Reconstruction Of Authority Dispute Arrangements Judging In The Environment Of Judicial Power

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Abstract.

Reconstruction of Dispute Arrangements for the Authority to Judge in the Sphere of Judicial Authority is research to reconstruct the arrangement of disputes over the authority to judge within the jurisdiction of the judiciary from 1945 to the present. The objective to be achieved in this research is to find legal politics for the formation of laws regarding judicial disputes within the jurisdiction of the judiciary. The research method used in this research is normative juridical research, by examining various laws and regulations in accordance with the research problem. The research results show that disputes over the authority to judge within the judiciary are in the Supreme Court.

Keywords: *Authority Dispute, Adjudicating and Judicial.*

I. INTRODUCTION

Article 24 paragraph (2) of the Constitution of the Republic of Indonesia 1945, hereinafter referred to as the 1945 NRI Constitution, stated that Judicial power is exercised by a Supreme Court and agencies subordinate courts within the general justice environment, religious justice environment, military justice environment, judicial environment state administration, and by a Constitutional Court.

From the provisions above, it can be understood that the judiciary is in place under the Supreme Court include:

a. general justice environment;
b. religious justice environment;
c. military justice environment; And
d. state administrative justice environment.

However, in its development, the judiciary was under the Supreme Court continues to grow. Call it Tax Court,[2] Fisheries Court,[3] Corruption Crime Court[4], and Commercial Court[5] are the latest developments in the judiciary under the Supreme Court. Considering that the above judicial bodies are on equal footing, then in exercising its authority, there may be adjudicative disputes in the environment judicial power. If there is a dispute over authority, then resolve it judicially lies in the hands of the Supreme Court, hereinafter referred to Supreme Court, or the Constitutional Court, hereinafter referred to as the MK. Supreme Court or the Constitutional Court, depending on the issue of authority dispute. When disputes over authority within the judiciary, then it becomes the authority of the Supreme Court, on the other hand, if there is a dispute over the authority of a state institution whose authority is granted by the Constitution, then it becomes the authority of the Constitutional Court.

In constitutional practice, disputes between state institutions can occur due to differences in interpretation of authority. This is due to the relationship between State institutions are checks and balances. There is no single state institution which has a higher position than other state institutions. As a consequence

arises the possibility of disputes in carrying out their respective authorities.[6] Disputes over authority do not only occur between state institutions. Dispute Authority can also occur within the reallasionam of judicial power. This writing wants to reconstruct the regulation of adjudicatory authority disputes in the environment judicial power.This study traces the post-law independence until today. This study is divided into three periods, the first period 1945-1959, the second period 1960-1999, and the third period 2000-2019.

II. METHODS

The method used in this study is normative juridical. by reviewing various statutory regulations in accordance with study theme. The approach method uses the Statute Approach (approach), Conceptual Approach (concept approach) and Historical Approach (historical approach).

III. RESULTS AND DISCUSSION

1. First Period: 1945-1959

In the post-independence period, the provisions of Articles I and Article II Transitional Rules to the Constitution of the Republic of Indonesia 1945 (1945 Constitution of the Republic of Indonesia) which states that:

Article I:

All existing laws and regulations still apply as long as a new one has not been established according to this Constitution.

Article II:

All existing state institutions will continue to function as long as possible implement the Constitution and have not yet created a new one according to this Constitution.

The implications of this Transitional Regulation are statutory and institutional regulations existing states will still apply as long as there are no new ones. Mahfud MD et al. states that:[7]

> Thus, when the Indonesian state was proclaimed, this did not happen legal and institutional vacuum. With the formulation of that article, all existing laws and regulations, both from the government era The Netherlands, England or Japan can continue to apply as long as it does not is contrary to the 1945 Constitution and no new regulations have been implemented or replaced according to the method regulated in the 1945 Constitution.

When Law Number 7 of 1947 concerning the Structure and The powers of the Supreme Court and the Attorney General's Office (UU 7/1947) were promulgated in Malang on February 27 1947, the legislators had predicting the possibility of authority disputes[8] in power circles judiciary:[9]

(1) The Supreme Court at the first and last judicial levels decide all disputes regarding judicial power:

a. between all judicial bodies whose seat is not a regional high court;
b. between the high court and the high court;
c. between the high court and an internal judicial body area the law

(2) The decision of the Supreme Court in this matter is determined at least three judges.

The author interprets that what is meant by the provisions of Article 5 paragraph (1) of the Law 7/1947 are:

a. disputes between district courts and district courts that are not deep one high court;[10]
b. disputes between high courts;
c. dispute between the high court and the district court in the jurisdiction the high court.

Clause Article 5 paragraph (1) of Law 7/1947 which states “Supreme Court at the first and also the last judicial level” means that It is at the Supreme Court that disputes regarding judicial authority are

decided. Decision The Supreme Court is "final and binding". “Final and binding” means final and binding, so that there is no other legal remedy other than the Court's decision the Supreme.Law 7/1947 was revoked and declared invalid by law Number 19 of 1948 concerning the Composition and Powers of Judicial Bodies, hereinafter referred to as Law 19/1948. With regard to adjudicating disputes, Article 58 of Law 19/1948 states:

The Supreme Court is at the first and final level of justice decide all disputes regarding judicial power:[11]
1st Between all judicial bodies whose seat is not area law something High Court.
2nd Between the High Court and the High Court.
3rd Between the High Court and an internal judicial body jurisdiction.
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The provisions of Article 58 of Law 19/1948 are exactly the same as Article 5 of Law 7/1947. The two are differentiated only editorially. The essence of dispute regulation Just like Law 7/947, Law 19/1948 uses the term dispute regarding the power to adjudicate. The authority to judge is still the same as Law 7/1947. The application of legal principles in the theory of "final and binding" legislation remains the same. Thus, it is at the Supreme Court that disputes over adjudicatory authority are resolved between District Courts and District Courts which are not in the same High Court, between High Courts and High Courts, between High Courts and District Courts which are not in one High Court.After the promulgation of Law 19/1948, the government promulgated the Emergency Law of the Republic of Indonesia Number 1 of 1951 concerning Temporary Measures to Implement a Unitary Structure of Power and Civil Court Procedures, hereinafter referred to as Emergency Law 1/1951.However, Emergency Law 1/1951 does not regulate disputes over judicial authority, and is also the final legal regulation regarding disputes over judicial authority within the judiciary.

2. Second Period 1960 – 1999

In this second period, judicial power is regulated by Law Number 19 of 1964 concerning Basic Provisions of Judicial Power, hereinafter referred to as the 1964 KK Law. The 1964 KK Law contains six chapter and 31 articles.[12] of the 1964 KK Law does not regulate disputes over the authority to adjudicate. After the 1964 KK Law, the government promulgated Law Number 13 of 1965 concerning Courts within the General Courts and the Supreme Court, hereinafter referred to as Law 13/1965. Article 38 of Law 13/1965 states that the High Court decides at the first and final level disputes over the authority to adjudicate between District Courts within its jurisdiction. This article means that the High Court decides disputes over the authority to adjudicate between District Courts in one High Court.

Article 48 of Law 13/1965 states:
Supreme Court in first and final instance:

a. All disputes regarding the authority to adjudicate between the courts of one judicial environment and the courts of another judicial environment;
b. All disputes regarding the authority to adjudicate between the District Court and District Courts that are not located within the jurisdiction or High Court;
c. All disputes regarding the authority to adjudicate between courts not mentioned in letters a and b.

In the Explanation of Law Number 13 of 1965 concerning Courts within the General Court and Supreme Court, it is stated that the hearings which are absolutely required to be known by the Chairman and Deputy Chief Justice of the Supreme Court, are hearings concerning disputes regarding the authority to adjudicate courts. from various judicial environments. This policy was taken to maintain the atmosphere and unity within the Supreme Court. Even though it is not expressly stipulated in this Law, it is a reasonable policy if such hearings are also attended by supreme judges from the field concerned with the courts where there is a dispute regarding the authority to adjudicate.In another part of the Explanation to Law Number 13 of 1965 concerning Courts within the General Court and Supreme Court, it is stated that as a court, the

Supreme Court has the power to hear dispute cases regarding the authority to adjudicate, decide on cassation and judicial review.Law Number 14 of 1970 concerning Basic Provisions on Judicial Power does not regulate disputes over the authority to adjudicate. The author is of the opinion that the provisions regarding regulating disputes over the authority to adjudicate are very important provisions. The 1964 KK Law and the 1970 KK Law do not regulate disputes over the authority to adjudicate, because they are not the content of the Judicial Power Law but the issue of disputes over the authority to adjudicate is the content of the Supreme Court Law Law Number 14 of 1985 concerning the Supreme Court, hereinafter referred to as the Law 14/1985, again regulates disputes over the authority to adjudicate. Article 33 and Article 34 of Law 14/1985 state that;

Article 33:

1) The Supreme Court decides at the first and final level dispute regarding the authority to adjudicate:
   a. between Courts in one Judicial environment and Courts in other Judicial Environments;
   b. between two courts within the court's jurisdiction
      Different Levels of Appeal from different Judicial Environments
      The same; c.between two Courts of Appeal in the Judicial Environment
   c. the same or between different judicial environments.

(2) The Supreme Court has the authority to decide at the first instance and finally, all disputes arising from the seizure of foreign ships and its cargo by warships of the Republic of Indonesia based on applicable regulation.

The provisions of Article 33 paragraph (1) are regulated in more detail in Chapter Iv Of The Lawproceedings For The Sup Reme Court Part Three Dispute Examination Concerning the Authority to Adjudicate Paragraph 2 of the General Court. Article 57 paragraph (1) regulates that the Application to examine and decide the dispute authority to adjudicate in civil cases, submitted in writing to The Supreme Court accompanied its opinion and reasons by:

a. litigants through the Chairman of the Court;
b. The Chairman of the Court who hears the case.

Article 57 paragraph (2) states that the Supreme Court Registrar takes es The request is included in the dispute registration book regarding the authority to djudicate civil cases and on the orders of the Chief Justice of the Supreme Court to send a copy thereof to the opposing party in the case with notification that he in grace Article 57 paragraph (2) states that the Supreme Court Registrar takes notes

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Article 57 paragraph (3) stipulates that after the application is received then the examination of the case by the Court examining it is postponed until The dispute was decided by the Supreme Court. Article 57 paragraph (4) states that the Supreme Court Decision is conveyed to:

a. the parties through the Chairman of the Court;
b. Chairman of the Court concerned.

In disputes over the authority to adjudicate criminal cases, Article 58 states that the Application to examine and decide the dispute authority to try criminal cases, submitted in writing by the Prosecutor General or defendant accompanied by his opinion and reasons. If the application is submitted by the Public Prosecutor then the application letter and files the case was sent by the Public Prosecutor to the Supreme Court,while a copy is sent to the Attorney General, the Heads of the Court and the Public Prosecutor at other Prosecutors' Offices as well as to the defendant.[13] No later than the latest 30 (thirty) days after receiving a copy of the application,The Public Prosecutor and/or the defendant convey their respective opinions to the

Supreme Court.[14] Article 60 paragraph (1) Law 14/1985 states that if an application is submitted by the defendant, then the application letter is submitted through the Public Prosecutor concerned, who then forwards the application along with opinions and case files to the Supreme Court. Article 60 paragraph (2) Article 57 paragraph (2) states that the Supreme Court Registrar takes notes The request is included in the dispute registration book regarding the authority to adjudicate civil cases and on the orders of the Chief Justice of the Supreme Court to send a copy thereof to the opposing party in the case with notification that he within a period of 30 (thirty) days after receiving a copy of the application 54 The person has the right to submit a written response to the Supreme Court accompanied by opinions and reasons. Article 57 paragraph (3) stipulates that after the application is received then the examination of the case by the Court examining it is postponed until The dispute was decided by the Supreme Court.

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while a copy is sent to the Attorney General, the Heads of the Court and the Public Prosecutor at other Prosecutors' Offices as well as to the defendant.[15]. later than the latest 30 (thirty) days after receiving a copy of the application. The Public Prosecutor and/or the defendant convey their respective opinions to the Supreme Court.[16]Article 60 paragraph (1) Law 14/1985 states that if an application is submitted by the defendant, then the application letter is submitted through the Public Prosecutor concerned, who then forwards the application along with opinions and case files to the Supreme Court.Article 60 paragraph (2) determines that the Public Prosecutor sends a copy of the application letter and his opinion to other Public Prosecutors. Meanwhile paragraph (3) states that other Public Prosecutors send their opinions to the Court Agung no later than 30 (thirty) days after receiving the copy the application.Article 61 paragraph (1) states that the Public Prosecutor must proceed as soon as possible submit a copy of the application to the Chief Justices of the Court decide the matter. Article 61 Paragraph (2) states that After the application is accepted by the Chief Justice, then the case is examined by The court examining it was adjourned until the dispute was decided by Supreme Court. Article 62 paragraph (1) states that the Court The Supreme Court can order the Court to examine the case requesting information from the defendant regarding matters deemed necessary.

Article 62 paragraph (2) outlined that after implementing the order, the Court that ordered to immediately publish the inspection report and send it to the Supreme Court.Article 63 paragraph (1) states that in the event of a dispute the authority to adjudicate submitted by the Public Prosecutor, the Supreme Court decided the dispute after hearing the Attorney General's opinion. Article 63 paragraph (2) regulates that the Attorney General inform the defendant of the Supreme Court's decision and the Public Prosecutor in the case. Disputes over the authority to adjudicate can also occur within scope Religious Courts, State Administrative Courts and Military Courts. This matter as regulated in Chapter Iv Procedure Law For The Court . Article 63 paragraph (1) states that in the event of a dispute the authority to adjudicate submitted by the Public Prosecutor, the Supreme Court decided the dispute after hearing the Attorney General's opinion. Article 63 paragraph (2) regulates that the Attorney General informs the defendant of the Supreme Court's decision and the Public Prosecutor in the case. Disputes over the authority to adjudicate can also occur within scope Religious Courts, State Administrative Courts and Military Courts. This matters as regulated in Chapter Iv Procedure Law For The Supreme Court Part Three Examination of Disputes regarding the Authority to Adjudicate Paragraph 3 Religious Courts, State Administrative Courts and Military Courts.

Article 64 paragraph (1) states that examination of disputes regarding authority to adjudicate between courts where:

a. in the Religious Courts environment;

b. within the State Administrative Court;[17]

carried out according to the provisions of Article 5. Furthermore, Article 64 paragraph (2) states that examination of disputes regarding authority to adjudicate between courts within the Military Justice Environment, carried out in accordance with the provisions of Articles 58 to Article 63. Paragraph 4 Examination of Disputes regarding the Authority to Adjudicate Intermediaries The Judicial Environment regulates the examination of disputes regarding authority to adjudicate between:[18]

a. Courts in the General Court District with Courts in the Wards Religious Courts with Courts within the Administrative Courts Country;
b. Courts in the Religious Court Environment with Courts in the environment State Administrative Court; carried out in accordance with the provisions of Article 57.

Article 65 paragraph (2) Law 14/1985 stipulates examination of disputes regarding the authority to adjudicate between the Courts in the General Court Environment and Trials in the Military Justice Environment are carried out according to the provisions of Article 58 to article 63.

3. Periode Ketiga; 2000-2020

Undang-Undang yang tercantum di bawah ini tidak mengatur sengketa kewenangan mengadili:

a. Undang-Undang 4 Tahun 2004 tentang Kekuasaan Kehakiman, namun mengatur dan memiliki kewenangan untuk memutus sengketa kewenangan lembaga negara yang kewenangannya diberikan oleh undang-undang dasar;
b. Undang-Undang Nomor 5 Tahun 2004 tentang Perubahan Atas Undang-Undang Nomor 14 Tahun 1985 Tentang Mahkamah Agung;
c. Undang-Undang Nomor 8 Tahun 2004 tentang Perubahan Atas Undang- Undang Nomor 2 Tahun 1986 tentang Peradilan Umum;
d. Undang-Undang Nomor 3 Tahun 2009 tentang Perubahan Kedua Atas Undang-ndang Nomor 14 Tahun 1985 tentang Mahkamah Agung;
e. Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman;
f. Law Number 49 of 2009 concerning the Second Amendment
g. Law Number 2 of 1986 concerning General Courts
h. Law on the Supreme Court and Laws

IV. CONCLUTION

Law Number 49 of 2009 concerning the Second Amendment Law Number 2 of 1986 concerning General Courts. Law on the Supreme Court and Laws The General Court which usually regulates disputes over the authority to adjudicate, but this time it didn't set. The author believes that both laws This is only a change so that only the substance that is changed is changed invited. By not changing the regulations regarding authority disputes adjudicating, meaning the legal politics of regulating authority disputes the trial is final. Conclusions and recommendations Based on the discussion above, it can be concluded that the dispute The authority to judge within the judiciary is caused by.

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