

CHAPTER I

INTRODUCTION

A. BACKGROUND

The times that are expected to become more modern influences almost all countries, which eventually many countries are able to follow developments, but it is negative impact and also not a few are even farther behind. The positive effect that emerged in the modern world is going to encourage the upholding of democracy building. According to the Greek philosopher Plato spoke of democracy, saying that the country that runs on top of the form of democracy will reap the ideal form of state called the welfare state, because democracy wants the State's role in the effort to reform the structure and culture of the State based on the constitution and an independent judiciary, which aimed at the people's welfare.¹

Entering order of reforms, demands for laws that favor the community becomes the main thing from a few other things. The law is determining the beginning and end of all activities of society, nation and state to achieve truth and justice for everyone.² Many events which interesting to note in guarding these reforms, ranging from the shift of power, the mechanism of direct elections and the events that pushed for the establishment of a democratic order intact. Today is interesting to study the judicial power,

¹ Sri Soemantri, 1993, "*Tentang Lembaga-Lembaga Negara Menurut UUD 1945*", PT. Citra Aditya Bakti, Bandung, Hlm 3-4.

² Slamet Effendy Yusuf dan Umar Basalim, 2000, *Reformasi konstitusi Indonesia perubahan Pertama UUD 1945*, Pustaka Indonesia Satu, Jakarta, hlm. viii

because it appears the new institutions that generate debate. Before the amendment of 1945 constitution the judiciary in the hands of the Supreme Court, then on the third amendment of the 1945 Constitution emerged new institutions as well as adding the authority of the judiciary, namely the Constitutional Court which is the only departure from the desire the realization of checks and balance system.

Constitutional Court is part of a judicial authority outside of Supreme Court. Under Article 7 B, Article 24 paragraph (2) and Article 24 C (1) of the 1945 Constitution, the Court has some authorities, which are:

1. Judicial review of Law against the 1945 Constitution,
2. Decide dispute over the authority of state institution whose authority is granted by the Constitution
3. Decide dissolution of political party
4. Decide on disputes concerning election results, shall pass a decision on the opinion of the House of Representatives (DPR) concerning alleged violations by the President and / or Vice President under the 1945 Constitution.

Birth of the Constitutional Court raised several Constitutional Law expert opinions to try to put expectations to the agency, to be able to independently, as well as smart in determining the verdict, which have implications for the implementation of high institutions of State.³ The presence of the Constitutional Court gives great hope full realization of the Rule of law, as

³ Kompas 27 Juni 2003, "Sengketa Lembaga Negara Itu Didepan Mata", www.kompas.com,

currently many abuses that occur to deny the conception of the State of Indonesia, namely Rule of law, then this new institution within the Indonesian state administration system will be able to assure the realization of democracy have been the demands of various groups.⁴

Constitutional Court perform four functions, namely as the guardian of constitutional institutions, the interpreter constitution, enforcement of democracy, and guard human rights. The four functions are implemented through the execution of four of authority and the duty Constitutional Court as contained in Article 24C Paragraph (1.2) of the 1945 Constitution.⁵ On the other hand as an adherent of democracy would not want to understand people's voice must be properly addressed, meaning that in the administration of the state should be based on the will of the people, *Vox Populi Vox Dei* (The voice of the people is the voice of God), saying that shows how high the people in the context of countries, mainly countries which adopts democracy.⁶ Even if the phrase was not intended to compare the power of God is sacred with the secular political power, but it meant that however without the power of the people, without his involvement, a democratic state will never exist. In the transition period that gave rise to much debate should consider to the interests of the general public.

In the transition state like that, it is predicted disputes of state institutions will continue to happen, and it will be one task of the new

⁴ A Mukthie Fadjar, 2006, "*Hukum Konstitusi dan Mahkamah Konstitusi*", Jakarta, Konstitusi Press, Hlm viii.

⁵ Ibid,

⁶ Sunagusti Hartono, 1982, *Apakah The Rule of Law Itu ?* Bandung: Alumni, hlm 45

institution namely Constitutional Court as a jury to decide. As a state institution that has the authority to decide disputes the authority of state institutions which the authority awarded the 1945 Constitution within the framework of the mechanism of checks and balances in the running of state power.⁷ Not clear conception about the competence of state institutions into Constitutional Court may lead to diverse interpretation. Post did an amendment to the 1945 Constitution; there was a shift much Indonesian state administration system, one of which is the institutional paradigm shift in the State. This is due to post-amendment; the constitution does not provide clear conception of the state institutions.

On this, there is one famous theory of Montesquieu, *the Trias Politica* strictly separating state power into 3 (three) of power, namely the executive power, legislative power, judicial power.⁸ *Trias Politica* theory is also a lot of criticism, the cause is not clear conception of the separation of powers is, therefore these theories in the science of law are translated into the theory and the theory of organ function.⁹ Some issues on the dispute of authority between state institutions has emerged, namely the conflict between the Parliament and Supreme Court, which deals with filling the position of Vice Chairman of the Supreme Court, is a form of dispute of state institutions in an era of transition,¹⁰ between the Supreme Court with the Judicial Commission also occurs dispute related to the authority of the two institutions

⁷ Feathurachman, 2004. "Mengungkap Kehidupan Mahkamah Konstitusi di Indonesia?" Bandung

in examining the judges, so that the Court took the initiative to bring together the Supreme Court and Judicial Commission in January 2006. The Court said the issue of summoning and examination of the judge who seemed to have run smoothly between Supreme Court and Judicial Commission, as happened in the case of invoking the Chief Justice, Bagir Manan, in fact it can be categorized as inter-institutional authority that disputes can be resolved in Court. Because if in performing their duties of a state institution was a constitutional cause problems for other state agencies, then it can be categorized as a dispute over the authority of state institutions, and the Court is authorized to handle the dispute as set forth in the 1945 Constitution, as well as Supreme Court and Judicial Commission.

The conflict between the Parliament and Supreme Court, which deals with filling the position of Vice Chairman of the Supreme Court, is a form of dispute of state institutions in the era of transition. Chief Justice Bagir Manan forced to conduct elections to replace Vice Chief Justice Taufiq, who retired in February 2003, done by the Supreme Court. The legal basis of it, namely the Third Amendment of the 1945 Constitution, which states the Chairman and Vice Chairman elected from and by the Supreme Court justices. While some legislators seem willing authorities have not taken for granted. Through members of the Commission II of DPR Akil Mochtar of the Golkar Party faction and Dwi Rio Latifa of the Democratic Party of Struggle faction

rejected the plan Bagir Manan choose his own Vice Chairman of the Supreme Court.¹¹

Based on the above background, it is to write the final project, writer take the title "Constitution Court and Judicial Independence Principle Related to the Dispute Settlement between State Institutions"

B. PROBLEM FORMULATION

Based on the above, we conducted research to find the answer: How the implementation of the principle of Judicial Independence on the settlement disputes between State institutions?

C. RESEARCH OBJECTIVES

To find the implementation of the principle of Judicial Independence on the settlement disputes between state institutions.

D. RESEARCH BENEFITS

1. Theoretical Benefits

Give contributions related to Judicial Independence by the authority of the Constitutional Court in deciding disputes of authority between state agencies.

2. Practical Benefits

To contribute to knowledge for all people in the field of legal science, especially concerning the presence of new institutions, namely the Constitutional Court who has the authority to decide disputes the