RESEARCH ARTICLE

INDONESIAN CONSTITUTIONAL COURTS' AUTHORITY UNDER DIGITAL GLOBALIZATION'S DEMAND

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ABSTRACT

This article is meant to see from the perspective of legal-academic using secondary approach regarding the Indonesian Constitutional Courts' Authority in the most recent era. Whereas the regulation of Indonesia has been generally and gradually updated, the Constitutional Courts' authority appears in "Pasal 24C ayat (1) UUD 1945, tugas Mahkamah Konstitusi sebagaimana juga kewenangan Mahkamah Konstitusi, antara lain menguji UU terhadap UUD 1945, memutus sengketa kewenangan lembaga negara yang kewenangannya diberikan oleh UUD 1945, memutus pembubaran partai politik, dan memutus perselisihan hasil pemilu". However, the 4.0 era, if not 5.0 era, appears to challenge the current regulation within constant demand of how the courts in overall will be held via online and will no longer have further requirements that is considered lacking in contributing of, mainly, quick settlement. In hope of that, the Constitutional Court is also one of the courts in Indonesia with high demands on both proposed regulations as well as what has been written in Undang-Undang Dasar 1945 to be able to adapt and resolves under the demand of simplicity and quick settlement.

Keywords: *Indonesian Constitutional Court. Authority, Demand.*

Penelitian ini ditujukan untuk melihat dari sudut pandang legal-akademik menggunakan metode pendekatan sekunder terhadap kewenangan Mahkamah Konstitusi terutama pada era masa kini. Terlepas dari banyaknya Undang-Undang di Indonesia yang telah mengalami perubahan, kewenangan Mahkamah Konstitusi tetap diatur dalam "Pasal 24C ayat (1) UUD 1945, tugas Mahkamah Konstitusi sebagaimana juga kewenangan Mahkamah Konstitusi, antara lain menguji UU terhadap UUD 1945, memutus sengketa kewenangan lembaga negara yang kewenangannya diberikan oleh UUD 1945, memutus pembubaran partai politik, dan memutus perselisihan hasil pemilu". Namun pada era 4.0, atau 5.0, tidak sedikit peradilan di Indonesia dihadapkan oleh tantangan berupa peradilan yang diselenggakan secara daring dimana dianggap tidak lagi membutuhkan sebanyak ketentuan apabila mengajukan sehingga tidak memenuhi asas cepat dan sederhana. Adanya harapan ini, Mahkamah Agung sebagai salah satu cabang peradilan di Indonesia dengan ajuan proposal perbandingan Undang-Undang atas Undang-Undang Dasar 1945 dapat memenuhi asas cepat dan sederhana.

Kata Kunci: Mahkamah Konstitusi, Kewenangan, Tuntutan Asas.

INTRODUCTION

In the first adjustment of regulations after the independence of Indonesia has announced, the existence of Constitutional Court and its authority has yet to be considered. One of the reasons this matter has been foreseen is due to the earlier existence of Supreme Court in which has been determined to have fulfilled most of the needs of the nation at the time. Several times did the request to submit a different proposal of liken the Act with the basis regulation arises, however, this soon is being held onto the People's Consultative Assembly (*MPR*) on 1998 under the statement of, and is quoted, *"MPR berwenang menguji undang-undang terhadap UUD 1945 dan Ketetapan MPR."* of the *Majelis Permusyawaratan Rakyat (MPR) kemudian membuat ketetaapan MPR Nomor III/MPR/2000 tentang Sumber Hukum dan Tata Urutan Peraturan Perundang-undangan, dalam Pasal 5 ayat (1).* It is soon the Constitutional Court was settled to become part of the authority mainly holding the absolute judgment.

Thus from the perspective of public, having two bodies of judges that is or are in regards of the same topic appears to receive equal pros and cons. At one hand, this may be seen as professionally settled by how the two judges are handling different subject in hands so the diversity will not be leading to overlapping authorities, or else the arising friction of resolve. On the other hand, with two judges may lead to the inconclusive overlapping authorities, there is also the arising possibility for ineffective resolve due to the possible friction.

The Constitutional Court, as it is separated by assignment and definition on UUD 1945 considerably as the court of law, the court itself has tried its best to convince Indonesians that they are standing on their own and is not overlapping authorities with the Supreme Court. Has setting out straight, different edges, the Constitutional Court begins to have the more modern approach by taking technologies into consideration. Specifically on the globalization which has begun since 1990s, the demand for the judges (as in this matter Constitutional Court) to be open minded is also high. In terms of technologies that has been applied in another countries (as recorded the first E-Court held on 2013 by the Chief Justice of India) has slowly been applied in Indonesia as well ever since the peak of 4.0 ear and 5.0 started. With this, the hope of established simplicity and quick settlement will be spread wide of the entirety of Indonesia.

METHOD

This article will be using secondary approach, as in literature studies as well as regulations in order to gain as many accurate statements as possible, by using the writings applied in Indonesia such as *UUD 1945*, *UU MK*, *TAP MPR*, articles, books, journals, regarding the subject in discussion. The analysis using written data available will lead to the mechanism of resolve for the future goal of simplicity and quick settlement.

RESULTS & DISCUSSION

1. The History of Constitutional Court

It was about the second trial of Ad Hoc of the bodies (*PAH I BP MPR)* that was sent to 21 countries in purpose of studied and liken the one that was applied in Indonesia on 2000. The proposal of sending people to study was first revealed after the first mendment of *UUD 1945* in which lead to the conclusion that none of the government bodies at the time has proposed the idea beforehand. Despite the eager agreement and new perspective gained from the team, it is soon revealed that not many of the political bodies were as eager and have the idea of Constitutional Court establishment remained an idea. Only until 2001 on the third amendment of *UUD 1945* did the Constitutional Court establishment has returned on the table to be reconsidered and reviewed.

One that immediately caught the focus led to the word 'impeachment' of the president and/or vice president, the establishment of Regional Leadership Council (*DPD*), the Election, and strengthen the position of Audit Board of Republic of Indonesia (*BPK*). By the time the Constitutional Court has established, the governmental body soon is recognized as the salient part of governmental boards. Several politicians has spoken up and is/are asked of their opinion during the third amendment, as Prof. Jimly Asshidiqie pointed out immediately to the impeachment at the time that is considered the application of injustice being held. Another politician to speak up is Prof. Dr. Sri Soemantri Martosuwignyo that gives rather 2 alternatives ; the Constitutional Court as an independent body ; the Constitutional Court under the Supreme Court hence the calling as 'Constitutional Law' instead.

Therefore the conclusion is soon written in the *Pasal 24C UUD 1945* in which has the mention of the following:

"a. Mahkamah Konstitusi berwenang mengadili pada tingkat pertama dan terakhir yang putusannya bersifat final untuk menguji undang-undang terhadap UUD 1945, memutus sengketa kewenangan Lembaga negara yang kewenangannya diberikan oleh UUD 1945, memutus pembubaran partai politik, dan memutus perselisihan tentang hasil pemilihan umum.

b. Mahkamah Konstitusi wajib memberikan putusan atas pendapat Dewan Perwakilan Rakyat mengenai dugaan pelanggaran oleh Presiden dan/atau Wakil Presiden menurut Konstitusi.

c. Mahkamah Konstitusi mempunyai sembilan orang anggota hakim konstitusi yang ditetapkan oleh Presiden, yang diajukan masing-masing tiga orang oleh Mahkamah Agung, tiga orang oleh Dewan Perwakilan Rakyat, dan tiga orang oleh Presiden.

d. Ketua dan Wakil Ketua Mahkamah Konstitusi dipilih dari dan oleh hakim konstitusi.

e. Hakim konstitusi harus memiliki integritas dan kepribadian yang tidak tercela, adil, negarawan yang menguasai konstitusi dan ketatanegaraan, serta tidak merangkap sebagai pejabat negara.

f. Pengangkatan dan pemberhentian hakim konstitusi, hukum acara serta ketentuan lainnya tentang Mahkamah Konstitusi diatur dengan undangundang."

In order to strengthen the existence of Constitutional Court, many stressed out the importance hence demanding a deadline to have it established. Specified on the regulations to detailed the assignment the Constitutional Court may held in the future. Before or on

the day of constitutional transition on 17th August 2003, on 13th August 2003, the Constitutional Court regulation is established.

As how this has been established, the following regulation on 2003 *Pasal 10 Ayat (1) Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi : "Putusan Mahkamah Konstitusi bersifat final, yakni putusan Mahkamah Konstitusi langsung memperoleh kekuatan hukum tetap sejak diucapkan dan tidak ada upaya hukum yang dapat ditempuh. Sifat final dalam putusan Mahkamah Konstitusi dalam Undang-Undang ini mencakup pula kekuatan hukum mengikat (final and binding)."* In other words if the Constitutional Court has reviewed and stated that at one part or the other of an Act that is against the *UUD 1945* and/or considered to be not legally restricting, the decision taken will be final.

The final decision, as stated by Financial Advisors Thomas Gawron and Ralf Ragowski mentioned in their book "*it is important to distinguish between effect of the court…for specific arena…five main addresses…legislative arena, the judicial arena, the administrative arena, and the private arena involving establishments and citizens"*. The *erga omnes* of the Constitutional Court targets not only several people, as in citizens, but also including bodies of authorities; it is then considered public, for all. With the characteristics of an Act and the basis regulation, it is possible that the legalized and illegalized version of one or more is align; this includes the illegalized version towards those filing the Act.

Hence taking from the Supreme Court, the Constitutional Court is settling 14 cases on 4th November 2003 that is using marathon method in which all 9 first judges at the time using plenary session within 3 days in a row. The motto given by the president, Prof. Jimly Asshidiqie "Justice delay Justice denied" resulted for all of the cases to be handled and checked each 5 per day in order to reach settlement as fast as it could.

2. Globalization Demand on the Establishment of E-Court

Ever since the first establishment has been conducted on August 2003, the development has yet to reach as far of Indonesian territory. The Constitutional Court socialized specifically the amendment of *UUD 1945* as the basis of this body to be recognized and the rights of the citizens to be able to file their concern and/or proposals regarding the Acts that is applied. Despite the manual demand that was first faced as a challenge, the increasing incoming files began to led citizens to get to know further about the Constitutional Court and its existence.

Therefore entering the era of developing technologies, the Constitutional Court follows by building up official website on 2003 in order to preach the goal of being transparent and accountable for the citizens to access. The first update in the website involved the first trial held back then as one of the most notable trial was *001/PUU-I/2003 tentang pengujian Undang-Undang Ketenagalistrikan* that is considered the fastest and most comprehensive for public to grasp. The website itself offer several points such as the information of the trial, the proposals, the statement of decision, the updated regulations, streaming video of trial, case management, tracking, retrieval system, good governance information and annual report.

CONCLUSION

The current era of 5.0 become part of the development of the globalization that remains on updating, in which every single individuals have been involved as part of the global area. Nowadays accessing information is possible without the earlier hassle as requirements or the likes, not to mention the permission that shall be granted.

The court as part of the governmental body posing as the fairest of all for the citizens should also developing in regards of undergoing E-Court, as to having it not when every other countries has have the fresh start ahead. In hopes of such the E-Court could be granted to be better in the future as well as for the other governmental bodies to be able to follow.

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