CHAPTER II
LITERATURE REVIEW

A. THE EXISTENCE OF THE CONSTITUTIONAL COURT IN INDONESIA

1. History of the Constitutional Court

The Court begins with the history of the founding of the Third Amendment of the 1945 Constitution in Article 24 paragraph (2), Article 24C and Article 7B which was passed on November 9, 2001. After the legalization of the Third Amendment of the 1945 Constitution, then in order to wait for the establishment of the Constitutional Court, the Assembly set the Supreme Court to temporarily perform the functions as stipulated in Article III of the 1945 Constitution Transitional Rule in the Fourth Amendment.

Establishment of the Constitutional Court needs to be done for our nation's fundamental changes over the 1945 Constitution.[12] In the framework of the First Amendment to the Fourth Amendment of the 1945 Constitution, our nation has adopt new principles in the constitutional system, namely, among others, the principle of separation of powers and "checks and balances' as the access of equivalent system of parliamentary supremacy in force previously. As a result of these changes, we need to hold the mechanism to rule on the dispute of authority that may occur between the institutions that have positions that are equal to each other,

[12] Jimly Asshiddiqie, 2002, *Konsolidasi Naskah Undang-Undang Dasar Negara Republik*

whose authority is defined in the 1945 Constitution, have institutionalized the role of law and judges who can control the process and product political decisions that only rely on the principle of 'the rule of majority'.[13] Therefore, the function of judicial review over the constitutionality of the Act and the testing process of law for dismissal of charges against the President and / or Vice President is associated with the function of the Court. In addition, also needed a mechanism to decide various disputes that arise that cannot be resolved through normal judicial processes, such as the dispute over election results and demand the dissolution of something political party. Case-case of this kind is closely related to the rights and freedoms of citizens in the dynamics of democratic political systems that are guaranteed by the 1945 Constitution.

2. Theoretical Basis and Legal Authority of the Constitutional Court

1945 Constitution provides that the Court had four constitutionally entrusted powers and one constitutional obligation. The four authorities are:

a. Judicial review the law against the 1945 constitution
b. Decide disputes between institutions whose authority is the authority granted by the 1945 Constitution,
c. Decide disputes election results, and
d. Decide on the dissolution of political parties.

While the obligation is to decide the opinion of the House that the President and / or Vice President has been guilty of committing an offense, or no longer meets the criteria for the President and / or Vice President as defined in the 1945 Constitution.

From the theoretical approach of the Court authority to distinguish between major powers, namely the authority that makes these institutions is the state judicial system is therefore appropriate for the Court called authority to judicial review the law against the 1945 Constitution and rule on the dispute the authority of state institutions whose authorities are granted by the 1945 Constitution and the additional authority not directly related to the state administration in the form of judicial authority to decide upon the dissolution of political parties, deciding disputes over election results and a duty to decide upon the opinion of the House of Representatives.[14]

The decision rendered by Constitutional Court is attributed as a final and binding decision, which means that it would not be any legal remedies to challenge its decisions. This attribute *fulfills res judicata facit ius* principle of judiciary power.[15] Judicial independence is a pre-requisite to the legal state and fundamental guarantee of fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects. In spite of the fact Constitutional Court should perform its function in a way required by good governance

[14] Harjono, *Mahkamah Konstitusi Dalam Sistem Ketatanegaraan Di Indonesia*, www.legalitas.org, diunduh pada hari Sabtu, 25 September 2010, pukul 21:45 WIB

[15] 2009 *Judicial independence*, new law journal 1953 oxfordtextbooks hlm 40

principles. Law on Constitution Court puts in its articles duties to be performed by Constitutional Court in order to meet those requirements. Those articles are;

a. Article 34 (3) : Public announcement (determination of first session) is done by pasting the copy of notification on a public announcement board dedicated to such a purpose at the Constitutional Court's building.
b. Article 36 (2); Ways of obtaining letters or writings evidence has to be legally held accountable.
c. Article 38 (2): Letters of summons have to be received by the summoned at least 3 (three) days before the court session.
d. Article 40 (1): Constitutional Court sessions are open to the public, except the justices' meetings.
e. Article 41 (2): In the interest of the examination , the Constitutional Court Justices have to summons parties involved to provide necessary information and/or to send written inquiries to the state institution related to the application.
f. Article 43: In the court examination, applicant and /or respondent can be accompanied or represented by his /her representative based on authorization special for the purpose.
g. Article 45 (3): Decision of Constitutional Court has to contain facts obtained from court sessions and legal considerations used as bases of

h. Article 45 (5): In the session, all Constitutional Court Justices are obliged to present a written consideration or opinion deals with the application.

i. Article 46; Decision of the Constitutional Court are signed by justices who examined, tried, and decided the case, as well as the clerk of the court.

j. Article 47: Decision of the Constitutional Court obtained a final legal force once the decision is announce in plenary session open to pubic.

k. Article 49: Constitutional Court has to provide copies of the decision to the parties at the least 7 (seven) working days after the decision is announce.

3. State Institutions Before and After Amendments of the 1945 Constitution

To understand the sense of an institution or organ of state in more deeply, we can approach it from the view of Hans Kelsen on the Concept of the State-organ in his General Theory of Law and State. Hans Kelsen describes that "Whoever fulfills a function determined by the legal order is an organ." [16]

That is, an organ of state is not always an organic form. In addition to organic-shaped organ, more broadly, any position which is determined by the law can also be called the organ, provided that their functions are created norms (norm creating) and / or are running the norm (norm applying). "These functions, be they of a norm-creating or of a norm-

applying character, are all ultimately aimed at the execution of a legal sanction".[17]

According to Kelsen, parliament enacted legislation and citizens who choose their representatives through elections are both organs of state in a broad sense. Similarly, judges who prosecute and punish criminals and convicts who run the sentence in a correctional institution, is also an organ of state. In short, in the broad sense, the organs of state were identical with the individuals who perform certain functions or positions within the context of state activity. This is what is called a public office or public office (public offices) and public officials or public officials (Public Officials).

In addition to the understanding it, Hans Kelsen also describes the sense organs of state in the narrow sense that is the sense organ in the sense of material. Individual organs of state said only if he personally has a particular legal position (... it personally has a specific legal position). A civil law transaction, for example, a contract, is an act or acts that create legal as well as a court decision.

State institutions are sometimes referred to as government agencies, non-departmental government bodies, or any state agency. There are established on the basis or because they were given power by the Constitution, some are established by Presidential Decree. Hierarchy or

ranking position of course depends on the degree of regulation by legislation and regulations.

State institutions are regulated and established by the Constitution is a constitutional organ, whereas the organs established under the Act is a law, which only formed because while the president's decision would lower the level and degree of treatment of the law against officials who sit in it. Similarly, if the institution is established and given authority under Local Rule, of lower level.

State institutions are a state government agency based in central functions, duties and authority expressly stipulated in the 1945 Constitution. Overall, the 1945 Constitution before the change purposed of six institution recognize high / highest state, namely the MPR, DPR, President, MA, Supreme Audit Board (hereinafter written BPK), and the Supreme Advisory Council (hereinafter written DPA) as a high state institution. But after the amendment, state institutions under the provisions of the 1945 Constitution is the MPR, DPR, the Regional Representative Council (hereinafter written DPD), President, BPK, MA, MK, and KY without knowing the term high or the highest state institution.

4. The Authority Dispute Between State Institutions

State agencies dispute caused by the first constitutional system which adopted the provisions of the 1945 Constitution after the change of I, II, III and IV, inter-state relations mechanism is horizontal, not vertical. If before we know the existence of higher institutions and the highest state

institution, it is now no longer the highest state institution. MPR is no longer the highest institution building its position in the structure of our constitutional system, but equal to each other with other constitutional institutions, such as President, House of Representatives, the Constitutional Court, Supreme Court and the BPK. Checks and balances is the principle of inter-institutional relations, where these institutions are equal but mutually recognized control, so that in carrying out the authority of the 1945 Constitution there is disagreement in interpretation, the dispute settlement mechanism is done through the judicial process of state administration is by the name of the Constitutional Court.

The object of disputes between state institutions in the framework of the constitutional court jurisdiction is a dispute about the constitutional authority between state agencies. Main issue is not with the state's institutional bodies, but rather lies in the matter of constitutional authority in the implementation, if any dispute arises between the interpretations of each other. Then the authority decided which institution actually has authority in dispute is the constitutional court.

Thus, the constitutional court is authorized to rule on the dispute of authority between state institutions whose authorities are granted by the 1945 Constitution. Constitutional dispute in the sense that there are two elements that must be fulfilled, namely:

a. The existence of constitutional authority specified in the 1945

b. The emergence of disputes in the implementation of these constitutional authorities as a result of differences in interpretation between two or more relevant state institutions.

In case of disputes constitutional authority of state institutions, all state institutions whose authorities are regulated in the 1945 Constitution can apply if he considers that the authority is aggrieved by the decision constitutional in something other state agencies. The only institutions that are exempt from the possibility of becoming parties to the dispute case of this constitutional authority is the Supreme Court as provided by Article 65 of Law No.24 of 2003 concerning the constitutional court. This article determines, "the supreme court cannot become parties to the dispute of authority between state institutions whose authorities are granted by the Constitution 1945 on the constitutional court." Not so obvious reason why the Supreme Court excluded in this case, except that in the process of deliberation of the draft law the constitutional court to develop the understanding that the supreme court is the judiciary that is independence and also its decision shall be final and binding.[18] However, in case the authority of constitutional disputes, the question is not a supreme court decision related to the case, but matters concerning the implementation of the provisions of the 1945 Constitution relating to the authority of the supreme court as a state institution whose authority is granted by the 1945 Constitution.

[18] Jimly Asshiddiqie, 2006, *sengketa kewenangan constitutional lembaga Negara*, Jakarta, konstitusi press, hlm 12-17

B. JUDICIAL INDEPENDENCE

1. Definition of Judicial Independence

Indonesia said as a legal state, this can be seen in the explanation of the 1945 Constitution which states that Indonesia is a constitutional state based on Pancasila and not based on sheer power. This shows that all actions must be guided by the law or should be legally defensible. In addition, a state said to be a legal state to have the features include: The recognition and protection of Human Rights, the justice that is free from the influence of power or other power and impartial, and the legality in the sense of law.

Judicial Power in Indonesia is under the 1945 Constitution, namely Article 24 paragraph (1) and (2) and Article 25. And subject to change after the 1945 Amendments to the III. According to the 1945 judicial authority is an independent power means that apart from the influence of other powers such as government or other entity other than the government in connection with the power of free and independent judiciary, then there are several factors that led to the judicial authorities to free and impartial namely:[19]

a. Legal Basis of the Supreme Court.

b. Quality and Integrity of Judges.

c. The tradition of legal life in society.

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[19] Pamadi Sarkadi, *sistem hukum Indonesia*, www.PKNI4207-FKIP-sistem hukum

One of the factors that led to the judicial authorities to free and impartial one of them is the juridical basis of the MA, this is because the Supreme Court is the culmination of the judicial process is conducted in Indonesia, where all trials the underlying shading under MA. Factors of quality and integrity of the judges is very important, because it concerns the judge in making a decision, and legal tradition in a society that is that the law in order to meet the demands of justice for the community.[20]

However an independent judicial authority is one of the important principles in democracy. Shimon Shetreet of Judicial Independence: New Conceptual Dimensions and Contemporary Challenges independence of the Judiciary divided into four terms of substantive independence (independence in deciding the case), personal independence [for example a guaranteed period of employment and occupation (term of office and tenure)], internal independence (independence from bosses and co-workers) and collective independence (for example, the court's participation in the administration of courts, including the determination of the court budget.)[21]

2. The principle of Rule of Law

In the 1945 Constitution has expressly stated as such in Article 1 paragraph (3) states "The State of Indonesia is a constitutional state", and

[20] Pamadi Sarkadi, *ibid*

[21] Saldi Isra, *Negara Hukum dan Demokrasi: Sistem Peradilan dan Realitas Penegakan Hukum,*

Article 1, paragraph (2) states' sovereignty in the hands of the people and carried out according to the Constitution ".

Legal states that are based on popular sovereignty is the foundation of a system of Government of the Republic of Indonesia which has the objective "to protect the people of Indonesia and the entire state of Indonesia and to promote the general welfare, the intellectual life of the nation and participate implement world order based on freedom, lasting peace and social justice "in accordance with the opening of the constitution, and the legal state, among others, include: the principle of legality, equality in law, restriction of power, protection of human rights, fair trial and impartial should be addressed to protect the interests of the people.

According to Prof. DR. Sudargo Gautama, SH. suggested three characteristics or elements of legal state, namely[22]:

a. There are restrictions on state power against individuals, means the state cannot act arbitrarily. State action is limited by law, individuals have rights against the state or the people have the right of the ruler.

b. Principle of Legality

   Every action must be based on rule of laws that have been held first to be obeyed also by the government or the apparatus.

[22] Marjanne Termoshuizen-Artz, "*The Concept of Rule of Law*", Jurnal Hukum Jentera, Pusat

c. Separation of Powers

For basic human rights were actually protected is by the separation of powers which is the body that makes laws and regulations, carry out and prosecute should be separated from each other are not in one hand.

The jurists of Southeast Asia and the Pacific as stated in the book "The Dynamics Aspects of the rule of law in the Modern Age", proposed terms the rule of law as follows:[23]

a. Constitutional protection in the sense that the constitution other than the guarantee of individual rights also must determine how to obtain the protection of procedural rights are guaranteed;
b. Justice Agency which is free and impartial;
c. Freedom to express opinions;
d. Free elections;
e. The freedom to organize and opposition;
f. Civic education (citizenship).

According to Arief Sidharta[24], Scheltema, formulate views on the elements and principles of Rule of Law, which includes 5 (five) as follows:

a. Recognition, respect, and protection of human rights that is rooted in respect for human dignity (human dignity).

[23] *ibid*

[24] B.Arief Sidharta, "*Kajian Kefilsafatan tentang Negara Hukum*", dalam Jentera (Jurnal Hukum),

b. Applicability of the principle of legal certainty. Legal state aims to ensure that the rule of law embodied in the community. The law aims to achieve legal certainty and predictability that high, so the dynamics of living together in society are 'predictable'. The principles contained in or related to the principle of legal certainty that are:

1) The principle of legality, constitutionality and the rule of law;
2) The principle of the law define different regulations about how the government and its officials of government action;
3) The principle of non-retroactivity of legislation, before tying the law must first be properly promulgated and published;
4) The principle of justice is free, independent, impartial, and objective, rational, just and humane;
5) The principle of non-liquet, the judge should not reject the case because the reason the law does not exist or is not clear;
6) Human rights must be formulated and guaranteed protection in the law or the Constitution.

c. Applicability of equation (*similia Similius* or Equality before the Law) In a State of Law, the Government should not be privileged persons or groups of people, or discriminate against people or certain groups of people. In this principle, contained :

1) Guarantees equality for everyone before the law and government, and
2) Providing a mechanism to demand equal treatment for all citizens

d. The principle of democracy where everyone has equal rights and opportunities to participate in the government or to influence government actions. For that principle of democracy that embodied by several principles, namely:

   1) The existence of mechanisms for the selection of certain public officials who are direct, general, free, confidential, honest and fair, held regularly;
   2) The government is responsible and can be held accountable by the people's representative bodies;
   3) All citizens have the same possibilities and opportunities to participate in political decision-making process and control the government;
   4) All acts of government open to criticism and rational assessment by all parties;
   5) Freedom of opinion / belief and opinion;
   6) Freedom of the press and traffic information;
   7) The bill should be published to enable the effective participation of the people.

e. Governments and officials undertaking as a public servant in order to realize social welfare in accordance with the purpose of the state concerned. In principle it contained any of the following:

   1) General principles of good governance;

2) The terms fundamental to human existence which human dignity is guaranteed and defined in the rules of legislation, especially in the constitution;

3) The government should rationally arrange every action, have clear objectives and effective manner (*doelmatig*). This means that government must be held effectively and efficiently.

Muhammad Tahir Azhary[25], by taking inspiration from the Islamic legal system, proposed the view those characteristics *Nomokrasi* or Rule of law that either contains 9 (nine) principles, namely:

a. The principle of power as a mandate;
b. Principle of consultation;
c. The principle of justice;
d. The principle of equality;
e. The principle of recognition and protection of human rights;
f. The principle of fair trial;
g. The principle of peace;
h. The principle of welfare;
i. The principle of obedience of the people.

As we know that the problem of legal state is essentially nothing else than the question of power. There are two centers of power. On the one hand there are countries with the power that a necessary condition to

[25] Muhammad Tahir Azhary, *Negara Hukum: Suatu Studi tentang Prinsip-Prinsipnya Dilihat dari*

be able to govern. On the other hand, seem reluctant to let go of the people who ruled all his power. We see that if the ruler of a state only aims to obtain maximum power regardless of the freedom of its people, and then fled away, the rule of law. Thus it is obvious how important the goal of a state in relation to our problem.

According to *Van Apeldoorn* purpose of law is to set the order in a peaceful and fair society. Peace among men is maintained by the law to protect certain human interests, honor, freedom, life, property and so on toward that loss. The interests of individual and group interest people always contradict each other. Conflicts of interest always cause dissension. Even the people battle between people against people, when the law does not act as an intermediary to maintain the peace. Legal maintain peace in light of conflicting interests are carefully and hold the balance of which by law can only achieve a goal (set in a peaceful social life) when he headed a fair rule. That is, rules that contain a balance between the interests protected so that everyone gain as much as possible which is a part.[26]

According Montesquieu, the best state is legal state, because in the constitution in many countries have three main cores, namely:[27]

a. Protection of Human Rights

b. Enactment of a State constitutional

c. Limiting the powers and authorities of the state organs.

Besides that one purpose of the law are to obtain maximum the law certainty (*rechtzeker heid*). Certainty the law becomes increasingly important when it comes to teaching the state based on law. Knowledge has become a classic in the science of the law that the written law is deemed better ensure the law certainty than the unwritten law.

In that context, the organs of power, including judicial authorities are not only required to be a power that is free and impartial, but also must be impartial and aims to protect the interests of the owner of the sovereignty of the people. Montesquieu as the French jurists in The Spirit of the Laws (1748) suggested the idea of constitutionalism which is connected the separation of powers in relation to the judicial authorities stating "... the Judiciary Should be independent of the legislature and executive ...[28]

3. Judicial Power

MA as the holder of supreme power in the field of judicial authorities, have a great responsibility in maintaining the balance between power and maintain the principle of judicial independence as the main principle of democracy. Independence of the judiciary is guaranteed under international law, among others:[29]

a. Declaration of Human Rights (Article 10)
b. International Covenant on Civil and Political Rights (ICCPR) (Article 14)

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[28] Bambang Widjojanto, *Reformasi Konstitusi: Perspektif Kekuasaan Kehakiman*, www.djpp.depkumham.go.id, diunduh pada hari kamis, 30 September 2010, pukul 12:43 WIB

[29] Harifin A. Tumpa, 2009, *Mahkamah Agung Pasca Perubahan Undang-undang Dasar Negara Republik Indonesia 1945*, jurnal Majelis Vol. 1 No 1, Agustus 2009, hlm 2-4

c. Vienna Declaration and Programmed for Action 1993 (paragraph 27)

d. International Bar Association Code of Minimum Standards of Judicial Independence, New Delhi 1982

e. Universal Declaration on the Independence of Justice, Montreal 1983.

Both before and after the change of the changes to the 1945 Constitution, the Supreme Court is a state of high institution holder of judicial power. After changing the 1945 Constitution, judicial power in addition to the Supreme Court also culminates culminating to the Court, as the judiciary after the change of constitution formation of the 1945 Constitution, as a logical consequence of the realization of the idea of checks and balances.[30]

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms without any discrimination, Whereas the Universal Declaration of Human Rights enshrines in particular the principles of equality before the law, of the presumption of innocence and of the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights both guarantee the exercise of those rights, and in addition, the Covenant on Civil and Political Rights further guarantees the right to be tried without undue delay, Whereas

[30] Hamdan Zoelva, *Paradigma Baru Ketatanegaraan Pasca Perubahan UUD 1945*,

frequently there still exists a gap between the vision underlying those principles and the actual situation, Whereas the organization and administration of justice in every state should be inspired by those principles, and efforts should be undertaken to translate them fully into reality,

Whereas rules concerning the exercise of judicial office should aim at enabling judges to act in accordance with those principles, Whereas judges are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens, Whereas the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, by its resolution 16, called upon the Committee on Crime Prevention and Control to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors,

Whereas it is, therefore, appropriate that consideration be first given to the role of judges in relation to the system of justice and to the importance of their selection, training and conduct, The following basic principles, formulated to assist Member States in their task of securing and promoting the independence of the judiciary should be taken into account and respected by Governments within the framework of their national legislation and practice and be brought to the attention of judges, lawyers, members of the executive and the legislature and the public in general. The principles have been formulated principally with professional judges in mind, but they apply equally, as appropriate, to lay judges, where they exist.

4. Court Procedural Law

Implementation of the constitutional authority of the Constitutional Court based on the Law of Procedure Court of public event laws for all authorities of the Constitutional Court (set in Article 28 to 49 of Law No. 24 of 2003) is a special event for each authority of the Constitutional Court further equipped with various Court Rules (hereinafter written PMK) as stipulated in article 86 of Law Number 24 Year 2003 regarding the Constitutional Court referred to "the constitutional authority to decide disputes the State institutions", is set in article 61 to with 67 of Law No. 24 of 2003 on the Constitutional Court. As for who can become the applicant is a state institution whose authority is granted by the Constitution of 1945, being the defendant is a state agency that takes the authority of other State institutions.[31]

The Constitutional Court is a court of first instance and of appeal ensuring that decisions are final and binding once handed down by the court. The authorities and powers of the court include:

a. judicial review of any Law alleged to be in conflict with the Constitution,
b. decide any conflict between state institutions that derive their respective authority and power from provisions contained in the Constitution,
c. decide on the dissolution of political parties, and
d. Decide conflict that arises over the results of general elections.

[31] Mahfud md, 2008, *separation of power and independence of constitutional court in Indonesia*

In addition to the above noted authorities and powers the Constitutional Court must decide upon opinions submitted by the DPR with respect to allegations that the President or Vice President are in breach of the prevailing laws and regulations with regard to treason, corruption, bribery, other serious criminal acts, dishonest behavior, or is incapable of fulfilling the requirements for the Office of the President and/or Vice President.

The Constitutional Court comprises 9 members of which one is appointed Chief Justice. Justices to the Constitutional Court are appointed by the Supreme Court, the DPR, and the President, with each appointing 3 justices. The provisions of the Constitution, the relevant laws, and implementing regulations expressly prohibit justices of the Constitutional Court from concurrently holding positions as:[32]

a. state officials,
b. members of political parties,
c. entrepreneurs,
d. advocates, or
e. Civil servants including as active members of the National Armed Forces or National Police Service.

According to the law, the first stage in the Constitutional Court process is to file a complaint, written in Bahasa Indonesia and signed by the disputing party and must be in the form of 12 original copies of the

[32] Peter Leyland, 2007, *the new Indonesian constitution court*, Jakarta, Hanns Seidel Foundation

complaint. The structure of the complaint must cover the identity of the parties and whether they have legal standing to bring the matter to the Court as well as the *posita* and *petitum* of the complaint. The complaint must also be complete with all supporting evidence. For electoral disputes, the complaint has to be submitted within 72 hours (3 x 24 hours) since the result of the National Election is declared by the National Election Commission.

After the court receives the complaint then the session/hearing schedule will be set up with the first hearing to be scheduled within 14 days of the registration of the case. The parties to the dispute then will be notified of the hearing date there will also be a public announcement of the hearing. In the pre-examination phase, the bailiff will examine whether the complaint already fulfills the requirements as well as make a determination on the clarity of the complaint. If the complaint still lacks sufficient clarity or is incomplete in any way the bailiff will return the complaint to the relevant party and demand that the party rectify the noted issues within 14 days and resubmit the case to the court.

For complaints that concern the judicial review of legislation with respect to alleged conflicts with the Constitution then this complaint should also be forwarded in copy to the President and the parliament (MPR). Dispute between governmental institutions requires that a copy of the complaint be forwarded to the opposing party. Any complaint regarding an opinion of the parliament requires that a copy of this

complaint be forwarded to the President. In cases where a complaint has been submitted with respect to the announced election results then a copy of this complaint must be forwarded to the National Election Commission. All hearings at the Court are open to the public and require the attendance of all parties to the complaint with respect to the presentation of their respective evidence and any other testimony required by the court.

However, where one of the parties is a government institution then that evidence or testimony may be in written form and submitted within 7 days of the hearing. The Court has the power to call expert witnesses to submit testimony where the Court believes that it will contribute to the understanding of the matter being heard or assist in resolving the matter to the satisfaction of the Court. All witnesses are entitled to be accompanied by their legal representatives or any other person of their choosing. The decision of the Court shall be rendered within 60 working days after of registration of the case for the dissolution of a political party. In cases concerning the dispute of election results the relevant time limits are 14 days where the disputed results concern the President and Vice-President and 30 days where the dispute concerns the parliamentary election results.

In cases concerning opinions of Parliament the time limit is 90 working days of registration. Court decisions are to be in written form and each judge's opinion is to be included in the judgment, including any dissenting opinions. The decision of the Court is deemed to be final and binding once it has been read in open court. A copy of the decision that