# Formulation Setting Of Settlement Of Authority Disputes Between State's Instituti0n Are Not Subject To The Constitution Of The Republic Of Indonesia Year 1945

Winasis Yulianto

Law Faculty Abdurachman Saleh University, Situbondo, East Java, Indonesia
*Corresponding author:
Email: winasis_yulianto@unars.ac.id

***Abstract***.
*The provisions of Article 24C paragraph (1) of the Republic of Indonesia Constitution Year 1945 give authority to the Constitutional Court to the dispute over the authority of state institutions whose authority is granted by the Constitution. Whereas disputes between state institutions that are not regulated in the Republic of Indonesia Constitution Year 1945 have a vacuum of norm.The results of the study show that: first, the need to regulate disputes over authority between state institutions that are not regulated in the Republic of Indonesia Constitution Year 1945 because Indonesia is a constitutional state, due to the incomplete discussion in the Amendment of the Republic of Indonesia Constitution Year 1945, due to the potential for disputes of authority between state institutions. Second, the legal implications of the settlement of authority between state institutions not regulated in the Republic of Indonesia Constitution Year 1945 conducted by the President through instructions for resolving disputes. Third, in the perspective of state life, the formulation of disputes settlement arrangements between state institutions can be done through three options: (1) expanding the authority of the Constitutional Court (2) expanding the authority of the Supreme Court (3) giving authority to other state institutions.*

***Keywords:*** *Authority Disputes, State's Institutions and Republic of Indonesia Constitution Year 1945*

## I. INTRODUCTION

As a Constitutional State, Indonesia places the Republic of Indonesia Constitution Year 1945 as the highest law (basic law) in the hierarchy of statutory regulations. According to Miriam Budiardjo, each constitution contains the following provisions:

a. State organization, for example the distribution of powers between legislative, executive and judiciary bodies: in a federal state, the distribution of powers between the federal government and state governments; procedures for resolving issues of violation of jurisdiction by one government agency and so on.
b. Human rights (usually called the Bill of Rights if it is in a separate text).
c. Procedures for amandement the constitution.
d. Sometimes it contains a prohibition to change certain characteristics of the constitution.

The constitutional arrangement or state organization is an important aspect in the life of state administration. Therefore there are state institutions mentioned in the Republic of Indonesia Constitution Year 1945 and state institutions that are not regulated in the Republic of Indonesia Constitution Year 1945. The state institutions mentioned in the Republic of Indonesia Constitution Year 1945 after the amandement are:[1] the People's Consultative Assembly, the President and Vice President, the Regional Government, the Council People's Representative, Regional Representative Council, General Election Commission, Central Bank, Supreme Audit Board, Supreme Court, Judicial Commission, Constitutional Court, Indonesian National Army, and Indonesian National Police.The outside of the state institutions mentioned in the Republic of Indonesia Constitution Year 1945, there are still other state institutions in the Indonesian constitutional system, including the Corruption Eradication Commission (KPK), the National Human Rights Commission (Komnas HAM), and the Indonesian Broadcasting Commission (KPI).

In implementation of the authority of state institutions, there is a possibility of disputes between state institutions. Jimly Asshiddiqie believes that the dispute over the constitutional authority of state institutions is caused by the relationship between the institution and other institutions that is bound by the

principle of checks and balances. As a result, the possibility arises in exercising the authority of each there is a dispute in interpreting the mandate of the Constitution.[2] In the event of a dispute over the authority of a state institution whose authority is granted by judicial institution to resolve the dispute, namely the Constitutional Court of the Republic of Indonesia.[3]

In the case of inter-state authority disputes that are not regulated in the Constitution of the Republic of Indonesia Year 1945, there is no single law that regulates them. Three times disputes between the Corruption Eradication Commission (KPK), and the Indonesian National Police (Polri), were not resolved through judicial institutions.In practice, the concept of resolving disputes over authority between state institutions whose authority was not granted by the Constitution of the Republic of Indonesia Year 1945 is resolved by the President. The President brings together the leaders of the disputed state institutions. Furthermore, the president gives instructions that must be obeyed by the disputing state institutions.[4] The problem is, settlement with such a model is not a judicial settlement, which certainly does not have legal force or may even be disobeyed by the parties to the dispute. Therefore, it is necessary to reconcile the settlement of disputes between state institutions which are not regulated in the Constitution of the Republic of Indonesia Year 1945 which is currently (in practice) carried out through presidential instructions

The focus of the problems in this study are:

a. Why does it need to regulate the resolution of disputes between state institutions that are not regulated in the Republic of Indonesia Constitution Year 1945?
b. Is the legal consequence of resolving disputes between state institutions not regulated in the Republic of Indonesia Constitution Year 1945 conducted based on instructions through the president's speech?
c. In the perspective of state life, how is the formulation of dispute resolution between state institutions not regulated in the Republic of Indonesia Constitution Year 1945?

## II. METHODS

This research uses the normative legal research method, which is to study various laws and regulations related to the research theme. The approach used in this study is the statutory approach, the case approach, the historical approach, the comparative approach and the conceptual approach.[5] The legal materials used in this study are primary legal materials, secondary legal materials and non-legal materials. The collected legal material will be analyzed using the normative method, namely the doctrinal method with prescriptive optics.[6] The legal material that has been collected is then processed in a classified, categorized, systematized manner and interpreted according to the problem to be discussed.

## III. RESULTS AND DISCUSSION

### 3.1. The Need for Regulatory Settlement of State's Institutions Authority Disputes Not Regulated in the Constitution of the Republic of Indonesia Year 1945

#### 3.1.1. Indonesia is a Constitutional State

The idea of the rule of law, besides being associated with the concept of *rechtsstaat* and the rule of law, also relates to the concept of nomocracy which originates from nomos and cratos. The words of nomocracy can be compared with demos and cratos or kratein in democracy. Nomos means the norm, while cratos is power. What is imagined as a determinant in the exercise of power is the norm or law.[7]According to Julius Stahl, the concept of the rule of law which he calls the term rechtsstaat includes four important elements, namely: protection of human rights, division of power, governance based on laws and state

administrative justice.[8]The AV Dicey outlines three important characteristics in each rule of law which he calls the term The Rule of Law, namely: Supremacy of Law, Equality before the Law, and Due Process of Law.[9] Thus according to AV Dicey, the rule of law has three important characteristics, namely the rule of law, equality before the law and the principle of relief.

Unlike AV Dicey, Jimly Asshiddiqie argues that to be called the Constitutional State (*Rechtsstaat* or The Rule of Law) in the sense that it actually has twelve main principles.

[10] *First*, the Supremacy of Law (Supremacy of Law). All problems are resolved by law as the highest guideline. *Second*, Equality before the Law. There is an equal position in law and government. In the framework of this principle of equality, all discriminatory attitudes and actions in all their forms and manifestations are recognized as prohibited acts. *Third*, the Principle of Legality (Due Process of Law). In each Constitutional State, the principle of legality in all its forms is required (due process of law).

*Fourth*, the Limitation of Power. There are restrictions on state power and state organs by applying the principle of the distribution of power vertically or the separation of powers horizontally. Fifth, Independent Executive Organs. In order to limit that power, in the present era also develops an independent government institutional arrangements. *Sixth*, free and impartial justice. There is a free and impartial judiciary. This free and impartial trial must absolutely exist in the rule of law. *Seventh*, State Administrative Court. In each Constitutional State, opportunities must be made for each citizen to challenge the decisions of the state administration official and the execution of the administrative court decision by the administrative officer of the state. *Eighth*, Constitutional Court. The importance of the Constitutional Court is in an effort to strengthen the system of checks and balances between branches of power that are deliberately fragmented to guarantee democracy. *Ninth*, Protection of Human Rights. There is a constitutional protection of human rights with legal guarantees for its enforcement demands through a fair process.

*Tenth*, Democratic (Democratische Rechtsstaat). Embraced and practiced the principle of democracy or popular sovereignty that guarantees the participation of the community in the process of state decision making. *Eleventh*, Functioning as a Means of Realizing the National Goal (Welfare Rechtsstaat). The law is a means to achieve goals that are idealized together,

*Twelfth*, Transparency and Social Control. There is transparency and social control that is open to every process of law making and enforcement. Indonesia has these twelfth element. In theory, we can said Indonesia is a Constitutional State.

### 3.1.2. Potential Occurrence of Institutional's Authority Disputes in the Perspective of Constitutional Theory and Theory of Authority

In the perspective of constitutional theory, one of the constitutional materials is a description of state institutions.[11] The existence of the police is mentioned in Article 30 paragraph (2), paragraph (3), paragraph (4) and paragraph (5) of the Constitution of the Republic of Indonesia Year 1945 and Law Number 2 of 2002 concerning the Indonesian National Police. Unlike the police, the KPK was not mentioned in the 1945 Constitution of the Republic of Indonesia. The KPK was formed based on Law Number 30 of 2002 concerning the Corruption Eradication Commission.The Attorney General's Office of the Republic of Indonesia is not explicitly stated in the Constitution of the Republic of Indonesia Year 1945. In Article 24 paragraph (3) of the Constitution of the Republic of Indonesia Year 1945, it is stated that other bodies whose functions are related to judicial authority are regulated in the law. The prosecutor's function is closely related to judicial authority. Therefore, the Attorney General's Office of the Republic of Indonesia as one of the bodies referred to in Article 24 paragraph (3) of the Constitution of the Republic of Indonesia Year 1945. The last law governing the prosecutor's office is Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia.

Based on constitutional theory, the basis for the formation of the KPK, police and prosecutors is different. The Corruption Eradication Commission is formed based on the law, so that it has a position as an auxiliary organ. The police force was formed based on the Constitution of the Republic of Indonesia Year 1945, the prosecutor's office was formed based on the the Constitution of the Republic of Indonesia Year 1945 even though it was not explicitly mentioned. On the basis of this thinking, the authors argue that the police and prosecutors are the main organs of the constitution.[12]Based on constitutional theory, especially relating to the function of the constitution, the formation of the Corruption Eradication Commission, the police and the prosecutor's office must have strict limits on authority among the three state institutions. However, the law for the formation of these three institutions provides potential disputes between state institutions, namely between the KPK-Police, Police-prosecutors, and KPK-Prosecutors. In terms of the function of the constitution as a determining and limiting power of state organs, namely the KPK, the police, and the prosecutor's office, the Constitution of the Republic of Indonesia Year 1945 and the laws for the formation of the three state institutions can impose limitations on the authority of the KPK, the police, and the prosecutor's office. The limitation of the authority of the KPK, police and prosecutors is still normative. This is because in practical terms, there are still disputes of authority between the three state institutions.

In terms of the constitution as a regulator of power relations between state institutions, the Constitution of the Republic of Indonesia Year 1945 and the laws for the formation of the Corruption Eradication Commission, the police and the prosecutor's office have not been able to regulate the power relations between the three state institutions. This is evident, there are still disputes of authority between the three state institutions. In other words, the Constitution of the Republic of Indonesia Year 1945 and the laws for the formation of the Corruption Eradication Commission, the police, and the prosecutor's office failed to regulate relations between state institutionsThe establishment of a state institution called the KPK because the eradication of criminal acts of corruption committed by the police and prosecutors has not yet been effective and efficient.[13] The formation of the KPK is based on the KPK Law. In terms of the theory of authority, this means that the source of the KPK's authority is the attribution of the KPK Law, namely Law Number 30 of 2002 concerning the Corruption Eradication Commission. However, there are some experts who argue that the authority of the KPK comes from the Constitution of the Republic of Indonesia Year 1945. This is based on the duties, authorities and obligations of the KPK relating to law enforcement. Therefore, then the KPK is qualified as other bodies whose functions are related to judicial power regulated in law.[14]

Jimly Asshiddiqie argues that besides the prosecutor's office, another institution that also functions related to the judicial authority is the Corruption Eradication Commission (KPK), Advocate, National Human Rights Commission.[15] When Jimly Asshiddiqie's opinion is followed, the source of the KPK's authority is the Constitution of the Republic of Indonesia Year 1945. However, the facts show that of the 35 cases of disputes over the authority of state institutions handled by the Constitutional Court,[16] none of the KPK became either the applicant or the respondent. The author is of the opinion that the source of the KPK's authority is not the Constitution of the Republic of Indonesia Year 1945, but the KPK Law. As a consequence, if the KPK disputes its authority with other state institutions, then it is not the authority of the Constitutional Court that has the authority to try it.Attribution of police authority is the Constitution of the Republic of Indonesia Year 1945, particularly Article 30 paragraph (2), paragraph (3), paragraph (4) and paragraph (5) as well as Law Number 2 of 2002 concerning the Indonesian National Police. This means that a state institution called the police is mentioned explicitly in the Constitution of the Republic of Indonesia

Year 1945, while details of the authority are stated in the Police Law.Another thing that emphasizes the attribution of police authority to the Constitution of the Republic of Indonesia Year 1945is the mention of Article 30 in the consideration given the Police Law. Thus, the attribution of police authority is in the Constitution of the Republic of Indonesia Year 1945. As a consequence, when the police dispute authority with a state institution that:

a. the authority granted by the Constitution, can be settled in the Constitutional Court
b. the authority is not granted by the Basic Law, so it does not constitute the authority of the Constitutional Court.

What about the attorney's authority attribution? In this regard, the authors argue there are two choices. *First*, the attorney's authority is attributed to the Constitution of the Republic of Indonesia Year 1945. This is based on the idea that Article 24 paragraph (3) of the Constitution of the Republic of Indonesia Year 1945 must be interpreted by the attorney. This opinion is supported by the fact that the legislators included the provisions of Article 24 paragraph (3) of the Constitution of the Republic of Indonesia Year 1945 in their consideration in view of Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia. When this opinion is followed, then when the AGO disputes the authority with a state institution that:

a. the authority granted by the Constitution, can be settled in the Constitutional Court;
b. Its authority is not granted by the Basic Law, so it does not constitute the authority of the Constitutional Court.

*Secondly,* a state institution called the prosecutor's office is not explicitly mentioned in the Constitution of the Republic of Indonesia Year 1945. Whereas the Constitution of the Republic of Indonesia Year 1945 itself does not have an explanation which is an authentic interpretation of Article 24 paragraph (3) of the Constitution of the Republic of Indonesia Year 1945. When this view is followed, if the prosecutor's office disputes authority with other state institutions, then it is not the authority of the Constitutional Court that has the authority to try it.The author himself tends to agree with the first view that the attorney's authority is attributed to the Constitution of the Republic of Indonesia 1945. While the details of his authority are in the Prosecutor's Law. Interpretation that one of the state institutions included in the provisions of Article 24 paragraph (3) of the 1945 Constitution of the Republic of Indonesia is correct. The state institution called the prosecutor's office has the duty and authority to conduct prosecutions as a function of the judicial authority

### 3.2. Legal Implications of Institutionals Authority Dispute Settlement Based on Presidential Instruction

#### 3.2.1. Implications of the Formation of the Team of Eight by the President

In resolving the dispute between the KPK and the police in the case of Chandra M Hamzah and Bibit Samad Rianto, President Susilo Bambang Yudhoyono issued Presidential Decree Number 31 of 2009 concerning the Establishment of an Independent Team to Verify the Fact and Legal Process in the Case of Br. Chandra M Hamzah and Br. Bibit Samad Rianto, hereinafter referred to as Presidential Decree 31 of 2009. As a legal basis for the issuance of Presidential Decree 31 of 2009 are:

1. Article 4 paragraph (1) of the Constitution of the Republic of Indonesia Year 1945;[17] and
2. Law Number 8 of 1981 concerning Criminal Procedure.

Former constitution does not provide an official interpretation of the provisions of Article 4 paragraph (1) of the Constitution of the Republic of Indonesia Year 1945. Regarding the provisions of Article 4 paragraph (1) of the Constitution of the Republic of Indonesia Year 1945, Bagir Manan believes that in terms of the theory of distribution of power, the definition of government power is executive power.[18] Furthermore Bagir Manan argues that as the executive power governing the administration carried out by the President, it can be distinguished between the general governing powers and the special governing

powers.[19]The power of public administration is the power to administer the state administration. The President is the highest leader in the administration of the state. The implementation of state administration covers a very broad scope of duties and authority, that is, every form of conduct or activity of state administration. These duties and authorities can be grouped into several groups: (a) Duties and authority of administration in the field of security and puc order;( b). Duties and authority to carry out government administration starting from correspondence to documentation and others; (c). Duties and authorities of the state administration in the field of public services; (d). Duties and authority of the state administration in the field of public welfare implementation. Whereas what is meant by special government administration tasks is the administration of governmental duties and authority which constitutionally rests with the President personally who has a prerogative nature (in the area of government). The tasks and authorities of the government are: The President as the highest leader of the war, foreign relations, and the right to give titles and honors.[20]

A similar opinion was expressed by Philipus M Hadjon. Philipus M Hadjon understands governance from two senses: on the one hand it means "government function" (governmental activity), on the other hand it means "governmental organization" (a collection of government entities).[21] Associated with the president's authority in forming the Team of Eight, it can be said that the president has the authority in forming the Team of Eight. Therefore, the resolution of the dispute of authority between the KPK versus the police by the president is constitutional.However, based on the theory of separation between the power of lawmakers, the judiciary and the executive (executive),[22] the resolution of the KPK versus police dispute by the president by forming a Team of Eight However, based on the theory of separation between the power of lawmakers, the judiciary and the executive (executive), the resolution of the KPK versus police dispute by the president by forming a Team of Eight is not a legal (judicial) resolution. Considering it is not a legal settlement, the parties to the dispute (in this case the KPK and the police) may not be subject to a settlement made by the president. This is different from the resolution of law that is forced,[23] which must be obeyed by the parties, namely the KPK and the police. Therefore the authors argue, the KPK dispute resolution with the police conducted by the president by forming the Team of Eight of the KPK dispute resolution versus the police. Thus, in the perspective of the legal certainty theory, the KPK dispute resolution with the police conducted by the president by forming a Team of Eight does not have legal certainty.

### 3.2.2. Implications of the President's Speech regarding the KPK Dispute with the Police in the Case of Alleged Corruption Simulator Driving License

Whereas what is meant by special government administration tasks is the administration of governmental duties and authority which constitutionally rests with the President personally who has a prerogative nature (in the area of government). The tasks and authorities of the government are: The President as the highest leader of the war, foreign relations, and the right to give titles and honors.[24] A similar opinion was expressed by Philipus M Hadjon. Philipus M Hadjon understands governance from two senses: on the one hand it means "government function" (governmental activity), on the other hand it means "governmental organization" (a collection of government entities).[25] Associated with the president's authority in forming the Team of Eight, it can be said that the president has the authority in forming the Team of Eight. Therefore, the resolution of the dispute of authority between the KPK versus the police by the president is constitutional.However, based on the theory of separation between the power of lawmakers, the judiciary and the executive (executive),[26] the resolution of the KPK versus police dispute by the president by forming a

Team of Eight However, based on the theory of separation between the power of lawmakers, the judiciary and the executive (executive), the resolution of the KPK versus police dispute by the president by forming a Team of Eight is not a legal (judicial) resolution. Considering it is not a legal settlement, the parties to the dispute (in this case the KPK and the police) may not be subject to a settlement made by the president. This is different from the resolution of law that is forced,[27] which must be obeyed by the parties, namely the KPK and the police. Therefore the authors argue, the KPK dispute resolution with the police conducted by the president by forming the Team of Eight of the KPK dispute resolution versus the police. Thus, in the perspective of the legal certainty theory, the KPK dispute resolution with the police conducted by the president by forming a Team of Eight does not have legal certainty.

In the case of a suspected SIM simulator corruption, President Susilo Bambang Yudhoyono gave five instructions:

a. Legal handling of alleged corruption in the procurement of a SIM simulator involving Police Inspector General Djoko Susilo, to be handled by the KPK and not broken down. Polri handles other cases that are not directly related.'
b. The legal process against the Police Commissioner Novel Baswedan was incorrect, both in terms of timing and method.
c. Disputes concerning the timing of the assignment of Polri investigators, who have served in the KPK, need to be reorganized and will be set forth in a Government Regulation. The President hopes that the technical implementation will also be regulated in an MoU between the KPK and the National Police.
d. Thoughts and plans to revise the KPK Law as long as to strengthen and not to weaken the KPK are actually possible. But the president is of the view that it is not appropriate to do so at this time.
e. The President hopes that the Corruption Eradication Commission (KPK) and the National Police can renew their MoU and then obey and run, and continue to increase synergy and coordination in eradicating corruption so that events like this do not continue to recur in the future.

Settlement of disputes between the KPK and the police in cases of alleged corruption of the SIM simulator through presidential instructions is not a legal settlement.[28] Therefore, KPK leaders and police leaders can obey or reject the president's decision. When the leadership of the KPK or the leadership of the police obeys the president's decision, it means agreeing to the steps taken by the president. Conversely, if one or both leaders of the two institutions refuse to implement the president's decision, it means that they do not approve of the steps taken by the president.Even though it is not a legal settlement, we still have to appreciate the decision of President Susilo Bambang Yudhoyono in an effort to resolve the dispute between the KPK and the police. This presidential effort is a legal breakthrough in order to break the deadlock against the legal vacuum in the event of a dispute over the authority of a state institution that is not regulated in the Constitution of the Republic of Indonesia.Year 1945.In the case of alleged corruption of the SIM simulator, shortly after the president gave a speech, the national police chief said he would obey the president's order. The National Police Chief said that he would follow up and coordinate with the KPK to submit the SIM simulator case.[29] For law violations committed by Commissioner Novel Baswedan, the National Police Chief stated that he would still adjust his law enforcement.[30]The statement of the Chief Police General Timur Pradopo above has a double meaning. On the one hand will obey presidential instructions, on the other hand do not approve or reject presidential instructions.

On the one hand, the police agree with the president's decision regarding the alleged corruption of the SIM simulator and will submit the SIM simulator case to the KPK. On the other hand, the police do not agree with the president's decision regarding law enforcement for violations of the law committed by Commissioner Novel Baswedan.Compliance and non-compliance by the police is a logical consequence of

non-judicial settlement. This is different when a dispute between the Corruption Eradication Commission and the police is resolved by a legal settlement that has a compelling nature. If there is a compelling nature in the resolution of disputes between state institutions that are regulated outside the 1945 Constitution of the Republic of Indonesia, including the KPK with the police, the parties to the dispute must comply with the dispute resolution decision. Therefore, from the perspective of the theory of legal certainty, the resolution of disputes between state institutions outside the 1945 Constitution of the Republic of Indonesia as conducted by President SBY does not have legal certainty

**3.2.3. Legal Implications of President Joko Widodo's Actions in Handling the KPK Dispute with the Police regarding the Nomination of the National Police Chief**

President Joko Widodo took action in the form of two speeches and formed an Independent Team consisting of eight people. In a speech at the Bogor Palace, President Joko Widodo delivered two important things:

1. As Head of State, President Joko Widodo asks the Polri and KPK institutions to ensure that the legal process must be objective and in accordance with the existing law;
2. As Head of State, President Joko Widodo requested that the police and KPK institutions not cause friction in carrying out their respective duties.

In connection with the president's instructions that the Indonesian National Police and the KPK ensure that the legal process must be objective and in accordance with existing laws, the author believes that President Joko Widodo is aware that government power is limited by the constitution. This means that the president realizes that the president cannot intervene in the legal process. The president's actions above are constitutional.Although the president's statement is constitutional, it is an appeal and not a judicial resolution. Therefore, because it is only an appeal and not a judicial settlement, there is no obligation for the police and the KPK to comply with the appeal. Especially when associated with the position of the president who explicitly only as head of government in the Constitution of the Republic of Indonesia Year 1945 and not explicitly as head of state.*Second*, related to President Joko Widodo's statement that the police and KPK institutions do not cause friction in carrying out their respective duties.

From the provisions of Article 8 and the explanation of Article 8 paragraph (2) of the National Police Law, it can be concluded that the position of president is the superiors of the Indonesian National Police, bearing in mind that the Indonesian National Police are under the president. However, the responsibility of the Republic of Indonesia National Police must be based on laws and regulations, so that there is no intervention in the Republic of Indonesia National Police. This condition was fully realized by President Joko Widodo in providing direction in the KPK dispute with the Police. President Joko Widodo's instructions are only appeal, not intervention. President Joko Widodo's actions in giving instructions to the head of the national police so that there is no friction with the KPK in carrying out their duties is constitutional.This is different from the position of the KPK, where from the provisions of Article 3 and the explanation of Article 3 of the KPK Law, it can be concluded that the KPK is a state institution that is independent and free from the influence of any power. What is meant by any power is executive, judicial, legislative power, other parties related to corruption cases, or circumstances and situations or for any reason. Therefore, the president also cannot influence the authority of the KPK in carrying out the eradication of corruption.The problem is whether presidential instructions in the form of appeals can be qualified as a form of intervention. Intervention means interference in disputes between two parties (people, groups, countries, etc.) When viewed from the nature of the above intervention, it can be concluded that the president's appeal above cannot be qualified as a form of intervention. Thus, the legal implications of the president's appeal have no binding power and in the perspective of the theory of legal certainty, do not have legal certainty.

### 3.3. Formulation of Dispute Resolution of State Inter-Institutional Authority that is Not Regulated Outside the 1945 Constitution of the Republic of Indonesia

#### 3.3.1. Option 1: Extend the Authority of the Constitutional Court

The authority of the Constitutional Court can decide and try a dispute over the authority of a state institution whose authority is given by the constitution. Whereas in the life of state administration in Indonesia, in the perspective of the theory of state institutions put forward by Jimly Asshiddiqie there are four levels of state institutions: (1) Institutions formed under the Constitution; (2) Institutions formed under the Law; (3) Institutions formed based on Government Regulations or Presidential Regulations; (4) Institutions established based on Ministerial Regulation.If related to the provisions of Article 24C paragraph (1) of the Constitution of the Republic of Indonesia Year 1945 which regulates the authority of the Constitutional Court with the theory of state institutions as stated by Jimly Asshiddiqie above, only the first level state institutions have a forum in the event of a dispute over authority. While the second, third and fourth level state institutions do not have a forum in the event of a dispute over authority.To anticipate the occurrence of disputes between state institutions which are not regulated in the Constitution of the Republic of Indonesia Year 1945, this can be done by expanding the authority of the Constitutional Court.

This means that, the clause of Article 24C paragraph (1) of the Constitution of the Republic of Indonesia Year 1945 which reads "The Constitutional Court has the authority to adjudicate at the first and last level the decision is final to test the law against the Basic Law, to decide on a dispute over the authority of a state institution whose authority is granted by the Constitution, decides the dissolution of political parties, and resolves disputes over the results of the general election "amended to the Constitutional Court has the authority to adjudicate at the first and last level whose decisions are final to test the law against the Basic Law, decide upon disputes over the authority of state institutions , decide upon the dissolution of political parties, and decide on disputes over the results of general elections ".With the abolition of the clause "the authority granted by the Constitution", it means that the Constitutional Court has the authority to decide upon disputes of authority between state institutions, regardless of where the source of authority of the said state institution is. Therefore, if there is a dispute over authority between state institutions which is not regulated in the Constitution of the Republic of Indonesia Year 1945, the Constitutional Court of the Republic of Indonesia will decide the case.The author believes this option is more likely to be chosen, this is because at least two arguments:

a. public trust in a state institution called the Constitutional Court is still relatively high;
b. Authority disputes between state institutions are not cases that have high intensity, so that they do not interfere with the main task of the Constitutional Court.

However, the difficulty faced when this option is chosen is to amend the 1945 Constitution of the Republic of Indonesia and the Constitutional Court Law. Changing the Constitution of the Republic of Indonesia Year 1945 and the Constitutional Court Law is not an easy task.

#### 3.3.2. Option 2: Extend the Authority of the Supreme Court of the Republic of Indonesia

Article 24A paragraph (1) of the Constitution of the Republic of Indonesia Year 1945 states that the Supreme Court, hereinafter referred to as the Supreme Court, has the authority to adjudicate the level of cassation, examine the statutory provisions under the law, and have other authority granted by the law. This means that the provision of Article 24A paragraph (1) of the Constitution of the Republic of Indonesia Year 1945 is the basis of the authority of the Supreme Court.

Article 28 paragraph (1) of Law Number 14 Year 1985 concerning MA states that MA has the duty and authority to examine and decide:

a. petition for cassation;
b. dispute authority to adjudicate;
c. application for a review of court decisions that have obtained permanent legal force.

Based on the Constitution of the Republic of Indonesia Year 1945 and Law Number 14 of 1985 concerning MA, Law Number 5 of 2004 concerning Amendment to Law Number 14 of 1985 concerning MA

and Law Number 3 of 2009 concerning Second Amendment to Law Number 14 of 1985 concerning the Supreme Court, the Supreme Court does not have the authority to decide upon disputes of authority between state institutions.If the Constitutional Court has the authority to decide authority disputes between state institutions whose authority is granted by basic law, then the authority to decide upon disputes between state institutions governed outside the Constitution of the Republic of Indonesia Year 1945 can be given to the Supreme Court. The granting of authority to the Supreme Court to decide on disputes between state institutions which are regulated outside the Constitution of the Republic of Indonesia Year 1945 is simpler when compared to the Constitutional Court, given that the provisions of Article 24A paragraph (1) of the Republic of Indonesia Constitution Year 1945 allow for this. As mentioned above, the provisions of Article 24A paragraph (1) of the Constitution of the Republic of Indonesia Year 1945 give the following authority to the Supreme Court:

a. adjudicate the level of cassation;
b. examine the statutory regulations under the law; and
c. other powers granted by law.

The clause has "other authority granted by law" as a door for the entry to grant authority to the Supreme Court to decide upon disputes of authority between state institutions outside the Constitution of the Republic of Indonesia Year 1945.If the Supreme Court will be given the authority to decide upon disputes between state institutions which are regulated outside the Constitution of the Republic of Indonesia Year 19145, then what is done is enough to make changes to the law on the Supreme Court. This method is simpler if the authority to decide upon disputes between state institutions outside the Constitution of the Republic of Indonesia Year 1945 is given to the Constitutional Court which must be done through amendments to the Constitution. The process of making laws is simpler when compared to making changes to the Constitution.

But if this option is chosen, there are at least two burdensome reasons:

a. public trust in the Supreme Court is relatively low, so that it will lack public support;
b. if the Supreme Court is given additional authority to settle disputes between state institutions, it is feared that it will interfere with the main task of the Supreme Court. This is because the Supreme Court still has arrears on the case;
c. Supreme Court justices in the Supreme Court have diverse legal education backgrounds, while cases of authority disputes between state institutions are the domain of state administration law.

### 3.3.3. Option 3: Settlement of State's Institutional Authority Disputes Unregulated in the Constitution of the Republic of Indonesia Year 1945 to Other Institutions Year 1945

Article 24 paragraph (2) of the Constitution of the Republic of Indonesia Year 1945 stipulates that judicial authority is exercised by the Supreme Court and the Constitutional Court. This provision has the implication that judicial settlement of legal issues must be resolved through the two institutions. But in the framework of academic studies, option 3 is an alternative option that is not only fixed on the norm rigidly.

**First,** to legalize the resolution of disputes between state institutions which are regulated outside the Constitution of the Republic of Indonesia Year 1945, which in practice is resolved by the president. This means that the practice of resolving disputes between state institutions which is not regulated in the Constitution of the Republic of Indonesia Year 1945 conducted by the president does not yet have a juridical basis, so norms need to be established. In the norm to be determined, it is necessary to regulate the position of the president explicitly whether the president is in the position of head of government or the president as head of state. The clarity of the position of the president is very important, considering that it will have implications for which state institutions can dispute. If the president is in the position of head of government, this means that state institutions that can dispute are limited to state institutions that are formed based on statutory regulations under the law.But it is different when the position of president as head of state. If the position of president is as head of state, the resolution of disputes between state institutions governed outside the 1945 Constitution of the Republic of Indonesia is a state institution formed under the law. The position of

president, both as head of government and as head of state in resolving disputes between state institutions which are regulated outside the Constitution of the Republic of Indonesia Year 1945 must meet the following criteria:

a. One party is a state institution whose authority is granted by the Constitution of the Republic of Indonesia Year 1945, while the other party's state institution is formed under the law and under the law; or the parties to the dispute are state institutions formed both under the law and under the law;

b. The disputed material or substance is the authority of each state institution;

c. The President in making decisions in resolving disputes between state institutions which are not regulated in the Constitution of the Republic of Indonesia Year 1945 must be based on legal objectives, namely justice, legal certainty and benefits.

Regarding the option of resolving disputes between state institutions which are regulated outside the NRI Constitution Year 1945 given to the president, the authors disagree. The argument is that the president is not the holder of judicial authority, but the holder of government power. Because the president is not the holder of judicial power, the decision taken by the president does not have the same compelling nature as judicial power. The next implication is possible let the parties disobey the decision taken by the president. Thus, legal certainty will not be achieved given the disobedience of the parties to the dispute. Second, the resolution of disputes between state institutions which are regulated outside the 1945 Constitution of the Republic of Indonesia is submitted to the People's Consultative Assembly, hereinafter referred to as the MPR. MPR was chosen as an institution that can resolve disputes between state institutions that are not regulated in the 1945 NRI Constitution given the position of the MPR as the highest state institution in Indonesia before the amendment to the 1945 Constitution. Jimly Asshiddiqie argues: Before the amendment to the 1945 Constitution, the MPR or the People's Consultative Assembly had the position as the highest state institution.

To this MPR institution the President, as head of state and head of government at the same time, is subject and responsible. In this institution the sovereignty of the Indonesian people is also considered to be fully incarnated, and this institution is also regarded as the full perpetrators of that sovereignty. From this highest MPR institution, the mandate of state power is distributed to other high state institutions, whose position is below it according to the principle of distribution of power which is vertical (distribution of power). Based on Jimly Asshiddiqie's opinion above, the mandate of the power of state institutions comes from the MPR. Therefore, in the event of a dispute over authority between state institutions whose authority is regulated outside the 1945 Constitution of the Republic of Indonesia, the MPR can be given the authority to resolve it. However, this opinion has several weaknesses: a. because after the amendment to the 1945 Constitution, the position of the MPR is no longer the highest institution, but a high institution whose position is in line with other state institutions as a consequence of horizontal distribution of power according to the Constitution; b. The MPR is the incarnation of the entire people, both in political and regional terms, so that the resolution of the dispute will tend to be political rather than resolving the law; c. MPR is not a judicial institution, so it does not have the power to force the enforcement of decisions so that the implications do not create legal

## IV. CONCLUSIONS

From the results of the analysis in this study, the following conclusions can be drawn: a. The need to regulate the settlement of authority disputes between state institutions outside the Constitution of the Republic of Indonesia Year 1945 is because Indonesia is a constitutional state and because of the potential for disputes between state institutions that are not regulated in the Constitution of the Republic of Indonesia Year 1945. b. The legal implications of resolving disputes between state institutions which are not regulated in the Constitution of the Republic of Indonesia Year 1945 conducted by the President through instructions are the resolution of the KPK dispute with the police but does not create legal certainty. c. In the perspective of state life, reconciliation of dispute resolution between state institutions can be done through two options:

1. expand the authority of the Constitutional Court by removing the clause the authority granted by the Basic Law" in Article 24C paragraph (1) of the Constitution of the Republic of Indonesia Year 1945; 2. expanding the authority of the Supreme Court by adding provisions to Article 24A paragraph (1) of the Constitution of the Republic of Indonesia Year 1945; 3. devolve authority to other institutions (the President or MPR).

**REFERENCES**

[1] Abdul Latif, *Fungsi Mahkamah Konstitusi dalam Upaya Mewujudkan Negara Hukum Demokrasi*, (Yogyakarta: Kreasi Total Media, 2007).
[2] Bagir Manan, *Lembaga Kepresidenan*, (Yogyakarta: FH UII Press, 2003).
[3] Bernard Arief Sidharta, *Ilmu Hukum Indonesia Upaya Pengembangan Ilmu Hukum Sistematik yang Responsif terhadap Perubahan Masyarakat.* (Yogyakarta: Genta Publishing, 2013).
[4] Dahlan Tahib dkk, *Teori dan Hukum Konstitusi*, (Jakarta: RajaGrafindo Persada, 2001).
[5] Jimly Asshiddiqie, *Sengketa Kewenangan Konstitusional Lembaga Negara*, (Jakarta: Konstitusi Press, 2006).
[6] Jimly Asshiddiqie, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*, (Jakarta: Sinar Grafika, 2010).
[7] Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara*, (Jakarta: RajaGrafindo Persada, 2011).
[8] Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, (Jakarta: Sinar Grafika, 2011).
[9] Miriam Budiardjo, *Dasar-Dasar Ilmu Politik*, (Jakarta: PT Gramedia Pustaka Utama, 2002).
[10] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenada Media, 2005).
[11] Philipus M Hadjon dkk., *Pengantar Hukum Administrasi Indonesia*. (Yogyakarta: Gadjah Mada University Press, 2011).
[12] Satjipto Rahardjo, *Ilmu Hukum.* (Alumni: Bandung, 2000)