



Authority Dispute Between State Institutions Whose Authorities from Regulations Below the 1945 Constitution

Sengketa Kewenangan Antarlembaga Negara yang Kewenangannya didasari Peraturan Perundang- undangan di bawah Undang-Undang Dasar 1945

Moh. Roziq Saifulloh¹ , Putri Riska Answendy² 

¹ Enrekang District Court, Sulawesi Selatan, Indonesia

² Australian National University, Canberra, Australia

Article Info

Corresponding Author:

Moh. Roziq Saifulloh
roziqsaifulloh@gmail.com

History:

Submitted: 11-03-2023
Revised: 05-07-2023
Accepted: 20-07-2023

Keyword:

Authority; Institutions; Overlapping;
Dispute; Judicial Review.

Kata Kunci:

Kewenangan; Lembaga Negera; Tumpang
Tindih; Sengketa; Uji Materiiil.

Abstract

The dispute over authority between state institutions whose authorities are based on regulations under the 1945 Constitution cannot be resolved through a decision (*beschikking*), considering that matters involving overlapping authority that has been included in the regulations (*regelling*) and will remain in effect unless one of the matters has been annulled. This research aims to elaborate the pattern of power restriction on state institutions and find out the resolution of authority disputes between state institutions whose authority is based on regulations under the 1945 Constitution. This research is a legal argumentation using a normative research approach. The results of the research show that each state institution obtains authority by attribution, which originates from the 1945 Constitution or from regulations under the 1945 Constitution. The annulment of material containing authority that is sourced from the regulations under the 1945 Constitution can only be carried out through a material test (judicial review) by the judiciary, namely the Supreme Court.

Abstrak

Sengketa kewenangan antarlembaga negara yang kewenangannya didasari Peraturan Perundang-undangan di bawah Undang-Undang Dasar Negara Indonesia Tahun 1945 (UUD NRI Tahun 1945) tidak dapat diselesaikan melalui penetapan (beschikking), mengingat materi berisi kewenangan yang tumpang tindih telah tercantum dalam peraturan perundang-undangan (regelling) akan terus berlaku kecuali salah satu materinya telah dibatalkan. Penelitian ini bertujuan untuk menguraikan pola pembatasan kekuasaan lembaga negara dan mengetahui penyelesaian sengketa kewenangan antarlembaga negara yang kewenangannya didasari peraturan perundang-undangan di bawah UUD NRI Tahun 1945. Penelitian ini merupakan argumentasi hukum menggunakan pendekatan penelitian normatif. Hasil penelitian menunjukkan bahwa setiap lembaga negara memperoleh kewenangan secara atribusi, yaitu bersumber dari UUD NRI Tahun 1945 atau bersumber dari peraturan perundang-undangan di bawah UUD NRI Tahun 1945. Adapun pembatalan materi berisi kewenangan yang bersumber dari peraturan perundang-undangan di bawah UUD NRI Tahun 1945 tersebut hanya dapat dilakukan melalui uji materiiil (judicial review) oleh lembaga yudikatif, yaitu Mahkamah Agung.



Copyright © 2023 by
Jurnal Konstitusi.

All writings published in this journal
are personal views of the authors
and do not represent the views of the
Constitutional Court.

A. INTRODUCTION

1. Background

Based on Article 1 Clause 3 of *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945* (after this can be called the 1945 Constitution) defines that Indonesia is a country based on the rule of Law (*rechtstaat*), not power (*machtstaat*).¹ This provision has become common knowledge among the public, especially among Indonesian law graduates, as it is frequently used in various legal papers as an opening statement or as part of their papers. The mentioned provision emphasizes that everything in the Republic of Indonesia, including the authority held by state institutions and officials, has to be regulated and limited by Law.² Even after a close examination of *Naskah Komprehensif* (the Comprehensive Text), the restriction of authority seems to have been intended by the lawmaker to prevent or avoid the misuse of power or absolutism.³ The limitation of authority is in line with Lord Acton's adage that power tends to make people corrupt.⁴

Before delving deeper into the main discussion, it is necessary to explain the definition⁵ of authority and power. Authority is closely related to power, which according to Talcott Parsons, is the ability to ensure the implementation of mandatory tasks in a collective organizational system. Obligations are applied when it comes to collective goals. If there is resistance, negative sanctions being forced are considered reasonable, regardless of who enforces those sanctions. In short, the essence of power is the right to impose sanctions.⁶ According to Harold D. Laswell and Abraham Kaplan, authority is formal power. In line with this, Robert Bierstedt defines authority as institutionalized power.⁷ In conclusion, authority is legitimate power.⁸

Legitimacy plays a vital role in the existence of state power.⁹ Without legitimacy, power force in a country cannot be called authority¹⁰, and its existence can be categorized as an act against the Law.¹¹ Miriam Budiardjo defines legitimacy as people's beliefs that were

¹ Rumawi et al., "Parate Executie Dalam Fidusia Menurut Ratio Decidendi Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 19, no. 3 (2022): 555.

² Padmo Wahjono, "Hukum Antar Wewenang," in *Pejabat Sebagai Calon Tergugat Dalam Peradilan Tata Usaha Negara*, ed. P.J.J. Sipayung (Jakarta: Sri Rahayu, 1989), 34.

³ I Dewa Gede Palguna, in the 7th Plenary Session of MPR. Mahkamah Konstitusi, *Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945: Latar Belakang, Proses dan Hasil Pembahasan 1999-2002*, Mahkamah Konstitusi (Jakarta: Mahkamah Konstitusi, 2010), 610.

⁴ Sri Soemantri Martosoewignyo, in the 7th Session of PAH I BP MPR. Mahkamah Konstitusi, 303.

⁵ Muhammad Nuruddin, *Logical Fallacy: Menguak Kesalahan-Kesalahan Berpikir Yang Kerap Kita Jumpai Sehari-Hari*, 7th ed. (Depok: Keira Publishing, 2022), 146.

⁶ Miriam Budiardjo, *Dasar-Dasar Ilmu Politik* (Jakarta: Gramedia Pustaka Utama, 2007), 63.

⁷ Miriam Budiardjo, 64.

⁸ Ichsan Anwary, *Lembaga Negara dan Penyelesaian Sengketa Kewenangan Konstitusional Lembaga Negara* (Yogyakarta: Genta Publishing, 2017), 110.

⁹ Uswatun Hasanah et al., "Etika dan Budaya Politik: Konsep Sistem Politik di Indonesia" *Jurnal Pendidikan, Sains dan Teknologi* 1, no. 2 (2022): 336.

¹⁰ Ichsan Anwary, 109-110.

¹¹ Ichsan Anwary, 120.

given by the authority to a person or group, which its implementation can be accepted and respected because it is in line with the procedures and legal principles that apply. Therefore, peoples obey the rules and decisions passed by the authorities.¹² As a rule of law country, Indonesia must obtain its authority power from the regulations.¹³ Therefore, it also applies to the authority of state institutions, which cannot be separated from written legitimacy originating from the regulations.

Furthermore, Jimly Asshiddiqie elaborated in theory about the source of legitimacy norms.¹⁴ That the legitimacy of authority implicates the institutional hierarchy of a state institution, which consequently determines the appropriate legal treatment for the institution, especially regarding protocol etiquette, this theory explains that each state institution, both at the central and regional levels, can be categorized in its position based on the hierarchy of the regulations which were the source of norms from the given authority. As an example, the legitimate authority of State Ministries (*"Kementerian Negara"*) originates from Presidential Regulation Number 68 of 2019 on Organization of State Ministries (*"Peraturan Presiden Nomor 68 Tahun 2019 tentang Organisasi Kementerian Negara"*) as amended by Presidential Regulation Number 32 of 2021 (*"Peraturan Presiden Nomor 32 Tahun 2021"*) from this Presidential Regulation (*"Peraturan Presiden"* (after this can be called as *"Perpres"*)), then became the source of its implementation regulation called Ministerial Regulation (*"Peraturan Menteri"* (after this can called as *"Permen"*)) in each relevant Ministry.¹⁵ Hence based on this example, the President has a higher position than the Ministry as the position of the *Perpres* is higher in the hierarchy than the *Permen*.

With the authority and sources of legitimacy that have been structured, it can be assumed that there will be no problems between state institutions because each authority of each state institution has been divided into Regulations. However, the implementation practice resulted in another way. Issues related to power struggles between state institutions often occur, even though the theory assumes that there should be no more power struggles because it has been divided evenly between each of these state institutions.¹⁶

The struggle for authority power between state institutions is caused by the overlapping authority between two or more state institutions. This overlapping authority does not just happen, considering Indonesia adheres to the rule of Law.¹⁷ It occur for two reasons. First is the lack of state institutions' understanding of a legal product or statutory regulation.

¹² Miriam Budiardjo, *Dasar-Dasar Ilmu Politik*, 64–65.

¹³ Costantinus Fatlolon, "Evaluasi Proses Amendemen Undang-Undang Dasar Tahun 1945 : Perspektif Habermasian," *Jurnal Konstitusi* 19, no. 4 (2022): 819–42.

¹⁴ Jimly Asshiddiqie, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi* (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, 2006), 49.

¹⁵ Juwita Putri Pratama, Lita Tyesta ALW, and Sekar Anggun Gading Pinilih, "Eksistensi Kedudukan Peraturan Menteri Terhadap Peraturan Daerah Dalam Hierarki Peraturan Perundang-Undangan," *Jurnal Konstitusi* 19, no. 4 (2022): 865–85, <https://doi.org/10.31078/jk1947>.

¹⁶ Padmo Wahjono, "Hukum Antar Wewenang," 38.

¹⁷ Vera W S Soemarwi, "The Absence of Constitutional Court's Decision Follow Up: Is It A Loss?," *Jurnal Konstitusi* 19, no. 7 (2022): 721, <https://doi.org/10.29123/jy.v12i2.294.721>.

Second, because of the error factor from the lawmaker in understanding the distribution of power based on the source of its legitimacy.¹⁸ For example, cases related to overlapping authorities between state institutions in the economic field, as shown in the following table:

Table 1.
Overlapping Authority by State Institution

No	Authority	State Institution	Source of Laws	Overlapping Authority
1.	Authority Licenses on Tobacco Drying and Processing (Indonesian Standard of Industrial Classification) (hereinafter can be called KBLI 12091)	Ministry of Industry	<i>Perpres</i> Number 10 of 2021 as amended by <i>Perpres</i> Number 49 of 2021 and Annex of <i>Permen</i> of Ministry Industry Number 9 of 2021 (<i>"Permenperin Number 9 of 2021"</i>)	<i>Perpres</i> Number 10 of 2021, as amended by <i>Perpres</i> Number 49 of 2021, does not limit the industrial scale so that it is in line with the Ministry of Industry granting licenses to all industrial scales.
		Ministry of Agriculture	Annex of <i>Permen</i> of Ministry Agriculture Number 15 of 2021 (<i>"Permentan Nomor 15 Tahun 2021"</i>)	Granting licenses only to micro, small, and medium-scale enterprises.
2.	Authority of State Institutions to resolve disputes related to overlapping authorities	Supreme Court	Article 24A 1945 Constitution	Examine the dispute related to the regulations Hierarchy under the Law to the Law.
		Coordinating Ministry for Economic Affairs	Article 3 <i>Perpres</i> Number 37 of 2020 on Coordinating Ministry of Economic Affairs.	Resolving the issue of Intersecting KBLI and KBLI Without Supporting Ministries/Institutions in two regulations through <i>beschikking</i> : Letter of the Secretary of the Coordinating Ministry for Economic Affairs Number PI.01/433/SES.M.EKON/06/2021 dated 16 June 2021 (<i>"SESMEKON PI .01/433 Tahun 2021"</i>).

Source: Author

¹⁸ Komisi Reformasi Hukum Nasional (KRHN) as quoted by Maruarar Siahaan in Ichsan Anwary, *Lembaga Negara dan Penyelesaian Sengketa Kewenangan Konstitusional Lembaga Negara*, 117.

The two cases above are actually one single case, which the author breaks down to ease the reader to understand. It also emphasizes to the reader that the above case has two legal issues regarding overlapping.

The first case was indeed the initial cause of the issues in overlapping authorities, which is the existence of the same authority over a license/ business permit that is owned by more than one Ministry. This then led to overlapping authority. As of today, 140 KBLI in total were distinguished as overlapping licenses. It included what happened between the Ministry of Industry and the Ministry of Agriculture.¹⁹ Both ministries have the same authority over tobacco-drying and processing industry licensing (“KBLI 12091”). From then, we can see that the legal ground that legitimizes the authority over the KBLI 12091 Licensing at the Ministry of Industry is *Permenperin* Number 9 of 2021, while the legal basis for the Ministry of Agriculture is *Permentan* Number 15 of 2021. At first glance, the two legal grounds have the same hierarchical position, but when being examined further, the two Ministerial Regulations have different legal bases. Therefore, it led to overlapping authorities.

Table 2.
**Sources of Legitimacy Authority of State Institutions
 for Licensing (KBLI 12091)**

Source of Legitimacy	Ministry of Industries	Ministries of Agriculture
Ministerial Regulation	<i>Permenperin</i> Number 9 of 2021 “All industrial (business) scales: Micro, Small, Medium, and Large”	<i>Permentan</i> Number 15 of 2021 “Only allowed on the scale of Micro, Small, and Medium enterprises.”
Presidential Regulation	Article 3 clause (2) <i>Perpres</i> Number 10 of 2021, as amended by <i>Perpres</i> Number 49 of 2021. “The business scale is not limited so that it can be given to all industrial (business) scales: Micro, Small, Medium, Large.”	-
Government Regulation	Annex I Government Regulation (After this to called <i>PP</i>) Number 5 of 2021 (Industrial Sector) “Giving authority to the Ministry of Industry.”	Annex I <i>PP</i> Number 5 of 2021 (Agricultural Sector) “Giving authority to the Ministry of Agriculture.”

¹⁹ See Annex I Government Regulation Number 5 of 2021 (Agriculture Sector and Industrial Sector).

Source of Legitimacy	Ministry of Industries	Ministries of Agriculture
Law	Law Number 11 of 2020 on Job Creation (<i>"UU No. 11 Tahun 2020"</i>) Article 12 (Legitimation for <i>PP</i>) and Article 77 (Legitimation for <i>Perpres</i>)	Law Number 11 of 2020 Article 12 (Legitimation for <i>PP</i>)

Source: Author

Seeing the authority over the KBLI 12091 on Licensing as described in the table above, both have the same source of legitimacy, Law Number 11 of 2020. The difference is that a Presidential Regulation supports the source of legitimacy for the authority of the Ministry of Industry. At the same time, the Ministry of Agriculture has a different legitimacy supporter. Realizing the problem within the overlapping authority, Coordinating Ministry for Economic Affairs issued a decision (*beschikking*)²⁰ in the form of SESMEKON PI.01/433 of 2021²¹ to resolve cases related to overlapping authority as a whole for the problem that occurred to over 140 related KBLI. Its included authority over KBLI 12091 Licensing.²² On top of that, one of the *beschikking* materials contains the legitimacy of the Ministry of Agriculture for the authority of the KBLI 12091 Licensing and prohibits the enforcement of the authority of the Ministry of Industry.

The second case is an outcome of the first case. Regardless of the issue with the status of Law Number 11 of 2020, which was already declared conditionally unconstitutional²³, the actions from the Coordinating Ministry for Economy Affairs that has issued *beschikking*, even if it only contained the results of the agreement set forth in the letter, have been used as a reference or source of legitimacy and cancellation of authority for state institutions. Hence, setting aside the natural source of legitimacy of authority, namely the *Perpres* and *PP*. The Coordinating Ministry for the Economy seems to assume that they can refute the word "law violation" using the argumentation-based Article 3 point e of *Perpres* Number

²⁰ SESMEKON PI.01/433 of 2021 on function regulated by Article 3 point e *Perpres* Number 37 of 2013, more directed at decisions (*beschikking*) to collect results from coordination meetings for problem-solving, hence they cannot be referred to as Policy Regulations (*beleidsregel*).

²¹ AP5I, "Rapat Koordinasi KBLI Beririsan Antara Kementerian Kelautan dan Perikanan Dengan Kementerian Perindustrian - 24 Agustus 2021," accessed November 2, 2022, <https://ap5i-indonesia-seafood.com/indoap5i/2021/08/25/rapat-koordinasi-kbli-beririsan-antara-kementerian-kelautan-dan-perikanan-dengan-kementerian-perindustrian-24-agustus-2021>.

²² AP5I.

²³ See Law Number 11 of 2020 declared as Conditionally Unconstitutional on 25 November 2021 based Putusan MK Nomor 91/PUU-XVIII/2020 and has been amended by Peraturan Pemerintah Pengganti Undang-Undang ("*Perpu*") No. 2 Tahun 2022. Helmi Chandra SY and Shelvin Putri Irawan, "Perluasan Makna Partisipasi Masyarakat Dalam Pembentukan Undang-Undang Pasca Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 19, no. 4 (2022): 766, <https://doi.org/10.31078/jk1942>.

37 of 2020, which states that the Coordinating Ministry for Economy Affairs carries out the following functions: “*Dispute resolution in the economic sector that cannot be resolved or agreed between Ministries/Institutions and to ensure the implementation of the intended decision.*”

The argument above can be considered as normatively wrong because even though the Coordinating Ministry for Economic Affairs has the authority to resolve problems between state institutions in the economic sector, that does not mean that it can prohibit or prevent the enactment of the regulations, which are still legally valid. The act of prohibiting or preventing the enforcement of authority in statutory regulations implicitly has the same effect as the annulment of statutory regulations, which both impact the invalidity of a particular article. When referring to Article 16 clause (2) of Law Number 30 of 2014 on Government Administration (“UUAP”), it is stated that each head official related has the authority to resolve authority disputes through coordination to produce an agreement. However, it should be underlined that the same article also mentions “unless specified otherwise in the provisions of the statutory regulations.” It means that the agreement between head officials (*beschikking*) does not “necessarily” revoke the authority that is still valid in statutory regulations. Therefore, what is the necessary solution to abolishing the authority that is valid in regulations? The solution is through material testing.

Through material testing, the judicial institution can annul material deemed contrary to the regulations in the higher hierarchy, including material containing overlapping authorities. 1945 Constitution only gives statutory review authority to the judicial institution, the Supreme Court (after this can be called MA) or the Constitutional Court (after this can be called MK).²⁴ However, it is necessary to realize that no judicial institution is explicitly authorized to resolve disputes over the struggle over authority between state institutions except for those whose has been regulated in the 1945 Constitution.²⁵ Nevertheless, it has been clearly regulated that cancellation of statutory material, including material that contains overlapping authorities between state institutions, cannot be resolved through a decision (*beschikking*) in the form of an agreement between head officials or a ministerial letter but must be through a judge’s decision (*vonnis*).²⁶

Taking an example from the practice of exercising power mentioned above, it can be explained that this kind of situation illustrates an exercise of authority. The reason is that it acts as if given the authority to do administrative court within the administrative environment without any source of legitimacy in statutory regulations.²⁷ This development indicates that the government’s authority, originally based on statutory regulations, eventually shifted to no need to use statutory regulations and can be based on other forms of Law.

²⁴ See Article 24 Clause (2) 1945 Constitution.

²⁵ See Article 24C 1945 Constitution.

²⁶ Jimly Asshiddiqie, *Hukum Acara Pengujian Undang-Undang* (Jakarta: Konstitusi Press, 2006), 1–5.

²⁷ Padmo Wahjono, “Hukum Antar Wewenang,” 36.

As long as it is proven to be useful, its existence is justified. Hence, policies flourish as manifestations of authority without a legal basis or “expedited wisdom” (*detournement du pouvoir*).²⁸

Kolonel Inf Sadikin’s²⁹ view that the result of good legislation is often said to be the result of amazing literary art, the fruit of an expert thinker. But, without good implementation, the regulation only becomes a piece of literature, a sentence that is only appreciated among universities. Their usefulness for legal support is doubtful (*justisiabelen*). Just like a factory, not a magnificent factory building architecture or a machine, but the one inside controls or supervises the machine. Just like the regulations, their implementation should be implemented and supervised properly, not being ignored without providing any benefit and easily being violated.

Several previous studies related to disputes over the authority of state institutions were carried out by Triningsih and Mardiya³⁰, Eka Lestari,³¹ and Janpatar Simamora³². Triningsih and Mardiya’s research concludes that disputes over the authority of state institutions have *subjectum litis* and *objectum litis* interpretations that are still widely open. Meanwhile, Eka Lestari concluded that the absolute cumulative conditions for disputes over state institutions are that *subjectum litis* is a state institution specified in the 1945 Constitution, and *objectum litis* is the authority granted by the 1945 Constitution. As for Janpatar Simamora, he concluded that the scope limits and definitions of “state institutions,” as well as the meaning of “whose authority is granted by the constitution,” as stated in Article 24C clause (1) of the 1945 Constitution, is not being strictly regulated. Therefore, it is potentially raise multiple interpretations and diverse views regarding who actually has legal standing in cases of disputes over the authority of state institutions. From those studies, we know that currently, the available discussion is about the settlement of authority disputes between state institutions whose authority was granted by the 1945 Constitution through the Constitutional Court. Both are related to *subjectum litis* and *objectum litis*.³³In contrast to previous studies, this research discusses authority disputes between state institutions whose powers are granted by the regulations under the 1945 Constitution.

²⁸ Padmo Wahjono, 40–41.

²⁹ Inspektorat Djenderal Territorial dan Perlawanan Rakyat, *Undang-Undang Keadaan Bahaja 1957 dan Peraturan-Peraturan Jang Berhubungan Dengan Itu* (Jakarta: Inspektorat Djenderal Territorial dan Perlawanan Rakyat, 1957), 3–4.

³⁰ Anna Triningsih and Nuzul Qur’aini Mardiya, “Interpretasi Lembaga Negara dan Sengketa Lembaga Negara Dalam Penyelesaian Sengketa Kewenangan Lembaga Negara,” *Jurnal Konstitusi* 14, no. 4 (2018): 778–98, <https://doi.org/10.31078/jk1444>.

³¹ Sulistyani Eka Lestari, “Penyelesaian Sengketa Kewenangan Antar Lembaga Negara Oleh Mahkamah Konstitusi,” *DiH: Jurnal Ilmu Hukum* 10, no. 19 (2014): 38–47, <https://doi.org/10.30996/dih.v10i19.284>.

³² Janpatar Simamora, “Problematika Penyelesaian Sengketa Kewenangan Lembaga Negara Oleh Mahkamah Konstitusi,” *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 28, no. 1 (2016): 77–90, <https://doi.org/10.22146/jmh.15859>.

³³ *Subjectum litis* is a state institution whose powers are granted by the Constitution. At the same time, *objectum litis* is the constitutional authority of state institutions granted by the Constitution. See Peraturan MK Nomor 08/PMK/2006.

Based on the background above, it can be understood that there are issues with the pattern of power restriction in state institutions, especially which institutions have the authority granted by the 1945 Constitution and which are granted by statutory regulations under the 1945 Constitution. In addition, there is an absence of authority given by the 1945 Constitution for judicial institutions to settle disputes between state institutions. The legal issue of this research is considered legal obscurity if seen through the overlapping authority of state institutions. Furthermore, it can also be referred to as a legal vacuum if seen through disputes over the authority of state institutions whose powers are not granted by the 1945 Constitution but granted by laws or statutory regulations under it.

2. Research Questions

Problems that the author can draw from the background above are how the pattern of power restriction in state institutions is based on regulations? How do authority settle disputes between state institutions whose authorities are granted by the regulations based on the hierarchy below the 1945 Constitution?

3. Research Methods

This is a legal argumentation research that focuses on studying the causes of a case related to overlapping authority between the same authorities belonging to two different state institutions. Additionally, Both authorities were still valid.³⁴ The author uses normative research by analyzing existing regulations, especially the ones related to authority disputes between state institutions, to find the truth based on legal logic.³⁵ The study and analysis in this normative research cannot be separated from statutory regulations and legal materials relating to the restriction on powers of state institutions and settlement disputes between state institutions over authority whose authority is regulated by the regulations below the 1945 Constitution.³⁶

B. DISCUSSION/ ANALYSIS

1. Patterns of Power Restriction in State Institutions Based on The Regulations

State institutions are often associated with state agencies and state organs. The reason is that those three terms are inconsistently used in the regulations.³⁷ Jimly Asshiddiqie defines the concept of a state institution in a narrow meaning as an institution formed not as a civil organization based on the Constitution, Law, or by lower regulations. State institutions can exist in every realm of a government body, including legislative, executive, judicative,

³⁴ Moh. Roziq Saifulloh, "Examination and Confiscation of Notarial Deeds for The Purpose of Criminal Law Enforcement without Approval from The Notary Honorary Council," *Jurnal Penelitian Hukum De Jure* 22, no. 4 (2022): 427, <https://doi.org/10.30641/dejure.2022.v22.423-436>.

³⁵ I Nyoman Putu Budiarta Atmadja, I Dewa Gede, *Teori-Teori Hukum* (Malang: Setara Press, 2018), 124–131.

³⁶ Phillipus M Hadjon et al., *Pengantar Hukum Administrasi Indonesia (Introduction to the Indonesian Administrative Law)* (Yogyakarta: Gajah Mada University Press, 2015), 128.

³⁷ Jimly Asshiddiqie, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*, 31.

or even a combination of those three.³⁸ Nonetheless, the function of state institutions these days is rapidly growing, hence the doctrine of *trias politica* associated with Montesquieu is no longer relevant to be used as a reference, considering it is no longer possible to maintain those organizations only exclusively dealing with one function of power.³⁹

In Indonesia, state institutions are born based on statutory regulations. Therefore, each institution's authority must also be stated in writing form in statutory regulations.⁴⁰ The theory of sources of legitimacy norms by Jimly Asshiddiqie divides state institutions into stages based on a hierarchy of Regulations as well as provides limits on the powers given to these state institutions.⁴¹ Although Jimly Asshiddiqie prioritizes the application of this theory in protocol etiquette, the author's view of this theory can also be used as a guide for state institutions to find out the pattern of power restriction in state institutions hence they can know where to be responsible for their legal actions. For example, the legitimacy of authority within the State Ministries, before being regulated by each Ministry through its Ministerial Regulation, is being regulated in advance through *Perpres* Number 32 of 2021. Hence based on the hierarchical position of these regulations, it can be concluded that the Ministries are hierarchy below the President and thus responsible to the President.⁴²

Building upon the theory of the source of legitimacy norms, this research will describe the power restriction in state institutions based on the hierarchy of the regulations which were the source of their legitimacy so that it can be known to whom a state institution is responsible and to what extent its powers are limited. Additionally, it must be emphasized that there is no room for state institutions to obtain authority without it being regulated in statutory regulations first.⁴³ The method of granting authority through the regulations is called attribution. Every authority given to the state institution existed or was born in attribution form given from the highest statutory regulations, the 1945 Constitution⁴⁴, and it is referred to as the original power⁴⁵, which is then given and/or delegated to other state institutions through statutory regulations below it.⁴⁶ Based on the 1945 Constitution, at least 7 (seven) higher state institutions became the basis of power for the state institutions in Indonesia. It consists of the President, People's Consultative Assembly ("MPR"), House of Representatives ("DPR"), Regional Representatives Council ("DPD"), Constitutional

³⁸ Jimly Asshiddiqie, 32–33.

³⁹ Jimly Asshiddiqie, 35.

⁴⁰ Indroharto, *Usaha Memahami Undang-Undang Tentang Tata Usaha Negara Buku I* (Jakarta: Pustaka Sinar Harapan, 1994), 87–88.

⁴¹ Jimly Asshiddiqie, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*, 49–52.

⁴² Article 3 Law Number 39 of 2008 on State Ministry.

⁴³ Indroharto, *Usaha Memahami Undang-Undang Tentang Tata Usaha Negara Buku I*, 89.

⁴⁴ Tanto Lailam, Putri Anggia, and Irwansyah Irwansyah, "The Proposal of Constitutional Complaint for the Indonesian Constitutional Court," *Jurnal Konstitusi* 19, no. 3 (2022): 700, <https://doi.org/10.31078/jk1939>.

⁴⁵ Made Nurmawati, Nengah Suantra, and Luh Gde Astaryani, *Hukum Kelembagaan Negara* (Denpasar: Fakultas Hukum Universitas Udayana, 2017), 47.

⁴⁶ I Gde Pantja Astawa and Firdaus Arifin, *Sengketa Kewenangan Lembaga Negara di Mahkamah Konstitusi* (Refika Aditama, 2021), 149.

Court (“MK”), Supreme Court (“MA”), and Audit Board (“BPK”).⁴⁷ Derived from the source of attribution, higher state institutions were the beginning of the power branch since it function as direct state power.⁴⁸

The attribution of other state institutions outside what mentions above must refer to the state power that the 1945 Constitution has determined⁴⁹, hence it will obtain the same power as the 7 (seven) higher state institutions above.⁵⁰ In other words, every other state institution was given legitimized authority from higher state institution regulations because those 7 (seven) higher state institutions already obtained direct state power based on the highest Law, the 1945 Constitution. Furthermore, here is the following table that could explain branches of power from the higher state institutions regulated in the 1945 Constitution and its distribution of authority from the branches of power they obtained:⁵¹

Table 3.
Branch of Power of the Higher State Institutions and their Implementing Regulations as Attribution Authority to State Institutions

Higher State Institution	Breach of State Power	State Institutions that obtain Attribution through Implementing Regulations of Higher State Institutions
President	Executive	State institutions under it as administrators of government, both central and regional.
People’s Consultative Assembly	Legislative	Does not form implementing regulations as an attribution of authority to other state institutions.
House of Representative	Legislative (with legislative, budgeting, and supervisory function)	Does not form implementing regulations as an attribution of authority to other state institutions.
Regional Representatives Council	Legislative (as <i>co-legislator</i>)	Does not form implementing regulations as an attribution of authority to other state institutions.

⁴⁷ Jimly Asshiddiqie, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*, 41.

⁴⁸ Astawa and Arifin, *Sengketa Kewenangan Lembaga Negara di Mahkamah Konstitusi*, 149.

⁴⁹ Pan Mohamad Faiz, “Perlindungan Terhadap Lingkungan Dalam Perspektif Konstitusi,” *Jurnal Konstitusi* 13, no. 4 (December 2016): 769, <https://doi.org/10.31078/jk1344>.

⁵⁰ Jimly Asshiddiqie, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*, 41.

⁵¹ The use of the word “given” refers to attribution, not obtained from other state institutions or state institutions above it. Astawa and Arifin, *Sengketa Kewenangan Lembaga Negara di Mahkamah Konstitusi*, 149.

Higher State Institution	Breach of State Power	State Institutions that obtain Attribution through Implementing Regulations of Higher State Institutions
Constitutional Court	Judicative	State institutions belonging to the judicial or executive branch of power are given functions to hold judicial power based on the Law.
Supreme Court	Judicative	State institutions belonging to the judicial or executive branch of power are given functions to hold judicial power based on the Law.
Audit Board	<i>Financial audit</i>	Does not form implementing regulations as an attribution of authority to other state institutions.

Source: Author

Judging from the Higher State Institutions that form implementing regulations as an attribution of authority to state institutions, only 3 (three) higher state institutions can form implementing regulations as an attribution of authority, which are the President, the Constitutional Court (“MK”), and the Supreme Court (“MA”).

Before further discussion about the attribution of authority, it is necessary to understand that constitutionally the President is an executive body that can carry out legislative functions. Even though he has the authority to carry out legislative functions, the President cannot be called a legislative body.⁵² Since the DPR holds this power as instructed in Article 20 Clause (1) of the 1945 Constitution. Apparently, the common understanding about mentioning breach of legislative power is being restricted by the 1945 Constitution. Hence it is only attached to the establishment of the Formal Law (*formeell gesetz*). Besides, the President is referred to as the holder of executive power because he holds government power constitutionally.⁵³ While exercising this power, the President also carries out legislative functions such as establishing Government Regulations,⁵⁴ Forming Laws with the DPR, and establishing *Perpu* in conditions of compelling urgency.⁵⁵ To sum up, the President is not only authorized to make policies related to government administration (*beschikking*) but also has the authority to form regulations (*regelling*).

⁵² Jimly Asshiddiqie, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*, 134.

⁵³ Catur Alfath Satriya, “Karakteristik Pemakzulan Presiden di Indonesia,” *Jurnal Konstitusi* 19, no. 3 (2022): 537, <https://doi.org/10.31078/jk1932>.

⁵⁴ See Article 5 Clause (2) 1945 Constitution.

⁵⁵ See Article 22 1945 Constitution.

The attribution authority of executive government through Presidential Regulation is only given to the executive government at the central and regional levels.⁵⁶ Meanwhile, the legislative function in establishing the regulations is given to the central and regional governments (*Pemda*) based on their respective powers.⁵⁷ Both central and regional governments, which were executive institutions below the President, have the same authority as the President but still have restrictions in exercising the authority, which can be measured using the parameters of their hierarchical position. Furthermore, the position of the central government is above the regional government,⁵⁸ Hence when the regional government carries out its autonomy, it bonds to have limitations, especially central government affairs, which are already regulated based on statutory regulations.⁵⁹

Jimly Asshiddiqie explained that the position of state institutions not only can be categorized from the source of the legitimacy of their authority but also can be categorized as layers of position based on the functions of these state institutions. Where the central government is placed as the first-tier organ consisting of every higher state institution, and the second-tier organ is made up of every state institution that carries out central government affairs. In comparison, the regional government is positioned as the third-tier organ.⁶⁰ This can be seen based on what authority is granted by the regulations to carry out the functions of these state institutions. The hierarchical position of state institutions has implications for the legitimacy of state institutions to delegate their authority as well as becomes a parameter of how wide their authority can be applied to the state institutions below them. For example, first- or second-tier organs can delegate their authority to third-tier organs, but the reverse does not apply.⁶¹

Judicial power exercised by the Supreme Court and the Constitutional Court has one thing in common with the President, in which the three of them can form regulations (*regelling*).⁶² Contrary to the similarities, the judicial power also has differences with the President (as executive power holder), which can be seen in the pattern of authority attribution. The difference is that state institutions that are given the function of administering executive government are definitely below the President. Therefore, they are directly responsible to the President. Meanwhile, state institutions that can carry out functions related to judicial

⁵⁶ See Elucidation of Law Number 23 of 2014 on Regional Government.

⁵⁷ See Article 8 Law Number 12 of 2011 on Formation of the Regulation as has been amended by Law Number 13 of 2022 ("Law P3").

⁵⁸ Abdul Rauf Alauddin Said, "Pembagian Kewenangan Pemerintah Pusat - Pemerintah Daerah Dalam Otonomi Seluas - luasnya Menurut UUD 1945," *Fiat Justisia Jurnal Ilmu Hukum* 9, no. 4 (2015): 587, <http://jurnal.fh.unila.ac.id/index.php/fiat/article/viewFile/613/552>.

⁵⁹ Proborini Hastuti, "Menakar Konstisionalitas Penundaan dan/atau Pemotongan Anggaran Transfer ke Daerah Dalam UU APBN," *Jurnal Konstitusi* 19, no. 4 (2022): 843-66, <https://doi.org/10.31078/jk1945>.

⁶⁰ Jimly Asshiddiqie, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*, 105-111.

⁶¹ Article 5 Law Number 23 of 2014 on Regional Government as has been amended by Law Number 9 of 2015.

⁶² See Article 8 Law P3.

power outside the MK and MA⁶³ are not only limited to judicial institutions but also to executive government institutions that are given attributive authority through laws to be able to carry out judicial functions, such as the Attorney General's Office, Police ("POLRI"), Indonesian National Armed Forces ("TNI"), Ministry of Finance (Tax Court), Ministry of Manpower (Mediation of industrial relations), and other executive institutions. Thus, even though the executive branch carries out a judicial function, it is not responsible to the Supreme Court or the Constitutional Court but rather responsible to the President.

Realistically, neither the Supreme Court nor the Constitutional Court form implementing regulations as an attribution of their authority in the executive branch to exercise judicial power because this authority has a source of legitimacy called laws. Even though further regulations regarding the attribution of state institution's authority were also regulated through implementing regulations for the Supreme Court or the Constitutional Court, it does not mean that state institutions can be classified as judicial institutions. The functions related to judicial power only apply to second-tier organs. It does not apply to executive agencies in first-tier and third-tier organs. On the other hand, the authorities obtained by the executive branch in carrying out functions related to judicial power must be given through attribution from the 1945 Constitution or the Law. Therefore, an executive branch that carries out a function related to judicial power without any legal basis can legitimize that authority considered to be violating the Law. The violation refers to Article 17 *UUAP*, which regulates three prohibitions related to abuse of authority, including the prohibition to act arbitrarily, exceed, and/or mix up authority.

Based on the previous explanation, it can be concluded that all state institutions outside the 7 (seven) higher state institutions have their authority due to attribution from original power or authority originating from the regulations under the 1945 Constitution. From there, we can categorize state institutions into 2 (two) which is:

- a. State institutions whose authority originates from the 1945 Constitution consist of 7 (seven) institutions, including President, MPR, DPR, DPD, MK, MA, and BPK;
- b. State institutions whose authority originates from the regulations under the 1945 Constitution, which in the central government consist of 183 institutions as well as DPRD and Regional Governments, such as all Ministries of the Republic of Indonesia, TNI, POLRI, Attorney General, Judicial Commission, Corruption Eradication Commission ("KPK"), Presidential Advisory Council ("DPP"), the General Elections Commission ("KPU"), Business Competition Supervisory Commission ("KPPU"), National Commission on Human Rights ("Komnas HAM"), Commission for the Protection of Children ("KPAI"), the Ombudsman Commission, the Regional Government, and the Regional People's

⁶³ The Judicial Commission has a structural position equal to the Supreme Court and the Constitutional Court. However, it functions only as a support (auxiliary). Jimly Asshiddiqie, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*, 63.

Representative Council, as well as other state institutions as long as their powers are regulated in the regulations below the 1945 Constitution.⁶⁴

It is important to understand the pattern of attribution as a source of legitimate authority in order to know where the authority refers to and how to resolve it when disputes occur over authority between state institutions. Fundamentally, there is no room for state institutions to obtain authority except based on the regulations.⁶⁵ Even though state institutions have obtained attributive authority, it is not uncommon to find regulations that do not provide specific explanations regarding the exercise of this authority hence state institutions exercise their authority based on discretionary interpretation.⁶⁶

Regarding the extension of which discretion can be exercised, the government only can exercise discretion if the decisions or actions (*beschikking*) that were being made are still within the scope of its authority hence it does not cause conflicts of interest between state institutions and does not contradicting with positive Law.⁶⁷ In other words, even though there is a legal vacuum, discretion cannot easily be exercised arbitrarily outside of the function or even beyond the branch of power of state institutions as regulated in Article 31 *UUAP*. The reason it's that a government legal action may be considered to be nicely done in both the application and benefits (*doelmatig*), but if it uses authority that is contrary to positive Law or not even within its authority, even worst if it is supposed to be another institution authority, then the action is considered to be unlawful. In short, all government actions should, in appearance and reality, be based on positive Law.⁶⁸ Thus, it is also necessary to realize that discretion is not only talking about the issue of whether there is a legal basis or not (*wetmatigheid*) but also the issue of every action by the executive, which must always be considered proper, appropriate, and fair according to Law (*rechtmatigheid*).⁶⁹

2. Dispute Settlement over Authority Between State Institutions whose Authorities are Regulated by The Regulations below the 1945 Constitution

Previous discussions show two reasons for overlapping authorities between state institutions. First, the ambiguity of the regulations resulted in different interpretations due to state institutions' lack of understanding of how to exercise their authority. Second, lawmakers make errors in understanding the division of powers based on their source of legitimacy, thus giving the same authority to more than one different state institution. Certainly, the first reason can be resolved through coordination between state agencies with

⁶⁴ Kementerian Pendayagunaan Aparatur Negara dan Reformasi Birokrasi, "https://www.menpan.go.id/site/kelembagaan/lembaga-pemerintah-pusat," 2021, https://www.menpan.go.id/site/kelembagaan/lembaga-pemerintah-pusat.

⁶⁵ Indroharto, *Usaha Memahami Undang-Undang Tentang Tata Usaha Negara Buku I*, 90.

⁶⁶ Indroharto, 88.

⁶⁷ See Article 31 *UUAP*.

⁶⁸ Indroharto, *Usaha Memahami Undang-Undang Tentang Tata Usaha Negara Buku I*, 87.

⁶⁹ Indroharto, 89.

intermediary state institutions above them hence their authority can be mediated and/or clarified by the state agency that makes the authority. For example, disputes between executive agencies due to the differences in the interpretation of regulations which causing overlapping authorities. The President can mediate it as it places in a higher hierarchy in executive institutions. Thus, they can produce an agreement in the form of a decision as regulated in Article 16 *UUAP*.

Contrary to the second reason, regardless of the stages in the judicial process, the same authority belonging to two or more state institutions certainly requires an examination of the articles which contain those powers. This is because the authority has been regulated already in the regulations that are still in force. Hence the enforceability of this authority follows the validity of the material in the regulations that regulate it.⁷⁰ Therefore, it is necessary to annul the article that contains the authority belonging to unauthorized state institutions or contradicts the regulations above. In other words, the authority contained in the regulations (*regelling*) requires a judge's verdict to cancel it.⁷¹ If it is not canceled, the regulations governing this authority will still be in force as well as the application of the authority, even if overlap occurs. As for the discussion of solving the problem of overlapping authority between state institutions, the authors limit it to the problem of overlapping based on the second reason, which is lawmaker error in understanding the division of powers based on their source of legitimacy hence they include the same authority in more than one different state institution.

The problem with overlapping authority between state institutions is considered to be the object of dispute from dispute settlement between state institutions. It arises because of the conflicting authorities between different state institutions, as stated in the regulations. The problem of overlapping authority between state institutions is different from state administrative disputes, which occur in the State Administrative Court (PTUN). The following table describes the differences between the two disputes:

Table 4.
Difference between State Administrative Dispute and Authority Dispute between State Institutions

Dispute Type	State Administrative Dispute	Authority Dispute between State Institutions
Object	State administrative decisions (<i>beschikking</i>).	Regulations (<i>regelling</i>) that regulate the same authority or the one that is unclear in multiple state institutions cause overlapping authorities.

⁷⁰ Article 10 Law P3.

⁷¹ Article 9 Law P3.

Dispute Type	State Administrative Dispute	Authority Dispute between State Institutions
Subject	Individuals or civil legal entities (Applicant) with state administrative bodies or officials, both at the central and regional levels (Respondent).	State institutions against state institutions.
Enforceability object	<i>Presumptio Iustae Causa Principle:</i> State administrative decisions are deemed correct according to Law hence they can be implemented beforehand as long as they have not been proven otherwise.	Regulations containing overlapping powers remain valid in each state institution. Hence they can still exercise the authority as long as the MK or MA has not annulled the regulations containing the authority.

Source: Author

Regarding the problem with overlapping authorities, dispute resolution must trace the norms of legitimacy source that become the legal basis of this authority. The legal basis for “authority of state institutions” is different from the legal basis for “establishing state institutions.” For example, the legal basis for forming ministries is Article 17 of the 1945 Constitution. However, their attributive authority is not regulated in the Constitution but is commonly regulated by Presidential Regulations Number 32 of 2021 and, more specifically, in other Presidential Regulations. By tracing the norms of legitimacy source, which is the legal basis for the authority of state institutions, it can be known which judicial institutions have the right to revoke authority.

Regardless of the stages in the judicial process related to authority disputes between state institutions, the annulment of the authority of state institutions contained in regulations can only be carried out through a judicial review.⁷² Even though authority disputes between state institutions can’t be compared with the review of regulations against the higher regulations (judicial review), in the judicial process, disputes over these authorities certainly require the cancellation of part of the material in regulations that contain the authority of one of the institutions. The cancellation or annulment is considered important since the overlapping authority will continue to apply normatively as long as the material in the legislation is not canceled. For example, the same authority over the KBLI 12091 Licencing obtained by the Ministry of Agriculture and Ministry of Industry based on *PP* Number 5 of 2021, both ministries will continue to have normative authority as long as

⁷² See Elucidation Article 10 clause (1) point d and clause (2) Law P3.

the material authority of one of those state institutions has not been canceled by court decision.⁷³ Although realistically, there were deviations from the norms of legislation, in which the authority of the Ministry of Industry is being canceled through *beschikking*.⁷⁴

Up to this point, there are only 2 (two) state institutions, being authorities that constitute to cancel existing regulations, MK and MA.⁷⁵ Furthermore, the Constitutional Court is given the authority regarding disputes settlement between state institutions as regulated in Article 24C clause (1) of the 1945 Constitution.⁷⁶ The article states that the Constitutional Court has the authority to decide over the disputes of authority between state institutions whose powers are granted by the Constitution.⁷⁷ It should emphasize that the subject is “state institutions whose authority is granted by the Constitution,” not “state institutions formed by the Constitution” Hence it only refers to state institutions whose powers are regulated in writing form in the 1945 Constitution, and not just about the establishments or formation of the state institutions. The authority of the Constitutional Court is to interpret the authority of state institutions whose authority is contained in the 1945 Constitution.⁷⁸ It can easily be understood if it is being linked to the authority of the Constitutional Court to examine the Law against the 1945 Constitution, in which if a material (including material related to the authority of state institutions) in the Law deemed to be inappropriate or contrary to the authority regulated in the 1945 Constitution, thus the Constitutional Court may cancel some of the material in the said Law.⁷⁹

The same logic that is being used in the authority of the Constitutional Court supposedly can also be used to see what judicial institutions have the right to fill the legal vacuum on which to decide the authority in disputes between state institutions whose powers are granted by laws and/or statutory regulations below them. It certainly requires a judicial review of the regulations below the Law against the Law in order to cancel material related to the authority that is considered contrary to the Law but has been applied normatively in the regulations below the Law. Based on Article 24A of the 1945 Constitution, the judicial review authority is attached to the Supreme Court. The table below explains the concept of resolving Authority Disputes between State Institutions:

⁷³ See Elucidation Article 12 Law P3.

⁷⁴ The practice of deviations from the Law of results of SESMEKON PI.01/433 OF 2021 can be seen on the website of Lembaga OSS, where the authority over permits/legality over KBLI 12091 is only given to the Ministry of Agriculture as stipulated in Permentan Number 15 of 2021. Kementerian Investasi/BKPM, “Klasifikasi Baku Lapangan Usaha Indonesia (KBLI) 2020,” 2021, <https://oss.go.id/informasi/kbli-detail/3c4ce858-dd14-42e8-afab-f5f92346114b>.

⁷⁵ See Article 24A and Article 24C 1945 Constitution.

⁷⁶ Adam Ilyas, “Problematika Peraturan Mahkamah Konstitusi dan Implikasinya,” *Jurnal Konstitusi* 19, no. 4 (2022): 794–818.

⁷⁷ Miftah Faried Hadinatha, “Peran Mahkamah Konstitusi Mencegah Gejala Autocratic Legalism di Indonesia,” *Jurnal Konstitusi* 19, no. 4 (2022): 741–65.

⁷⁸ See Article 24C 1945 Constitution *jo.* Article 1 point 5 Peraturan MK Nomor 08/PMK/2006.

⁷⁹ Fitra Arsil and Qurrata Ayuni, “Kedudukan Hukum Khusus Dalam Pengujian Undang-Undang di Mahkamah Konstitusi,” *Jurnal Konstitusi* 19, no. 4 (2022): 965, <https://doi.org/10.31078/jk19410>.

Table 5.
Concept of Resolving Authority Disputes between State Institutions

State Institutions	Constitutional Court (“MK”)	Supreme Court (“MA”)
Authority	Interpreting the authority in the 1945 Constitution and canceling the authority regulated by the Law, which was considered contrary to the 1945 Constitution.	Interpreting the authority in the Law and canceling the authority regulated by the regulations below the Law, which are deemed contrary to the Law.
Legal Dispute Subject	State institutions whose authorities are regulated in the 1945 Constitution.	Institutions whose authorities are regulated in laws and/or regulations below them.
Dispute Object	The Law contains the authority of the Higher State Institutions that are not in accordance with the authority regulated in the 1945 Constitution.	Materials of regulations below the Law that are not in accordance with the authority regulated in the Law.
Legal Basis	Article 24C clause (1) of the 1945 Constitution <i>“The Constitutional Court has the authority to adjudicate at the first and final instance, the judgment of which is final, to review laws against the Constitution, to judge on authority disputes of state institutions whose authorities are granted by the Constitution, to judge on the dissolution of a political party, and to judge on disputes regarding the result of a general election.”</i>	Article 24A Clause 1 of the 1945 Constitution <i>“The Supreme Court shall have the authority to adjudicate at the level of cassation, to review statutory rules and regulations below the laws against the laws, and shall have other authorities granted by the laws.”</i>

Source: Author

The difference in the authority of the Constitutional Court and the Supreme Court lies in the authority that is written in the 1945 Constitution. The authority of the Constitutional Court has a legal basis that is regulated in writing form in the 1945 Constitution, while the Supreme Court does not. However, this does not prevent the Supreme Court from adjudicating its authority in disputes between state institutions whose authority is granted by laws

and/or regulations below it since the court adheres to the *ius curia novit* principle.⁸⁰ This means the court is prohibited from refusing a case because the judge is deemed to know and understand all kinds of laws as regulated in Article 10 of Law Number 48 of 2009 on Judicial Power. As a matter of fact, not only regulations but also policy (*beleidsregel*) such as Circulars Letter ("*Surat Edaran*") have also been tested and annulled by the Supreme Court.⁸¹

Quoting Paul Scholten's statement, "*Het recht is er doch het moet worden gevonden, in de vondst zit het nieuwe*", the law has been found, but it still needs to find its novelty which is shown from the discovery of it.⁸² This authority can be seen based on the indicators of power. If we examine the position of the Supreme Court, then we know that the title assigned to the Supreme Court is no different from the Constitutional Court, which is "judicial power." The two institutions were formed to uphold Law and justice through the judicial administration. Hence, it is not taboo if the same authority as the Constitutional Court is given to the Supreme Court, even if it has a different scope, which is the authority to decide authority disputes between state institutions whose powers are granted by laws and/or regulations below them.

Historically, law enforcement aimed not only at the people but also towards the state as the implementation of the principle of equality before the Law. The implementation of this principle also underlies the formation of PTUN with the aim of orderly administration within the government apparatus to create administrative behavior and prevent government officials from committing legal deviations.⁸³ Using the same rationale, the dispute resolution over authority between state institutions has the same urgency as establishing an Administrative Court, which is to prevent government officials from committing legal deviations.

The aim being wanted to achieve in the description of this discussion is to fill the legal vacuum by adding the authority of the Supreme Court over dispute resolution related to overlapping authority between state institutions whose authority is granted by legislation under the 1945 Constitution. Hence it can provide legal certainty for dispute resolution. Achieving this concept will help straighten out the chaotic administrative practices such as decisions of the executive branch (*beschikking*), which cancel the authority regulated in regulations (*regelling*). To achieve that goal, an amendment is needed. There has to be the fifth amendment to the 1945 Constitution, adding the phrase related to the authority of the Supreme Court in Article 24A of the 1945 Constitution. The additional phrase needed is

⁸⁰ Zainal Arifin Mochtar and Eddy O.S Hiariej, *Dasar-Dasar Ilmu Hukum: Memahami Kaidah, Teori, Asas dan Filsafat Hukum* (Jakarta: Perpustakaan Nasional RI, 2021), 140.

⁸¹ MA through Putusan 23 P/HUM/2009 declared that SE Dirjen Minerbapabum Departemen ESDM Nomor 03.E/31/DJB/2009 dated 30 January 2009 on Mining and Coal Licensing is invalid and not generally accepted.

⁸² Miftakhul Huda, "Rechtsvinding," *Konstitusi Nomor 98*, 2015.

⁸³ See Surat Menteri Kehakiman Republik Indonesia Number M.DL.04.04-04 dated 12 March 1987 on Proposals to Upgrade the State Administrative Court.

“to resolve authority despite between state institutions whose powers are granted by laws and/or regulations below the law.” This can also be done by changing the scope of legal subjects in a judicial review within the Supreme Court. Previously applications could only be submitted by community groups or individuals. Hence to accommodate this concept, it is necessary to add that applications can also be submitted by state institutions since the settlement disputes or judicial review to annul an authority cannot be directly initiated by the Supreme Court⁸⁴, but rather state institutions that have an interest in overlapping authorities as the *subjectum litis* that applies within the Constitutional Court.

C. CONCLUSION

The pattern of power restriction in state institutions based on regulations only gives original powers through the 1945 Constitution to 7 (seven) state institutions, namely the President, MPR, DPR, DPD, MK, MA, and BPK. Apart from those state institutions, other institutions have to obtain authority by attribution referring to the authority obtained by the 7 (seven) higher state institutions. As for the attribution authority, the state institutions can be divided into 2 (two) categories, state institutions whose authority originates from the 1945 Constitution and state institutions whose authority originates from statutory regulations below the 1945 Constitution. Dispute Settlement over authority between state institutions whose authorities are regulated by statutory regulations below the 1945 Constitution is still in a legal vacuum condition, hence the Supreme Court should be able to fill them. Naturally, the decision about canceling regulations, which contains the authority of state institutions, cannot be made internally through a decision of the executive institution (*beschikking*). Thus, it can only be removed through a judicial review. Suppose the dispute settlement over authority between state institutions is implemented. In that case, the *subjectum litis* is “state institutions whose authority is granted by laws and regulations below the Constitution.” At the same time, the *objectum litis* is “authority between state institutions which overlap and still valid in the Law and/or regulations below the Law.”

REFERENCE

Anwary, Ichsan. *Lembaga Negara dan Penyelesaian Sengketa Kewenangan Konstitusional Lembaga Negara*. Yogyakarta: Genta Publishing, 2017.

AP5I. “Rapat Koordinasi KBLI Beririsan Antara Kementerian Kelautan dan Perikanan Dengan Kementerian Perindustrian – 24 Agustus 2021.” Accessed November 2, 2022. <https://ap5i-indonesia-seafood.com/indoap5i/2021/08/25/rapat-koordinasi-kbli-beririsan-antara-kementerian-kelautan-dan-perikanan-dengan-kementerian-perindustrian-24-agustus-2021>.

⁸⁴ Mochtar and Hiariej, *Dasar-Dasar Ilmu Hukum: Memahami Kaidah, Teori, Asas dan Filsafat Hukum*, 418.

- Arsil, Fitra, and Qurrata Ayuni. "Kedudukan Hukum Khusus Dalam Pengujian Undang-Undang di Mahkamah Konstitusi." *Jurnal Konstitusi* 19, no. 4 (2022): 957–80. <https://doi.org/10.31078/jk19410>.
- Asshiddiqie, Jimly. *Hukum Acara Pengujian Undang-Undang*. Jakarta: Konstitusi Press, 2006.
- . *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*. Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, 2006.
- Astawa, I Gde Pantja, and Firdaus Arifin. *Sengeketa Kewenangan Lembaga Negara di Mahkamah Konstitusi*. Refika Aditama, 2021.
- Atmadja, I Dewa Gede, I Nyoman Putu Budiarta. *Teori-Teori Hukum*. Malang: Setara Press, 2018.
- Budiardjo, Miriam. *Dasar-Dasar Ilmu Politik*. Jakarta: Gramedia Pustaka Utama, 2007.
- Chandra SY, Helmi, and Shelvin Putri Irawan. "Perluasan Makna Partisipasi Masyarakat Dalam Pembentukan Undang-Undang Pasca Putusan Mahkamah Konstitusi." *Jurnal Konstitusi* 19, no. 4 (2022): 766. <https://doi.org/10.31078/jk1942>.
- Faiz, Pan Mohamad. "Perlindungan Terhadap Lingkungan Dalam Perspektif Konstitusi." *Jurnal Konstitusi* 13, no. 4 (December 2016): 766–87. <https://doi.org/10.31078/jk1344>.
- Fatlolon, Costantinus. "Evaluasi Proses Amendemen Undang-Undang Dasar Tahun 1945 : Perspektif Habermasian An Evaluation of the Amendment Process of the 1945 Constitution : A Habermasian Perspective." *Jurnal Konstitusi* 19, no. 4 (2022): 819–42.
- Hadinatha, Miftah Faried. "Peran Mahkamah Konstitusi Mencegah Gejala Autocratic Legalism di Indonesia." *Jurnal Konstitusi* 19, no. 4 (2022): 741–65.
- Hadjon, Phillipus M, Sri Soemantri Martosoewignjo, Sjachran Basah, Bagir Manan, Laica Marzuki, J.B. J.M. ten Berge, P.J.J. van Buuren, and F. A.A.M. Stroink. *Pengantar Hukum Administrasi Indonesia (Introduction to the Indonesian Administrative Law)*. Yogyakarta: Gajah Mada University Press, 2015.
- Hasanah, Uswatun, Chintia Kirani, Elina Mitha Gabylya, and Robiatul Adawiyah. "Etika dan Budaya Politik: Konsep Sistem Politik Di Indonesia." *Jurnal Pendidikan, Sains dan Teknologi* 1, no. 2 (2022): 330–43.
- Hastuti, Proborini. "Menakar Konstitusionalitas Penundaan dan/atau Pemotongan Anggaran Transfer ke Daerah Dalam UU APBN." *Jurnal Konstitusi* 19, no. 4 (2022): 843–66. <https://doi.org/10.31078/jk1945>.
- Huda, Miftakhul. "Rechtsvinding." *Konstitusi Nomor 98*, 2015.
- Ilyas, Adam. "Problematika Peraturan Mahkamah Konstitusi dan Implikasinya." *Jurnal Konstitusi* 19, no. 4 (2022): 794–818. <https://doi.org/10.31078/jk1943>.

- Indroharto. *Usaha Memahami Undang-Undang Tentang Tata Usaha Negara Buku I*. Jakarta: Pustaka Sinar Harapan, 1994.
- Inspektorat Djenderal Territorial dan Perlawanan Rakyat. *Undang-Undang Keadaan Bahaja 1957 dan Peraturan-Peraturan Jang Berhubungan Dengan Itu*. Jakarta: Inspektorat Djenderal Territorial dan Perlawanan Rakyat, 1957.
- Kementerian Investasi/BKPM. "Klasifikasi Baku Lapangan Usaha Indonesia (KBLI) 2020," 2021. <https://oss.go.id/informasi/kbli-detail/3c4ce858-dd14-42e8-afab-f5f92346114b>.
- Kementerian Pendayagunaan Aparatur Negara dan Reformasi Birokrasi. "https://www.menpan.go.id/site/kelembagaan/lembaga-pemerintah-pusat," 2021. <https://www.menpan.go.id/site/kelembagaan/lembaga-pemerintah-pusat>.
- Lailam, Tanto, Putri Anggia, and Irwansyah Irwansyah. "The Proposal of Constitutional Complaint for the Indonesian Constitutional Court." *Jurnal Konstitusi* 19, no. 3 (2022): 693–719. <https://doi.org/10.31078/jk1939>.
- Lestari, Sulistyani Eka. "Penyelesaian Sengketa Kewenangan Antar Lembaga Negara Oleh Mahkamah Konstitusi." *DiH: Jurnal Ilmu Hukum* 10, no. 19 (2014): 38–47. <https://doi.org/10.30996/dih.v10i19.284>.
- Mahkamah Konstitusi. *Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945: Latar Belakang, Proses dan Hasil Pembahasan 1999-2002. Mahkamah Konstitusi*. Jakarta: Mahkamah Konstitusi, 2010.
- Mochtar, Zainal Arifin, and Eddy O.S Hiariej. *Dasar-Dasar Ilmu Hukum: Memahami Kaidah, Teori, Asas dan Filsafat Hukum*. Jakarta: Perpustakaan Nasional RI, 2021.
- Nurmawati, Made, Nengah Suantra, and Luh Gde Astaryani. *Hukum Kelembagaan Negara*. Denpasar: Fakultas Hukum Universitas Udayana, 2017.
- Nuruddin, Muhammad. *Logical Fallacy: Menguak Kesalahan-Kesalahan Berpikir Yang Kerap Kita Jumpai Sehari-Hari*. 7th ed. Depok: Keira Publishing, 2022.
- Pratama, Juwita Putri, Lita Tyesta ALW, and Sekar Anggun Gading Pinilih. "Eksistensi Kedudukan Peraturan Menteri Terhadap Peraturan Daerah Dalam Hierarki Peraturan Perundang-Undangan." *Jurnal Konstitusi* 19, no. 4 (2022): 865–85. <https://doi.org/10.31078/jk1947>.
- Rumawi, Mellisa Towadi, Supianto, and Udiyo Basuki. "Parate Executie Dalam Fidusia Menurut Ratio Decidendi Putusan Mahkamah Konstitusi." *Jurnal Konstitusi* 19, no. 3 (2022): 554–79.
- Said, Abdul Rauf Alauddin. "Pembagian Kewenangan Pemerintah Pusat - Pemerintah Daerah Dalam Otonomi Seluas - Luasnya Menurut UUD 1945." *Fiat Justisia Jurnal Ilmu Hukum* 9, no. 4 (2015): 577–602. <http://jurnal.fh.unila.ac.id/index.php/fiat/article/viewFile/613/552>.

- Saifulloh, Moh. Roziq. "Examination and Confiscation of Notarial Deeds for The Purpose of Criminal Law Enforcement without Approval from The Notary Honorary Council." *Jurnal Penelitian Hukum De Jure* 22, no. 4 (2022): 423–36. <https://doi.org/10.30641/dejure.2022.v22.423-436>.
- Satriya, Catur Alfath. "Karakteristik Pemakzulan Presiden di Indonesia." *Jurnal Konstitusi* 19, no. 3 (2022): 528–53. <https://doi.org/10.31078/jk1932>.
- Simamora, Janpatar. "Problematika Penyelesaian Sengketa Kewenangan Lembaga Negara Oleh Mahkamah Konstitusi." *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 28, no. 1 (2016): 77–90. <https://doi.org/10.22146/jmh.15859>.
- Soemarwi, Vera W S. "The Absence of Constitutional Court's Decision Follow Up: Is It A Loss?" *Jurnal Konstitusi* 19, no. 7 (2022): 720–40. <https://doi.org/10.29123/jy.v12i2.294.721>.
- Triningsih, Anna, and Nuzul Qur'aini Mardiyah. "Interpretasi Lembaga Negara dan Sengketa Lembaga Negara Dalam Penyelesaian Sengketa Kewenangan Lembaga Negara." *Jurnal Konstitusi* 14, no. 4 (2018): 778–98. <https://doi.org/10.31078/jk1444>.
- Wahjono, Padmo. "Hukum Antar Wewenang." In *Pejabat Sebagai Calon Tergugat Dalam Peradilan Tata Usaha Negara*, edited by P.J.J. Sipayung, 27–62. Jakarta: Sri Rahayu, 1989.