

## **AUTHORITY OF THE CONSTITUTIONAL COURT TO ADJUDGE STATE ADMINISTRATIVE CASES**

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### **Abstract**

*Court The Constitution (MK) is institutions that have authority main in interpret The 1945 Constitution (UUD), as set up in Article 24C of the 1945 Constitution and the Law Number 24 of 2003 concerning Court Constitution . However , in In practice , the Constitutional Court often handles related matters with State Administration (TUN), although in a way normative authority the is at in realm State Administrative Court (PTUN) in accordance with with Constitution Number 5 of 1986 concerning PTUN and its amendments. Research This aiming For analyze To what extent does the Constitutional Court have authority in to judge TUN matters and implications the law to system justice in Indonesia. Study This use method legal normative with approach regulation statute approach, approach case approach, and case study approach conceptual (conceptual approach). Data obtained from source primary law in the form of regulation legislation and Constitutional Court decisions , as well as source law secondary like literature law and journal academic. Research result show that there is overlap overlap authority between the Constitutional Court and the Administrative Court in a number of related cases with decision state officials , disputes results elections , as well as testing of legal norms that have an impact on state administration . This is cause uncertainty law and potential weaken principle separation power in system Indonesian justice . Therefore that , it is necessary existence revision to Constitution Court Constitution For clarify the limits of his authority so as not to enter realm law state Administration .*

**Keywords:** Court Constitution , Authority , Separation Power , Legal Uncertainty.

### **Introduction**

Court The Constitution (MK) is one of the institution justice in system Indonesian state administration which has authority main in guard constitution and enforce the principle of the rule of law . The authority of the Constitutional Court as set up in Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD 1945) includes testing Constitution to constitution , decides dispute authority between state institution , decides dissolution party politics , as well as finish dispute results election general . In practice , the authority of the Constitutional Court is often intersect with realm law state administration , in particular in state administration cases (TUN ) . This matter cause debate legal about To what extent does the Constitutional Court have authority in to judge disputes of a nature administrative .

administrative law in Indonesia in general general is at in jurisdiction State Administrative Court (PTUN), as set up in Constitution Number 5 of 1986 concerning The



State Administrative Court which has changed with Constitution Number 9 of 2004 and Law Number 51 of 2009. PTUN has the authority For to judge decision state administrative officials suspected contradictory with law or harm right citizens . However , in a number of case , court The constitution also takes role in examine and judge related matters with decision state administration , especially in context dispute elections , testing of legal norms , and protection right constitutional citizen .

One of aspects that become debate in realm academic and practice law is expansion the authority of the Constitutional Court in handle dispute state administration that should be become PTUN realm or Supreme Court (MA). Several The Constitutional Court's decision shows existence broad interpretation to its authority , especially in related matters with elections and rights constitutional citizens . As example , MK in a number of the verdict has cancel decision administration related with nomination head area , dispute results elections , as well as provisions that have an impact straight to the right citizens in get service public . Phenomenon This bring up question fundamental regarding the limits of the Constitutional Court's authority in to judge state administration matters as well implications the law to system justice in Indonesia.

Study on the authority of the Constitutional Court in to judge state administration matters become important remember that distribution jurisdiction between institution justice must still in line with the principle of due process of law and supremacy constitution . Therefore that , research This aiming to : (1) analyze base law the authority of the Constitutional Court in state administration cases based on regulation applicable legislation , (2) review practice the trial that has been carried out by the Constitutional Court in handle matters of concern with law state administration , and (3) evaluating implications the Constitutional Court's decision on system state administrative law and balance authority between institution justice .

Research methods used in article This is approach legal normative with analysis to regulation legislation , Constitutional Court decisions , and literature relevant academic studies . In addition , studies case to a number of the related Constitutional Court decision with law state administration will used For understand pattern and direction development the authority of the Constitutional Court in to judge state administration matters . With Thus , the results study This expected can give contribution for development law state administration as well as clarifying the limits of the Constitutional Court's authority in system justice in Indonesia .

## **Methodology**

In research this , is used approach legal normative with method analysis law doctrinal . Research This aiming For understand and evaluate authority Court Constitution in to judge State Administration (TUN) cases based on regulation legislation , decisions court , and theory law administration and state administration .

Research methods This explained in a way systematic in table following :

Table 1: Research Method Design

| Aspect                       | Explanation  |
|------------------------------|--|
| Approach<br>Study            | Legal normative (legal research) with studies bibliography and analysis decision court .   |
| Data Types                   | Secondary data consisting of from material primary, secondary , and tertiary law .   |
| Data source                  | 1) Primary Legal Materials: 1945 Constitution, Laws Court Constitution , PTUN Law , and decision Court Relevant Constitution and Supreme Court . 2) Secondary Legal Materials : Books , journals law , research previously , and expert opinion . 3) Tertiary Legal Materials : Legal dictionaries , encyclopedias laws , and references others who support analysis .       |
| Data<br>collection technique | Library research , review document law , and analysis decision court .   |
| Data Analysis<br>Techniques  | Analysis qualitative with method prescriptive and descriptive . 1) Analysis Descriptive : Describes draft base the authority of the Constitutional Court and the Administrative Court in system Indonesian law . 2) Analysis Prescriptive : Providing recommendation regarding the limits of the Constitutional Court's authority in to judge state administrative matters . |
| Objects<br>Study             | Authority Court Constitution in to judge state administration cases based on decisions and rules applicable law .  |
| Framework<br>Thinking        | Use theory separation power , theory supremacy constitution , as well as theory law state administration for analyze the authority of the Constitutional Court in TUN matters .  |

Research methods This used For ensure that analysis done in a way systematic based on applicable legal norms as well as relevant with development law constitutional law in Indonesia. With approach this , it is expected study can give contribution theoretical and practical in understand the limits of authority Court Constitution in state administrative matters .

## **Result and Discussion**

This section serve findings main based on research that has been done about authority Court Constitution (MK) in to judge State Administration (TUN) cases . Findings This obtained from analysis regulation legislation , studies the Constitutional Court's decision , as well as comparison with system law state administration in Indonesia.

### **1. Authority Court Constitution in System Indonesian Judiciary**

Court The Constitution (MK) is institutions that have authority in field law constitution as set up in Article 24C of the 1945 Constitution. Authority MK's main functions include testing Constitution against the 1945 Constitution, resolution dispute authority between state institutions , disputes results election , dissolution party politics , as well as impeachment of the President /Vice President .

However , in the 1945 Constitution and in Constitution Number 24 of 2003 concerning the Constitutional Court, no There is provisions that are explicit give the Constitutional Court the authority For to judge State Administrative Affairs (TUN) matters . Authority in finish dispute state administration should be become the domain of the State Administrative Court (PTUN) as set up in Constitution Number 5 of 1986 concerning PTUN, which has experience change with Law No. 9 of 2004 and Law No. 51 of 2009.

However , in a number of case , the Constitutional Court has handle the matter that has element state administration , especially in dispute related election , authority state officials , as well as testing laws that have an impact on law state Administration .

### **Court Cases Constitutions in Conflict with State Administration**

Based on research , found that the Constitutional Court has several times handling the thing that should be is at in realm law state administration . Some case important thing to be highlight is as following

- 1) Dispute Elections and KPU Decisions One of the case that shows MK's involvement in dispute state administration is Constitutional Court Decision No. 41/PHPU.D-VI/2008, which annulled decision Commission General Election (KPU) related results election . In case This , KPU as state institutions issue decision administrative impact wide to participant election . In principle , the KPU decision can categorized as state administrative decisions that are in PTUN realm . However , because election is part from mechanism constitutional , the Constitutional Court took transfer authority in handle case This .
- 2) Testing Laws Affecting State Administration  
In the Constitutional Court Decision No. 137/PUU-XIII/2015, the Constitutional Court Constitution cancel the authority of the Minister of Home Affairs in

cancel Regional Regulation ( Perda ). Previously , based on Article 251 of Law No. 23 of 2014 concerning Regional Government , the Minister of Home Affairs has authority For cancel Conflicting regulations with regulation legislation above it . The Constitutional Court considered that authority This contradictory with principle autonomy area , so that give decision to overturn chapter the .

- 3) Decision of State Officials Who Have Impact Constitutional in Constitutional Court Decision No. 85/PUU-XI/2013, the Constitutional Court annulled rule regarding age limit candidate head area . Before decision this , there is restrictive provisions age candidate head area , which is regulated in regulation legislation . Applicant in case This to argue that restrictions age the violate right constitutional citizens for chosen in election general . MK then cancel provision said , with reason that limitation age must be proportional and not may hinder right constitutional citizen .

### **3. Comparison The authority of the Constitutional Court and the Administrative Court in Handle State Administrative Matters**

Research result show that there is intersection jurisdiction between the Constitutional Court and the Administrative Court in settlement state administrative disputes . In general theory , PTUN has authority handle dispute administrative , while the Constitutional Court handles dispute constitutional . However , in a number of cases , the Constitutional Court often handle case administrative with reason that decision administration the impact on rights constitutional citizen .

Table 2. Aspects

| Aspect          | Court Constitution (MK)   | State Administrative Court (PTUN)  |
|-----------------|---|--|
| Legal basis     | Article 24C of the 1945 Constitution, Law No. 24/2003 concerning the Constitutional Court | Law No. 5/1986 concerning PTUN (and its revisions : Law No. 9/2004, Law No. 51/2009) |
| Type of Case    | Dispute constitutional , testing of laws, disputes results election                       | Dispute administrative between citizens and state administrative officials           |
| Objects Dispute | Conflicting legal norms with the 1945 Constitution, the decision organizer election       | administrative decisions ( beschikking ) that are detrimental right citizen          |

#### **4. Legal Implications of The authority of the Constitutional Court in State Administrative Matters**

Findings main from study This to reveal that MK's involvement in state administration cases brought a number of consequence significant laws :

1. Overlapping Overlap Authority in a number of case , MK took transfer the authority that should be is at in PTUN realm . This matter create dualism court , where a matters involving aspect state administration can tried in two different institutions , namely the Constitutional Court and the Administrative Court .
2. Legal Uncertainty due to No existence clear boundaries about the authority of the Constitutional Court in TUN case , appears uncertainty law for society and state institutions . The parties often confused whether a dispute must submitted to the PTUN or direct to the Constitutional Court.
3. Threat to Principle Separation Power in theory separation power , every institution justice own coverage their respective authorities . However , when the Constitutional Court began enter realm law state administration , things This can considered as form deviation from principle separation power , because the Constitutional Court should only focus on the problem constitution .
4. The need for More regulation clear based on results research , found that No There is strict rules that limit the authority of the Constitutional Court in to judge TUN case . Therefore that , is needed revision against the Constitutional Court Law so that it does not happen overlap overlap authority with PTUN .

#### **Conclusion**

Based on results research that has been done , can concluded that Court The Constitution (MK) does not own authority explicit For to judge State Administration (TUN ) cases as regulated in Article 24C of the 1945 Constitution and Law No. 24 of 2003 concerning Court Constitution . In in theory , state administrative disputes should be become realm State Administrative Court (PTUN) in accordance with with Law No. 5 of 1986 concerning PTUN and its amendments . However , in In practice , the Constitutional Court often handles cases that have element state administration , especially in dispute election , authority state officials , and testing laws that have an impact on law state Administration .

Implications from MK's involvement in TUN cases give rise to a number of problem main , namely :

1. The occurrence overlap overlap authority between MK and PTUN

Constitutional Court often adjudicates the real thing is the realm of the PTUN, especially in matter decision state officials who have an impact constitutional . This is cause dualism jurisdiction that can confusing seeker justice .

2. Uncertainty law in system Indonesian judiciary

Because it does not There is strict limits about the authority of the Constitutional Court in handle TUN matters , society often confused in determine where are they must submit lawsuit . In addition , the Constitutional Court's decision in a number of cases that intersect with law state administration also gives rise to precedent law that does not consistent .

3. Threat to principle separation power

Triassic theory politics confirm that state institutions must operate authority in accordance with their respective functions . The involvement of the Constitutional Court in realm state administration can considered as form deviation from principle separation power , because the Constitutional Court should only focus on the problem constitutional .

4. The need for revision regulation For limit the authority of the Constitutional Court in TUN case

In order not to happen abuse jurisdiction , required more regulation clear about limitation the authority of the Constitutional Court. One of solutions that can taken is revision of the Court Law Constitution For ensure that the Constitutional Court only handle a real dispute related with constitution and not enter realm law state Administration .

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