COMPARATIVE STUDY OF THE CONSTITUTIONAL COURT AS A GUARDIAN OF THE CONSTITUTION BETWEEN INDONESIA AND GERMANY

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Abstract

After years of being formed, the Indonesian Constitutional Court is considered to have carried out its duties and functions well. However, if we look further, there are still shortcomings and several things that the Indonesian Constitutional Court has not accommodated in carrying out its duties and functions compared to the German Constitutional Court which is known to the world as one of the Constitutional Courts which is often used as a reference by other countries in the establishment of the Constitutional Court. This article will discuss the differences between Indonesian Constitutional Court and German Constitutional Court which aims to sort out the positive things that can be an improvement material for the Indonesian Constitutional Court to strengthen the Indonesian Constitutional Court. This writing uses a normative writing method with a comparative approach and a historical approach. The results of this study show that there are several arrangements from the German Constitutional Court that can actually be applied by the Indonesian Constitutional Court such as the authority of constitutional complaints and constitutional questions, arrangements regarding the expansion of the applicant party in the application for dissolution of a political party to the Constitutional Court, and regarding the elimination of re-election for a constitutional judge and also about the addition of their term of office.

Keywords*: Comparative study; German Constitutional Court; Indonesian Constitutional Court.*

I. INTRODUCTION

Based on the hierarchy of laws and regulations that the constitution, namely 1945 Constitution of the Republic of Indonesia is the highest law of the Indonesian state which is used as the basis for the implementation of national and state life, meaning that as the highest law of the state, the UUD 1945 should be a good and fair law, then in an effort to guard the constitution so that it is truly implemented and implemented as it should be and provides guarantees for protection of the

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constitutional rights of citizens, so a new state institution was formed in the Indonesian constitutional system, namely the Constitutional Court.[3]

In carrying out its function as a guardian of the constitution, the position of the Indonesian Constitutional Court is declared as one of the judicial institutions other than the Supreme Court which exercises judicial power in accordance with article 24 paragraph (2) of the UUD 1945, namely "*Judicial power is exercised by a Supreme Court and judicial bodies subordinate to it in the general judicial environment, religious judicial environment, military judicial environment, the administrative court environment of the state, and by a Constitutional Court.*" By the UUD 1945 the Constitutional Court is equipped with the authority as mentioned in Article 24C paragraph (1) of the 1945 Constitution which reads: "*The Constitutional Court has the authority to adjudicate at the first and last instance whose decisions are final to test the law against the Constitution, decide disputes over the authority of State institutions whose authority is granted by the Constitution, decide the dissolution of political parties, and decide disputes about the results of election results of elections general.*" The judges of the Constitutional Court consist of 9 constitutional judges, which in their appointment 3 people are proposed by the Supreme Court, 3 people by the House of Representatives, and 3 people by the President.[4] These judges are in accordance with the provisions of Article 22 of Law Number 24 of 2003 concerning the Constitutional Court to serve for 5 years and can be re-elected only for the next 1 term. With the composition and quality of members and authorities as already mentioned, the Constitutional Court is expected to be able to become an institution that can truly carry out its function as a guardian of the constitution.

Until now, the Constitutional Court has been established for 19 years since it was first formed in 2003 by exercising the authority it has in an effort to oversee the running of the constitution. In its journey to oversee the state constitution, the Indonesian Constitutional Court inevitably still has shortcomings that cause the non-optimal function of constitutional supervision by the Indonesian Constitutional Court. If we look at the Constitutional Court of an outside country, then the Constitutional Court of the German state becomes the right institution to see the success of the Constitutional Court as a constitutional guardian institution. The Constitutional Court of The German state has been known to the world as one of the Constitutional Courts that is often used as a reference by other countries in the formation of the Constitutional Court. The German Federal Constitutional Court has broader authority than the Indonesian State Constitutional Court however in fact the German Federal Constitutional Court is able to carry out its broad duties and authorities so well that it further strengthens its position as a highly respected and

[3] Jimly Asshiddiqie. 2004, *Konstitusi dan Konstitusionalisme*, Jakarta: Mahkamah Konstitusi Republik Indonesia dan Pusat Studi Hukum Tata Negara Fakultas Hukum Universitas Indonesia. p. 187

[4] Article 24C paragraph (3) 1945 Constitution of the Republic of Indonesia

respected federal organ, not only in Germany but also in the world.[5] The breadth of the authority of the German Constitutional Court can be a consideration for the Indonesian Constitutional Court in looking back at the extent to which the authority it currently has is able to support its function as a constitutional officer. In addition, arrangements in terms of the number of constitutional judges, recruitment of constitutional judges, the tenure of constitutional judges, and how the arrangements regarding the exercise of authority from the German Constitutional Court also have differences with Indonesia, which with such a composition and quality, is certainly one of the factors that affect the performance of the German Constitutional Court.

As a state of law, Indonesia and Germany both entrust the function of escorting the state constitution to the institution of the Constitutional Court. Although they have different historical backgrounds in the formation of the Constitutional Court, both the German Constitutional Court and the Indonesian Constitutional Court broadly have the same main goal, which is to create a constitutionally democratic state. Therefore, given that the German Constitutional Court has a good image in the eyes of the world as a state institution that guards the constitution, a comparative analysis between the Indonesian Constitutional Court and the German Constitutional Court needs to be carried out in order to strengthen the Constitutional Court of the Indonesian state. By making comparisons, similarities and differences will be found which can then be a reference to find the shortcomings and advantages of the Constitutional Court between the two countries. The results of the comparison are aimed at being able to improve the arrangements regarding the Indonesian Constitutional Court by providing new solutions or adopting several things from the German Constitutional Court that are suitable to be applied in Indonesia in order to strengthen the Indonesian Constitutional Court in carrying out its functions as a state institution guarding the constitution.

II. DISCUSSION

Indonesian and German Constitution

The State of Indonesia is a unitary state. This is confirmed in the Constitution of the Indonesian state, namely in Article 1 paragraph (1) of the UUD 1945 which reads *"The State of Indonesia is a unitary state in the form of a Republic".* A unitary state is a sovereign State, held as a unitary entity with the central government as the holder of the highest power over all state affairs. The form of a unitary state has characteristics including that there is a central government that has sovereignty both inside and outside, there is a basic law that applies to the entire territory of the state, there is one head of State or government, and there is one representative body of the people.

[5] Arief Ainul Yaqin's Library of Law and Social Science: *Mahkamah Konstitusi Jerman (Bundesverfassungsgericht)* (equityjusticia.blogspot.com) , accessed on 3 July 2022

Basically, in a unitary state, there is a principle that all state affairs are not divided between the central government and local governments so that the affairs of the state in unity remain round with the central government as the highest holder of power. However, in the Indonesian government system, which adheres to the principles of a decentralized unitary state, there are certain tasks that are taken care of by themselves, creating a reciprocal relationship that produces the existence of authority and supervision relationship.[6] A unitary state with a decentralized system is a form of state in which the central government as the holder of the highest power of the state gives part of its power to the regions to regulate and take care of their own households called autonomous rights. The form of the Unitary State of the Republic of Indonesia is held with the guarantee of the widest autonomy to the regions to develop in accordance with their respective potentials and wealth, of course, with the encouragement and assistance provided by the Central Government.[7]

The form of government of the Indonesian state is a unitary republic[8] which is a country that has a president as the head of state elected in general elections. Furthermore, the Indonesian state is a country with a constitutional republican form of government where the power of the president is limited by the constitution. The Indonesian government system adheres to the presidential system of government, namely the state system led by the president who is the head of state as well as the head of government. The president is directly elected by the people through general elections and holds office together with the vice president for five years and thereafter may be re-elected within the same term, for only one term.

Meanwhile, the German state is a country in the form of a federation, which is a country consisting of states that cooperate and form a unit called a federal state. There are 16 states in Germany, each of which has its own constitution, parliament, and government. But the highest state power remains with the federation. Although each state has its own constitution yet the state constitution must not conflict with the federal constitution called Grundgesetz. According to Miriam Budiarjo in his book *Dasar-Dasar Ilmu Politik,*[9] the main difference between the federal state and the unitary state is in its level of decentralization. In the concept of a federal state, each state has special authority in regulating state government, while the central government has the authority to regulate national affairs.

As for the form of government of the German state, it is a federated republic. Both the Federation and the 16 states have their own powers. Authorities in the areas of domestic security, schools, higher education, culture, and public

[6] Nimatul Huda, 2011, *Hukum Tata Negara Indonesia (Edisi revisi*), Jakarta: PT Raja Grafindo Persada. p. 92-93

[7] *Ibid.* p. 96-97

[8] Article 1 paragraph (1) 1945 Constitution of the Republic of Indonesia

[9] Miriam Budiarjo, 2007, *Dasar-Dasar Ilmu Politik* (Edisi Revisi), Jakarta: PT Gramedia Pustaka Utama.

administration at the commune level are in the state. Simultaneously each state government implements not only its state legislation, but also the legislation established at the level of the Federation. The state government through its representatives in the Federal Assembly (Bundesrat) is directly involved in the formation of legislation in force throughout the territory of the Federation.[10]

The System of Government implemented by Germany is democracy. Executive authority is assumed mainly by the Bundeskabinet (Federal Cabinet) headed by the Bundeskanzler (Federal Chancellor) and the Bundespresident (Federal President). The president acts as head of state while the head of government is held by the Chancellor. The President of Germany is elected by the Federal Assembly (Bundesversamlung) which is specially convened to elect the President and its members consist of all members of the Federal Parliament (Bundestag) and members elected by the State Parliament (Landtage). Juridically, the Federal President represents the country in international relations by signing international agreements and appointing and receiving ambassadors. The President also oversees the conformity of the law drafting process with the Constitution before the act is promulgated in the Federal Gazette. The President of Germany has a five-year term. Meanwhile, the Chancellor as head of government holds the highest political policy-making authority. The Federal Chancellor determines the country's policy and leads the cabinet.

In the constitution of both Indonesia and Germany, there are state institutions that carry out their respective functions and duties which are regulated by the state constitution. These institutions can be viewed as follows:

No.	Indonesia	Germany
1.	Majelis Permusyawaratan Rakyat (MPR), is a state institution consisting of members of the House of Representatives/Dewan Perwakilan Rakyat (DPR) and members of the Regional Representative Council/Dewan Perwakilan Daerah (DPD) who are elected through general elections.	The Federal Parliament (Bundestag), is a state institution that means the same as the DPR in Indonesia. This parliament is elected by the people through elections every four years. The main task of the Bundestag is to establish laws, elect a Chancellor and supervise the government.
2.	Dewan Perwakilan Rakyat (DPR), is a people's representative institution that is domiciled as a state institution that has a legislative function (forming laws), a budget	The Upper House or Council of Envoys of Other Countries (Bundesrat), is a state institution that means the same as the MPR in Indonesia. The Bundesrat is a council

[10] Matthias Bischoff, 2018, *Fakta Mengenai Jerman*, Jakarta: Katalis. p. 6

	function (compiling funds to determine the state budget with the President), and a supervisory function (supervision of the implementation of the Constitution, Laws, and implementing regulations).	of state envoys, i.e. representatives of the state whose numbers are based on the large number of inhabitants of the state concerned. The Bundesrat took part in the creation of laws and administration of the federal state. Members of the Bundesrat are not elected by the people but are taken from state government officials or persons authorized by that government. More than half of the laws created require the approval of the Bundesrat. Laws that require the approval of the Bundesrat are primarily laws relating to the interests of states, for example with their finances or administrative authority. Changes to the Constitution require the approval of the Bundesrat with a majority of two-thirds of the vote. In other matters of legislation, the Bundesrat has the right of objection only, which can be overturned by the decision of the Bundestag.
3.	Dewan Perwakilan Daerah (DPD), is a regional representative institution domiciled as a state institution. DPD has the function of submitting proposals, namely participating in discussions related to certain legislation, namely draft laws related to regional autonomy, central and regional relations, formation and expansion and merger of regions, management of natural resources and other economic resources, and related to the balance of central and regional finances. DPD also has the function of providing consideration	The Consultative Body *(Bundesversammlung),* also referred to as the Federal Assembly that serves for the election of the Federal President.

	regarding the draft law of the State Budget (APBN), and draft laws related to taxes, education, and religion. In addition, DPD also serves to supervise the implementation of certain laws.	
4.	Badan Pemeriksa Keuangan (BPK), is a state institution that has the task and authority to check the management and responsibility regarding state finances and submit the results of financial examinations to the DPR, DPD, and DPRD.	The Federal Government *(Bundeskanzler),* also called the cabinet consists of the federal chancellor and federal ministers, and the Federal President (Bundespresident).
5.	Mahkamah Agung (MA)/The Supreme Court, is one of the state institutions that exercise judicial power along with other judicial bodies in Indonesia. The authority of the Supreme Court (MA) is expressly stated in the 1945 NRI Constitution.	The Judicial Institution, consisting of the Constitutional Court *(Bundesverfassunggericht)* which is an institution whose existence is established by the German Constitution while overseeing the implementation of the German Constitution itself and the Supreme Court.
6.	Mahkamah Konstitusi (MK)/ Constitutional Court, is also one of the state institutions that exercises judicial power along with the Supreme Court and other Judicial Bodies. The Constitutional Court is a new institution that was added to indonesia's constitutional system as a result of the third amendment to the Constitution.	
7.	Komisi Yudisial (KY), is a state institution authorized by the Constitution to propose the appointment of supreme court justices.	

As a state of law, Indonesia and Germany have a constitution as the basic law of each country, namely Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (UUD 1945) as the Indonesian constitution, and the German Federal

Constitution or Grundgesetz as the German constitution. These two countries also both apply the continental European legal system or civil law, namely the legal system with the principle that the law obtains binding force because it is embodied in regulations in the form of laws and is systematically arranged in certain codifications or compilations. This is the basis for the two countries to have a constitution as a basic law which then brings consequences for the existence of institutions that supervise and escort the enforcement of the state constitution and ultimately adopt the establishment of a Constitutional Court to carry out this function. In addition, differences in the form of the state also caused differences between the Indonesian Constitutional Court and the German Constitutional Court. With the form of a Federated state consisting of states, the German Constitutional Court has several different authorities from the Indonesian state because it is adjusted to the form of the country. Such authority includes the authority to decide disputes between the Federation and the State, the authority to decide constitutional disputes within a state, and the authority to decide referral cases from states. These authorities clearly rest with the German Constitutional Court because the German state consists of states and the provisions under which each state has its own Constitutional Court. Thus, based on this, such authority possessed by the German Constitutional Court is absolutely not suitable to be enforced in Indonesia. But beyond that, some of the other powers of the German Constitutional Court have good potential to be taken into consideration for the Indonesian Constitutional Court.

Comparison of the German Constitutional Court and the Indonesian Constitutional Court

The establishment of the Constitutional Court in Indonesia and Germany are both aimed at maintaining and guarding the constitution. Despite having different backgrounds of formation, both the German Constitutional Court and the Indonesian Constitutional Court broadly have the same main goal, which is to create a constitutionally democratic state. This can be seen from the fact that the history of the formation of the German Constitutional Court which was the strong desire of the German people to establish a constitutional democratic state after previously being shackled by the Nazi totalitarian regime. The same thing was done by the Indonesian state, where the Constitutional Court was finally formed after the collapse of the undemocratic Orde Baru period.

Although both carry out the functions of constitutional guards, the authority possessed by the Constitutional Courts of the two countries is not entirely the same. The German Constitutional Court has broader authority than the Indonesian Constitutional Court. When compared with the German Constitutional Court, in terms of the authority it has and the implementation of this authority, there will be

some similarities and differences between the Indonesian Constitutional Court and the German Constitutional Court. It can be described as follows:

Judicial Review is a process of reviewing lower laws and regulations against higher laws carried out by the judiciary. In this case, the Indonesian Constitutional Court has the authority of judicial review to review the law. The Indonesian Constitutional Court only recognizes one model of judicial review, namely the testing of the Law against the UUD 1945, testing the extent to which the law concerned is in accordance with or contrary (tegengesteld) to the Constitution. This authority is formulated in the UUD 1945 and in Law Number 24 of 2003 concerning the Constitutional Court with the formulation *"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."* Based on Article 51 paragraph (3) of Law Number 24 of 2003 concerning the Constitutional Court, there are 2 types of statutory review, namely formal review, and material review. Formal statutory review (formele toetsing) is a review of law carried out because the process of forming the law is considered by the applicant to not meet the provisions under the Constitution. In the event that a law formation does not meet the provisions of law formation under the Constitution then the law. Meanwhile, material review of the law (materieele toetsing), that is, the reviewing of law is carried out because there is material content in paragraphs, articles, and/or parts of the law that the applicant considers to be contrary to the UUD. If a material content of paragraphs, articles and/or parts of the law is declared by the Constitutional Court to be contrary to the Constitution, the material content of the paragraphs, articles and/or parts of the law no longer has binding legal force.

Applicants in the Judicial Review submitted to the Constitutional Court are parties who consider their constitutional rights and/or authorities to be harmed by the enactment of the law as stipulated in Article 51 of the Constitutional Court Law, namely: (a) individual Indonesian citizens; (b) the unity of the customary law community as long as it is alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as stipulated in the law; (c) public or private legal entities; or (d) state institutions.

Unlike the Indonesian Constitutional Court, the German Constitutional Court has several types of judicial review authority, namely: [11]

1) First type of review (abstract statutory review authority) whose application is submitted by the Federal Government, the State Government, or a quarter of the members of the Bundestag in the event of a difference of opinion or doubt regarding the conformity, whether formal or material, of federal law or a state law with the constitution, or

[11] Yoshelsa Wardhana, 2016, *Perbandingan Hukum Tentang Pelaksanaan Judicial Review Antara Negara Indonesia Dan Negara Jerman*, Fakultas Hukum Universitas Muhammadiyah Surakarta. p. 7-8

the conformity of a state law to a Federal law. This procedure is called abstract review because to be able to file it is not required to have a case. Such an arrangement is contained in Article 13 paragraph (6) of the Federal Constitutional Court Law as also explained in Article 93 paragraph (1) number 2 of the Grungesetz or German Constitution. Meanwhile, the application filed by a court (Concrete statutory testing) is contained in Article 13 paragraph (11) as also explained in Article 100 paragraph (1) grundgesetz. The procedure for deciding this first type of Testing is in the eleventh section of Section 80-82a of the Federal Constitutional Court Act.

2) The second type of review is related to the rules of international public law regulated in Article 13 paragraph (12) of the Federal Constitutional Court Law. In addition, it is also stipulated in the constitution, Article 100 paragraph (2) of Grundgesetz. In this regard, the Federal Constitutional Court of Germany decides the question raised by a judge who is handling a concrete case in which it involves a norm of international law on the issue of whether a norm of international law has become an integral part of federal law and whether the norm of international law in question gives rise to rights and obligations for citizens.
3) The third type of review relates to the authority to handle referrals from the State Constitutional Court regarding the interpretation of the constitution with the intention of deviating from the previously existing judgments provided for in Article 13 paragraph (13) of the Federal Constitutional Court Act. This is also regulated in Article 100 paragraph (4) of the Constitution of the Federal Republic of Germany. In this case the Federal Constitutional Court of Germany ruled on the question of the Constitutional Court of the State when in interpreting the Federal Constitution, the Constitutional Court of the State intended to distort the Decision of the Federal Constitutional Court or the Decision of the other State Constitutional Court. The procedure for deciding this third type of testing is provided for in the thirteenth Section of Section 85 of the Federal Constitutional Court Act.
4) The fourth type of review, relating to the authority on constitutional complaints, is regulated in Article 13 (8a) of the Federal Constitutional Court Law. Constitutional complaint or what in German is called Verfassungsbeshwerde is briefly interpreted as a complaint filed by a citizen before the constitutional court because an act of a public official, or the non-conduct of a public official, has caused harm to the constitutional rights of the citizen concerned or essentially if the citizen receives treatment from the government that is contrary to the

constitution.[12] In principle constitutional complaints can only be made after all available legal remedies have been made, but in the current German constitutional justice system, such provisions can be set aside if serious harm has actually endangered the existence of the rights in question. [13]

The subjects who can file a constitutional complaint with the German Constitutional Court are individuals whose basic rights or rights stipulated in article 20 paragraphs (4), 33, 38, 101, 103, or 104 Grundgesetz are violated by a public official. In addition, constitutional complaints may also be filed by communes or commune associations if their right to self-government under section 28 grundgesetz is violated by a law other than the State law which is open to filing complaints with the State Constitutional Court. The procedure for deciding this fourth type is in the fifteenth section, Articles 90-95 of the Federal Constitutional Court Act. In some countries, constitutional authority is the basic authority of the Constitutional Court. But in Indonesia, the Constitutional Court does not have this authority. In fact, as a country of law that aspires to create justice for all its citizens and yearns for the realization of the supremacy of the constitution, adopting the idea of a constitutional complaint mechanism into the authority of the Constitutional Court of the Republic of Indonesia is one way to achieve this goal, because its application is a concrete form and an effort to respect and protect maximum constitutional rights. [14] When compared to the German state that has adopted constitutional complaints as one of the authorities of its Constitutional Court, theoretically this serves as a constitutional stimulus that can encourage the organ to participate in the process of determining state policy, one of which is through constitutional complaints, through this mechanism the Federal Constitutional Court can declare that public acts are not constitutional and must be overturned and unable to apply. [15] This constitutional complaint construction has been viewed as a method that has given such a wide reach to the community because any individual or group under the prosecution procedure can petition the constitutional protective organ.[16]

While in Indonesia, since 2003 until now, as long as the Constitutional Court was established in carrying out its functions, many of the applicant materials submitted outside the scope of authority of the Indonesian Constitutional Court were substantially constitutional complaints. However, since the case filed by the petitioner does not fall within the authority of the Constitutional Court to adjudicate

[12] Asmaeny and Izlindawaty. 2018*, Constitutional Complaint Dan Contitutional Question dalam Negara Hukum.*Jakarta; Kencana. p. 95-96

[13] Jimly Asshiddiqie and Ahmad Syahrizal. 2012, *Peradilan Konstitusi di 10 Negara*, Jakarta Timur; Sinar Grafika. p. 72

[14] Asmaeny and Izlindawaty, *Op. Cit.* p. 87

[15] Jimly Asshiddiqie and Ahmad Syahrizal, *Op.Cit*. p. 74

[16] *Ibid.*

him, the application for such a case by the Constitutional Court is declared inadmissible (niet ontvankelijk verklard). [17] The importance of the role of the German Constitutional Court to the protection of the constitutional rights of its citizens as guaranteed in the constitution of its country, therefore Germany is dubbed as a stable democratic state with its established pattern of legal state because the constitutional Court has carried out the function of constitutional review to the fullest, of which constitutional complaint is one of them,[18] then by reflecting on such facts, then it is a wise renewal if the Constitutional Court of the State of Indonesia also adopts a constitutional complaint mechanism to protect the constitutional rights of Indonesian citizens.

Besides constitutional complaints, the German federal Constitutional Court also knows the Constitutional Question, which is a constitutional question asked by a judge who is adjudicating a case but has doubts about the constitutionality of the law that applies to the case being tried. In this case, the German Federal Constitutional Court will only decide the issue of the constitutionality of the law in question of its constitutionality, and not decide the case that the judge is trying. This Constitutional Question authority is applied in the judicial review authority by the German federal Constitutional Court, namely the first type of testing of concrete norms, the second type of testing related to the rules of International Public Law, and the third type of testing as previously outlined by the author. This is because in practice in Germany, the constitutional question arises in several conditions, namely the first, if a court considers that a law is unconstitutional with the State constitution or the Federal constitution. The second, if a court considers that a State Act is inconsistent with the Federal Law. Third, when a court during a trial in a case, doubts whether a provision of international law is part of a Federal Law and whether that provision of international law directly gives birth to rights and obligations to individuals. Fourth, if the Constitutional Court of a State, in interpreting Grundgesetz, intends to deviate from the decision of the German Constitutional Court or the decision of another State Constitutional Court. [19] Although its form is a question, the construction of thought and substance that exists in constitutional questions in Germany is a review of legislation.

Through the constitutional question mechanism, the German Constitutional Court provides an entry point for questions about the constitutionality of an act by a judge when adjudicating a case. This such mechanism is a form of supervision of the implementation of the German Constitution carried out by the German Constitutional Court.

[17] Asmaeny dan Izlindawaty, Op. Cit. p. 222

[18] *Ibid.* 224

[19] I Dewa Gede palguna, *Constitutional Question: Latar Belakang Dan Praktik di Negara Lain Sertakemungkinan Penerapannya di Indonesia*, Jurnal Hukum Volume 17 No. 1. 2010. p. 7

Reflecting on the efforts to guard against the constitution carried out by the German Federal Constitutional Court which is manifested in the authority of constitutional complaints and constitutional questions, it is a very good idea for Indonesia if it adopts the two authorities of the German Federal Constitutional Court to strengthen Indonesian Constitutional Court in the context of supervision of the constitution and respect, protection, and fulfillment of human rights which is the minds of democracies and states of law.

Disputes over the Authority of State Institutions

In Indonesia, the dispute resolution authority of the authority of state institutions owned by the Indonesian Constitutional Court is limited to state institutions whose authority is granted by the UUD 1945 which has a direct interest in the disputed authority. The disputed authority in this case is the authority granted or determined by the UUD 1945. State institutions that can be applicants or respondents in cases of disputes over the constitutional authority of state institutions are Dewan Perwakilan Rakyat (DPR), Dewan Perwakilan Daerah (DPD), the Majelis Permusyawaratan Rakyat (MPR), the President, the Badan Pemeriksa Keuangan (BPK), Regional Government, other state institutions whose authority is granted by the UUD 1945. However, there is an exception to the Supreme Court, it is stated in article 65 of the Constitutional Court Law that the Supreme Court cannot be a party to a dispute of authority before the Constitutional Court. Meanwhile, the settlement of disputes over the authority of state institutions owned by the Federal Constitutional Court of Germany is the authority to resolve disputes of authority between the Federated Government and the State (Federal States) or disputes involving high organs within the Federal Government only. The applicant and the respondent in this case as provided in the German Federal Constitutional Court Law may only be: the Federal President, the Bundestag, the Bundesrat, the Federal Government, and those parts of these organs that have their own rights in accordance with the Basic Law or the rules of procedure of the Bundestag and Bundesrat.

Dissolution of Political Parties

The arrangement for the dissolution of political parties mentioned as one of the powers of the German Constitutional Court is regulated directly within grundgesetz. Grundgesetz regulates explicitly, in detail, and rigidly regarding the protection, formation, and dissolution of political parties. Meanwhile, in Indonesia, the dissolution of political parties is not regulated or explicitly explained in the UUD 1945, but is only mentioned as one of the authorities of the Constitutional Court as stated in Article 24C of the 1945 Constitution.

With regard to the reasons for the submission of the dissolution of political parties, basically the reasons for the dissolution of political parties by the

Constitutional Court both in Indonesia and in Germany are almost the same, namely if political parties commit acts that can threaten the sovereignty of the state and government. In Germany, the parties to the applicant are wider than in Indonesia, namely the Bundestag, Bundesrat and Federal Government. While in Indonesia the applicant for the dissolution of political parties is only by the government which in this case can be represented by the Attorney General and/or ministers assigned by the president.

If you look at the petitioner's provisions for the dissolution of political parties in Germany, we can see that there is a principle of checks and balences there between the executive and legislative representatives, both can be applicants for the dissolution of political parties. This is very good if applied in Indonesia, where later not only the executive (government) can ask for the dissolution of political parties, but also legislative institutions such as the DPR and DPD in order to strengthen the principle of checks and balances so that there is a balance of power between the two institutions. This is considering that as a democratic legal state, strengthening the principle of checks and balances is something that has always been pursued by the Indonesian state.

Resolving Disputes about Election Results

The authority of the Constitutional Court in deciding disputes over election results is the authority to decide disputes regarding the determination of the results of national elections (Elections) carried out by the Komisi Pemilihan Umum (KPU) which occurs because the calculation of votes for the results of an election is carried out incorrectly or incorrectly, either intentionally or unintentionally. The dispute includes disputes between the KPU and election participants.

Law Number 24 of 2003 concerning the Constitutional Court, especially in article 74, stipulates that applications regarding disputes over election results can only be submitted by individual Indonesian citizens who are candidates for DPD members participating in the election, Political Parties participating in the election, as well as spouses of Presidential and Vice Presidential candidates participating in the election to the Constitutional Court with the KPU as the Respondent party. In addition, it is also stipulated that an application may only be filed against the determination of the results of elections conducted nationwide by the Influencing Election Commission; a)the election of candidates for members of the Regional Representative Council; b)the determination of the pair of candidates entering in the second round of the Presidential and Vice Presidential elections and the election of the pair of candidates for President and Vice President; c)the acquisition of seats of political parties participating in elections in a constituency. The application can only be submitted within a period of no later than 3 days from the time the KPU announces the determination of the results of the national elections.

Meanwhile, in resolving election disputes, the Federal Constitutional Court of Germany acquired its authority under Article 41 paragraph (2) of the Grundgesetz which reads: (1) Scrutiny of elections shall be the responsibility of the Bundestag. It shall also decide whether a Member has lost his seat. (2) Complaints against such decisions of the Bundestag may be lodged with the Federal Constitutional Court. Based on the soundness of the article, it can be said that the authority of the German Constitutional Court related to election disputes is to examine the results of elections. This authority to deal with disputes over election results by the Constitutional Court is further affirmed in the Federal Constitutional Court Act, namely in Article 13 paragraph (3) which reads "*The Federal Constitutional Court shall decide on complaints against decisions of the Bundestag relating to the validity of an election or to the acquisition or loss of a seat in the Bundestag.*" Namely, it is authorized to decide complaints against Bundestag decisions related to the validity of elections or the acquisition or loss of seats in the Bundestag.

Applications for disputes over election results to the German Constitutional Court can be submitted by Parliament or by citizens who have the right to vote. In this case, if the person who raises the objection to the election results is the parliament, then a special commission is formed in the parliament authorized to examine the results of such elections, which can then be submitted to the Constitutional Court. However, it is also possible for MPs individually or collectively to submit the validity of the results of such elections. The objection relates only to the error in the balance of the calculation of the division of the number of seats in parliament. In addition, citizens who have the right to vote can also object to the number of seats in parliament but if supported by a minimum of 100 people who have the right to vote or a group in parliament or a minority in the Bundestag which is at least 1/10 the number of seats of Bundestag members. As for the Law of the Constitutional Court of Germany, the deadline for submitting objections to the election results to the Constitutional Court is 2 months from the time it is decided by the Bundestag.[20]

Impeachment

Although the authority of the Indonesian Constitutional Court is stated to be limitatively consisting of 4 authorities as mentioned in Article 24C paragraph (1), on the other hand there are also arrangements regarding the obligations of the Constitutional Court. The UUD 1945 and the Constitutional Court Law distinguish the powers and obligations of the Constitutional Court. This can be seen from the arrangements regarding the authority and obligations stated in different paragraphs both in the UUD 1945 and in the Constitutional Court Law. The obligation of the Constitutional Court in question is the obligation of the

[20] Bisariyadi, *Komparasi Mekanisme Penyelesaian Sengketa Pemilu di Beberapa Negara Penganut Paham Demokrasi Konstitusional*, Jurnal Konstitusi, Volume 9 No. 3. 2012. p. 549

Constitutional Court to give a verdict on the opinion of DPR regarding alleged violations by the President and/or Vice President as stated in Article 24C paragraph (2) jo Article 7B of the UUD 1945. The Opinion of the DPR referred to in this case contains allegations that the President and/or Vice President are suspected of having committed violations of the law in the form of treason against the state, corruption, bribery, other serious criminal acts, or despicable acts, and/or no longer qualify as President and/or Vice President as referred to in the UUD 1945.

The applicant in the event of dismissal of the President and/or Vice President is the DPR. If the Constitutional Court decides that the President and/or Vice President is proven to have committed a violation of the law in the form of treason against the state, corruption, bribery, other serious criminal acts, or despicable acts and/or it is proven that the President and/or Vice President no longer qualifies as President and/or Presidential Representative, the decision justifies the opinion of DPR. Meanwhile, if the Constitutional Court decides that the President and/or Vice President is not proven to have committed an offence, then the judgment states that the application is rejected. Although the Constitutional Court has an obligation to give a verdict on the opinion of the DPR regarding the dismissal of the president, but related to the dismissal of the president itself, it cannot be dismissed by the Constitutional Court through its decision. The decision of the Constitutional Court in this case is forwarded to the MPR and heard in the MPR session to decide whether the President and/or vice President is dismissed or not. In this case, even though the Constitutional Court decided the opinion of DPR on the allegations against the president to be decided correctly, the MPR in its session still gave the opportunity to the President and/or Vice President who had been declared to have committed unlawful acts by the Constitutional Court to submit an explanation, so there is a possibility that the President and/or Vice President who has been declared by the Constitutional Court to violate the law will not be successfully dismissed. It can be concluded that the MPR is the one who has the authority to decide the dismissal of the President and/or Vice President.

Unlike in Indonesia, which only has the obligation to decide the opinion of the DPR regarding the proposal to dismiss the president, in Germany, the Federal Constitutional Court is indeed directly given the authority to be able to dismiss the Federal President by the country's constitution. According to the German constitution, the provisions regarding the procedure for dismissing the president are equated with impeachment. This authority to dismiss the president by the Constitutional Court is provided for in Chapter V of article 61 Grundgesetz regarding the President that the Bundestag or Bundesrat may indict the Federal President before the Federal Constitutional Court for willful violations of the Basic Law or other federal law. Article 61 paragraph (1) of Grundgesetz specifies that dismissal against the President can be filed by 1/4 of the members of the Bundestag or 1/4 of the number of votes in the Bundesrat. This session of the president's dismissal is

conducted by the Bundestag or Bundesrat before the Constitutional Court which examines and decides whether the President is indeed violating the constitution or other Federal Laws. The decision to dismiss the President is set at least 2/3 of the members of the Bundestag or 2/3 of the number of votes in the Bundesrat. In Article 61 subsection (2) of Grundgesetz it is determined that, if the Constitutional Court finds the President guilty of violating the constitution or any other Federal Law, the Constitutional Court may declare the President to have been removed from office. Upon dismissal, the Constitutional Court may issue an interim court order to prevent the President from carrying out his presidential functions. [21]

In the provisions of the German constitution, the dismissal procedure imposed on the President becomes the authority of the Constitutional Court to decide whether or not the President is guilty. What also distinguishes it from the Indonesian state is that when in Indonesia the Constitutional Court only has the obligation to decide the opinion of the DPR on allegations against the President and/or Vice President and its decision cannot immediately dismiss the President and/or Vice President, while in Germany even though the dismissal case is filed and decided by Parliament, but more as a political decision only while the legal decision is in the Constitutional Court. So even though Parliament decided differently from the findings of the Constitutional Court, the Constitutional Court was given a legal instrument to administratively dismiss the President from office and effectively "freeze" the functions of the presidency. With this, the decision of the German Constitutional Court could determine the expiration of the office of the President.

In addition to the authority as described above, between the Constitutional Courts of Indonesia and Germany, several things were found as follows:

a) The number of Constitutional Judges. The Indonesian Constitutional Court consists of 9 Constitutional Judges who decide together each case that is the authority of the Indonesian Constitutional Court, while the German state has 16 Constitutional Judges which are then divided into two panels that handle different cases according to the regulations in the German Federal Constitutional Court Law.
b) The tenure of the Judge. If an Indonesian constitutional Judge has a term of office of 5 years and can be re-elected for the next term, but in Germany, a Constitutional Judge has a term of office of 12 years and cannot be re-elected for the next term. Referring to this arrangement regarding the re-election of Judges of the Constitutional Court, In this case, Indonesia actually can adopt a German arrangement where Judges of the Constitutional Court after one term of office cannot be re-elected. This is to avoid potential intervention by interested parties in the re-election process that can degrade the independence of Constitutional Judges. In addition to strengthening the

[21] Abdul Wahid, *Independensi Mahkamah Konstitusi Dalam Proses Pemakzulan Presiden dan/atau Wakil Presiden*, Jurnal Konstitusi Vol. 11 No. 4. 2014. p.683

independence and power of the judiciary, such an arrangement also aims to maintain the performance of Constitutional Judges in examining and deciding cases until the end of the term, where if there is a re-election, the focus of Constitutional Judges, especially Judges who participate in re-election will be divided on the election, then it can have bad implications on the legal products produced by the Constitutional Court later. So, to prevent this from happening, there needs to be an arrangement that Constitutional Judges cannot be re-elected after one term. Such an arrangement can be accompanied by an increase in the term of office of Constitutional Judges to 10 years to compensate for the regulation regarding the elimination of the term of office of Judges of the Constitutional Court.

c) Recruitment of Constitutional Judges. The Judges of the Indonesian Constitutional Court in their elections were proposed to be three people each by the President, DPR, and MA. In Germany, constitutional judges are also appointed by three institutions, namely by the Federal Government, parliament (Bundestag and Bundesrat), and the Federal Supreme Court.

III. CONCLUSION

In practice, basically the Constitutional Courts of Indonesia and Germany have similarities in terms of competence, namely both have competence in the realm of Judicial review or testing of laws, decide disputes over the authority of state institutions, the authority to disband political parties, and decide disputes over election results. Even so, there are considerable differences between the two, where in addition to the procedural law arrangements of each Constitutional Court in exercising their authority, it is also known that the German Constitutional Court has broader authority than the Indonesian Constitutional Court. The breadth of the authority of the German Constitutional Court in question includes, among others, the existence of a constitutional complaint mechanism and constituonal questions in the authority to test laws by the German Constitutional Court that are not owned by the Indonesian Constitutional Court. Reflecting on this, Indonesia may have helped expand the authority of the Indonesian Constitutional Court by adding constitutional complaint authority and constituonal questions, both by amending the UUD 1945, namely Article 24C Paragraph (1) to increase the authority in it as one of the authority of the Constitutional Court by changing the article to "The Constitutional Court has the authority to adjudicate at the first and last level whose decision is final to test The Law against the Constitution, decides disputes over the authority of state institutions whose authority is granted by the Constitution, terminates the dissolution of political parties, decides disputes about the results of elections and adjudicates constitutional complaints and constitutional questions. Or simply revise the Constitutional Court Law by adding the authority of constitutional complaints and constitutional questions. Regarding the authority to dissolve

political parties, according to the author, the Indonesian Constitutional Court may follow the German Constitutional Court in terms of arrangements regarding the applicant's party in the dissolution of political parties, namely that it can also be requested by the legislature, so that not only the President can request the dissolution of political parties in order to strengthen the principle of checks and balances between the executive institution and the legislative institutions in the state government system. Regarding the regulation of the term of office of constitutional judges, according to the author, the Indonesian Constitutional Court can consider the same arrangement as the German Constitutional Court, namely regarding the term of office for only one term and cannot be re-elected afterward. This arrangement can be accompanied by increasing the term of office of judges to 10 years by revising the Constitutional Court Law regarding the term of office of Judges of the Constitutional Court as part of an effort to strengthen the independence of judicial power.

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