	2	2	1
7.	2009	1	0	1	0	0	1	0	1
8.	2010	0	1	1	0	0	0	0	1
9.	2011	1	6	7	0	0	4	0	4
10.	2012	3	3	6	1	1	3	1	6
11.	2013	0	3	3	0	0	2	0	2
12.	2014	1	0	1	0	0	1	0	1
13.	2015	0	1	1	0	0	0	1	0
14.	2016	0	0	0	0	0	0	0	0
15.	2017	0	0	0	0	0	0	0	0

Total	11	25	36	1	3	17	4	25	-
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Source: see

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

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

The existence of the Constitutional Court as a new institution cannot be understood partially, but it must be understood as a foundation to strengthen the practice of constitutionalism in the 1945 Constitution after the amendment. The essence of the idea of constitutionalism is that every state organ has limited authority. In relation to that, the Constitution has a significant power as the supreme law in limiting the authority of the branches of the government¹.

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

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

The jurisdictions of the Constitutional Court are stated in Article 24C Paragraph (1) in the 1945 Constitution and Article 10 Paragraph (1) of Law No. 24 Year 2003 on Constitutional Court as amended by Law No. 4 Year 2014. The Constitutional Court is authorized to hold trials at the first and final

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

stage and will produce final decisions, (that it would not be any legal remedies to challenge its decisions) on the following:

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

Relevant to this provision, the jurisdiction of the Constitutional Court to settle disputes on jurisdiction among the state institutions is manifestation of the implementation of judicial power which is exercised by the Constitutional Court².

In general, the concept of state institution is often related to the theory of Montesquieu in the doctrine of *Trias Politica*. *Trias Politica* is the separation of powers which are divided into three branches of power in parallel position, as follows³:

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

²Jimly Asshiddiqie, 2006, *Sengketa Kewenangan Konstitusional Lembaga Negara*, Jakarta, Konstitusi Press, p. 1.

³Kaka Alvian Nasution, 2014, *Buku Lengkap Lembaga-Lembaga Negara*, Jakarta, Saufa, p. 8.

who appointed.

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

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

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

B. Research Problem

Based on the background, the research problem can be formulated as follows: how is the role of the Constitutional Court in settling dispute on jurisdiction among the state institutions?

C. Objectives of Research

Based on the formulation of the problem, the purpose of the study are as follows:

1. To know the issues of the settlement of dispute on jurisdiction among the state institutions.
2. To evaluate the role of Constitutional Court in settling disputes on jurisdiction among state institutions.
3. To propose a better concept of Constitutional Court in settling disputes on jurisdiction among state institutions.

D. Benefits of Research

1. The research will give benefits to science, especially the science of law. Moreover, to date there is not many research which evaluate the role of the Constitutional Court in settling dispute on jurisdiction among the state institutions.
2. The research will give suggestion to the relevant institution which has authority to make a new policy regarding the authority of the Constitutional Court in settling disputes on jurisdiction among state institutions.