

# Comparison between the Supreme Court and the Constitutional Court as Part of the Actors of Judicial Power in Indonesia

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**Abstract:** The 1945 Constitution of the State of the Republic of Indonesia Year 1945 confirms that Indonesia is a country of law. The one important principle of state of law is the guarantee of the implementation of independent judicial power, free from the influence of other powers to organize judiciary to enforce the law and justice. This study is based on the curiosity of investigators in uncovering the scope and existence of judicial power in Indonesia. The scope and existence were restricted to two state institutions in the field of the judiciary, the Supreme Court (SC) and the Constitutional Court (CC). Therefore, this study aims to identify and analyze the comparison (similarities and differences) between the authority of the SC and the CC. This study using normative legal research. SC and the CC have the same authority to be a court decision that is both first and last. SC and the CC provides access to people who can not afford as the recipient of legal aid to be able to act. SC have jurisdiction in the enforcement of the criminal law, while the CC, does not have jurisdiction in the enforcement of the criminal law, but the CC decision related to the decriminalization of significant influence in the enforcement of criminal law. SC and the CC differ in their patterns and the supervision of the Chief Justice of the Constitutional Court. SC and the CC different in terms of a court decision is final and binding. The SC decision, are not the first and last because is final and binding and there is also not final but is already binding. There are differences of transparency in the legislation review in the SC and the CC in Indonesia.

**Keywords:** The Rule of Law, Attribution Power, Judicial Power, Justice

## 1. Introduction

According to the 1945 Constitution of the State of the Republic of Indonesia Year 1945, Judicial Power is regulated in Chapter IX. The chapter consists of five articles, namely Article 24, Article 24A, Article 24B, Article 24C, and Article 25. Below is given a classification of the provisions of those articles to understand the scope of judicial power in Indonesia.

### a. General Provisions (Article 24):

- 1) Judicial power shall constitute an independent power to hold a judicature for law reinforcement and justice. \*\*\*)
- 2) Judicial power shall be made by a Supreme Court and judicial bodies thereunder within a general judicature, religious court, military court, state administration court, and by a Constitutional Court. \*\*\*)
- 3) Other bodies of which the functions relate to judicial power shall be stipulated by virtue of law. \*\*\*\*\*)



b. The Supreme Court (Article 24A):

- 1) The Supreme Court shall be competent to hear at cassation instance, test the legislation under the law against the law, and have other competences conferred upon by the law. \*\*\*).
- 2) Justices of the Supreme Court shall have non-disgraceful, fair, professional integrity and personality and be experienced in the field of law. \*\*\*)
- 3) The prospective justices of the Supreme Court shall be recommended by the Judicial Commission to the House of People's Representative for approval and further stipulated as justice of the Supreme Court by the President. \*\*\*)
- 4) Chief judge and deputy chief judge of the Supreme Court shall be elected from and by the justices of the Supreme Court. \*\*\*)
- 5) Composition, position, membership, and law of procedure of the Supreme Court and judicial bodies there under shall be stipulated by virtue of law. \*\*\*)

c. The independent Judicial Commission (Article 24B):

- 1) The independent Judicial Commission shall be competent to recommend the appointment of justices of the Supreme Court and have other competences in the framework of maintaining and upholding the honour, dignity, and behaviour of the judges. \*\*\*)
- 2) Members of Judicial Commission shall have knowledge and experience in the field of law and non disgraceful integrity and personality. \*\*\*)
- 3) Members of Judicial Commission shall be appointed and dismissed by the President with the approval from the House of People's Representative. \*\*\*)
- 4) Composition, position, and membership of Judicial Commission shall be stipulated by virtue of law. \*\*\*)

d. The Constitutional Court (Article 24C):

- 1) The Constitutional Court shall be competent to hear at the first and final instances where the judgment shall be final in nature to test the law against the Constitution, judge dispute of competence of state institution of which the competence is conferred upon by the Constitution, judge dissolution of a political party, and judge a dispute on general election results. \*\*\*)
- 2) The Constitutional Court shall pass a judgment on opinions of the House of People's Representative on alleged violation committed by the President and/or Vice President pursuant to the Constitution. \*\*\*)
- 3) The Constitutional Court shall have nine members of constitutional judges stipulated by the President, the members are proposed by the Supreme Court, three members by the House of People's Representative, and three members by the President. \*\*\*)
- 4) Chief Judge and Deputy Chief Judge of Constitutional Court shall be elected by and from constitutional judges. \*\*\*)
- 5) Constitutional judges shall have non-disgraceful, fair, professional integrity and personality, be statesmen mastering constitution and state administration, and not double as state officials. \*\*\*)
- 6) Appointment and dismissal of constitutional judges, law of procedure and any other provisions on Constitutional Court shall be stipulated by virtue of law. \*\*\*)

e. Terms of Appointment and Dismissal of Judges (Article 25): The requirements of becoming and being dismissed as judge shall be stipulated by virtue of law. \*\*\*)

Mark \*\*\* as described above means the third alteration or amendment of the 1945 Constitution of the State of the Republic of Indonesia Year 1945, conducted by the People's Deliberative Assembly of the Republic of Indonesia. Based on the State Gazette of The Republic of

Indonesia Year 2006 Number 13 concerning the Third Amendment of the 1945 Constitution of the State of the Republic of Indonesia, it is mentioned that the amendment was decided in the 7th Plenary Session of the People's Deliberative Assembly of the Republic of Indonesia (continued 2) dated November 9, 2001 - Annual Session of the People's Deliberative Assembly of the Republic of Indonesia and shall come into force on the date of stipulation. The change itself was set in Jakarta on November 9, 2001 with the Chairman of the People's Deliberative Assembly of the Republic of Indonesia at that time was Amien Rais.

From the above description, it is known that the scope of the judicial power according the constitution in Indonesia is the Supreme Court and the lower courts within the general court, the jurisdiction of the judiciary, the military court environment, the administrative court of the state, the Constitutional Court, other bodies whose functions relate to judicial powers, and the Independent Judicial Commission. It should be emphasized that the Independent Judicial Commission is included within the scope of the judicial authority, but the Independent Judicial Commission is not the perpetrator of the judicial power.

This study is based on the curiosity to reveal the scope and existence of the judicial power in Indonesia. The scope and existence of the two state institutions in the field of judicial power, namely the Supreme Court and the Constitutional Court. Therefore, this study can be done to see and compare it between the Supreme Court and the Constitutional Court. The completeness of this study of science, especially legal science is the understanding and contemplation of the space and existence of the Supreme Court and the Constitutional Court as a home for justice seekers in Indonesia to materialize what the law seeks to achieve.

## **2. Research Method**

The terms 'method' and 'methodology' are used frequently in the context of legal research. They are sometimes used interchangeably to mean the same thing, but they are often used also to mean slightly different things. Based on the above description, the research methods in this paper are described as follows.

### *2.1 Types and Nature of Research*

This study seen from its type is a normative legal research. While viewed from its nature, this research is descriptive, that is research which gives clear and detailed description to the problem of comparison between Supreme Court and Constitutional Court as part of judicial power actors in Indonesia.

### *2.2 Object of Research*

The object of this study is related to the authority of the Supreme Court and the Constitutional Court as part of the judicial authorities in Indonesia and its comparison (similarity and difference).

### *2.3 Data and Data Sources*

The data used in this research is only in the form of secondary data. Secondary data in this research consist of primary, secondary, and tertiary legal material.

Primary legal material, are binding legal materials, such as the Constitution of 1945, legislation, customary law, jurisprudence, and so forth. Secondary legal material, which provides an explanation of primary legal materials, such as, draft laws, research results, work of law, and so on. While tertiary legal materials are materials that provide clues and explanations of primary and secondary legal materials, for example dictionary, encyclopedia, cumulative index, and so on.

Based on the above description, the secondary data in this study is data obtained from the legislation, including the 1945 Constitution of the State of the Republic of Indonesia Year 1945, Law

No. 3 of 2009 on the Second Amendment to Law Number 14 Year 1985 on the Supreme Court, Law Number 48 Year 2009 on Judicial Power, Law Number 12 Year 2011 on the Establishment of Legislation and Law Number 4 Year 2014 on Stipulation of Government Regulation in Lieu of Law Number 1 Year 2013 on the Second Amendment to Law Number 24 Year 2003 regarding the Constitutional Court to become Law.

#### *2.4 Data Analysis*

Data analysis in this research is done qualitatively, that is describe or describe data in the form of description of sentence. The description of the data is further compared to the provisions of the legislation and with the opinions of jurists. Stages of data analysis in this study starts from data collection, which then proceed with data processing, data presentation and compare data.

#### *2.5 Conclusion Withdrawal Method*

The method of drawing conclusions in this study is conducted deductively, namely the withdrawal of conclusions from the provisions of a general nature to the provisions of a special nature.

### **3. Result and Discussion**

The substance of result and discussion is about similarity and the difference of authority between the supreme court and the constitutional court.

#### *3.1 Similarity Authority between the Supreme Court and the Constitutional Court*

The Supreme Court and the Constitutional Court both have the authority of the first and final court decision. In general, the decision of the Constitutional Court is the first and last.

According to Duwi Handoko, against the verdict imposed by the Constitutional Court, everything is final and binding. Meanwhile, against the verdict imposed by the Supreme Court there is a final and binding and there are also decisions that "not final", but already binding. An example of a final and binding decision by the Supreme Court is a decision in a review case. While the example of the verdict imposed by the Supreme Court which is not final yet binding is in the case of cassation.

The Supreme Court and the Constitutional Court both involve the Judicial Commission in the appointment of Supreme Judges and Constitutional Justices. In relation to improvements between law enforcement by the Supreme Court and the Constitutional Court with other bodies whose functions relate to the judicial powers, the following comparison is made. Equalization: The Supreme Court and the Constitutional Court both provide and uphold the human rights body, namely the granting of access to people who can not afford legal aid recipients to be able to hold a law in the Supreme Court and in the Constitutional Court.

From the above description, the authors recommend to the House of People's Representative of the Republic of Indonesia to form Law about judicial power in Indonesia into a "special" book of constitution/law (codified). This is according to the author is very important because with the compilation of a special book containing the judicial power will facilitate the seeker of justice in terms of finding the legal basis as one means of defending himself in the trial. In addition, with the separation of rules on the actors of judicial authorities, it would be difficult for students to understand that the perpetrators of judicial powers in Indonesia are in fact controlled by many legal institutions, both in the form of "general justice" and "special courts".

#### *3.2 The Difference of Authority between the Supreme Court and the Constitutional Court*

The Supreme Court and the Constitutional Court differ in terms of the supervisory patterns of Supreme Court Justices and Constitutional Justices. The Supreme Court and the Constitutional Court differ in terms of final and binding court rulings. The decision of the Supreme Court in general, is not the first and last because there is a final and binding court ruling and there are also decisions that are

not final yet binding. The Supreme Court and the Constitutional Court differ in dismissal of Supreme Court Justices and Constitutional Judges involving the Judicial Commission.

Differences: The Supreme Court in a criminal case shall base its analysis of the judicial process which has been conducted, ie starting from investigation, investigation, prosecution, up to the judgment of the decision, either at the first level and/or an equivalent court. Where the Constitutional Court, has no authority in enforcing the Criminal Law, will the decision of the Constitutional Court related to decriminalization give a significant influence in criminal law enforcement.

Furthermore, there is a difference of transparency in the examination of judicial review cases in the Supreme Court and the Constitutional Court. In the examination of judicial review of the law against the 1945 Constitution of the State of the Republic of Indonesia Year 1945 in the Constitutional Court, starting from preliminary examination until the read/declaration of the decision is made public. This is certainly different from the examination of judicial review cases of laws under the law in the Supreme Court. It should be emphasized here that the new Constitutional Court ruling has a final and binding nature when the ruling is read or spoken, not at the time of the ruling It is completed "formed".

Based on the above explanation, the description of the explanation is the regulation on the reading of the decision on the judicial review of the law in the Constitutional Court is only stipulated in the form of Constitutional Court Regulation Number 06/PMK/2005 concerning the Guidelines for Procedure in the Case of Law Tests. This is because the 1945 Constitution of the State of the Republic of Indonesia Year 1945 and Law Number 4 Year 2014 concerning Stipulation of Government Regulation in Lieu of Law Number 1 year 2013 on the Second Amendment to Law Number 24 Year 2003 on the Constitutional Court Became the Law, not specifically regulated in particular. This has the potential to have a negative impact if the decision that has been decided in the Consultative Meeting of the Judge does not meet an agreement to be pronounced or kept pronounced but without a minimum period to read/pronounce the verdict and the absence of sanction if the case has been terminated through the Consultative Forum The judge was not immediately pronounced in a plenary session open to the public. This is what then became the pros and cons in the trial of the Constitutional Court case Number 14/PUU-XI/2013. The Constitutional Court case Number 14/PUU-XI/2013 is one example of a real case from the above mentioned, that is related to the hearing of decision reading concerning Law Number 42 Year 2008 concerning General Election of President and Vice President against the 1945 Constitution of the State of the Republic of Indonesia Year 1945. In Case, the decision was pronounced by the Constitutional Court after more than six months (the case was terminated on 26 March 2013 and read/pronounced in a plenary session open to the public on 23 January 2014). The examination of judicial review of the law against the 1945 Constitution of the State of the Republic of Indonesia Year 1945 in the Constitutional Court, from preliminary examination to read/declaration of judgment is made public. This is certainly different from the examination of judicial review of legislation under the law against the law in the Supreme Court. The difference is entirely left to the readers to answer it independently.

Based on the foregoing if the writer's first recommendation is difficult to fulfill, it is related to the authority of the Supreme Court, which is not only regulated in the constitution but also spread in various laws, such as Law Number 3 Year 2009 concerning Second Amendment Law Number 14 Year 1985 concerning the Supreme Court and Law Number 8 Year 1981 concerning the Criminal Procedure Code (different from the authority of the Constitutional Court other than in the constitution, there is only regulated in Law Number 4 Year 2014 concerning Stipulation Government Regulation in Lieu of Law Number 1 Year 2013 on the Second Amendment to Law Number 24 Year 2003 concerning the Constitutional Court to become Law), the authors request to the legislators to reform by establishing special rules on the authority of the Supreme Court, so the authority of the Supreme Court is only contained in the Constitution and Law Number 3 Year 2009.

#### 4. References

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