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| All Authors | Khin Myo Thant |
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Constitutional Court of the Republic of Indonesia

KhinMyo Thant*

Abstract

The Constitutional Court of the Republic of Indonesia was established as a consequence of the third amendment to the Constitution of Indonesia, which was ratified by the People's consultative Assembly on 9 November 2001. The Constitutional Court is a product of reform, especially in the institutional aspects of state in Indonesia. The existence of this institution has resulted in a new freshness in the political, democratic, and national life of Indonesia. The existence of the Constitutional Court serves as a fresh wind for each citizen, especially in protecting their basic rights against every action taken by the state that they deem to be inconsistent with the Constitution. The Constitutional Court is a court of first and final instance in that justices have the authority to hold trials at both the first instance and appellate stages. The final decisions issued by the Court are deemed to be binding and may pertain to the following: (1) the constitutional validity of Acts; (2) disputes between state institutions; (3) the dissolution of political parties; (4) disputes related to the results of general elections; and (5) allegations of treason, corruption, bribery, and other serious criminal offences against the President and Vice-President. Therefore, this paper aims to analyze and statutes of the Constitutional Court of the Republic of Indonesia.

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Introduction

The Constitutional Court is normally the court of last resort, the highest judicial body in the government. The world first Constitutional Court established in Austria(1920) is the consequence of the influence of Hans Kelsen's theories. The Constitutional Court is a main organ charged with the duty to guard constitutionality, to protect the principle of the Constitution as the supreme law of the land and to recognize and protect the rights and liberties of the people.

The legal basis of the Indonesian state is the 1945 Constitution was promulgated the day after the 17 August 1945 proclamation of independence. The Constitution was amended four times in the period from 1999 to 2002. The first

* Lecturer, Dr, Department of Law, University of Mandalay

amendment was made on 19 October 1999, the second was made on 18 August 2000, the third made on 9 November 2001, and the fourth was made on 10 August 2002. The amendments principally were drafted to address the perceived weaknesses in the prevailing provisions of the Constitution at that time. The primary weaknesses include that the political system is too executive oriented, the ambiguity of the provisions, and extensive use of delegation power.

The Constitutional Court has jurisdiction to determine whether the provisions of any law, rule or regulation are contrary to or in consistent with the Constitution. This Court resolves disputes among government ministers, legislatures, and the executive. Decisions of the Constitutional Court are not subject to appeal by any other court. Decisions of the Constitutional Court shall be final and without recourse. These decisions shall have authority over all the instituted powers as stipulated in the Constitution. The Constitutional Court plays an important role in constitutional review. The basic function of the Constitutional Court is to protect and to interpret the Constitution.

Materials and Methods

A comprehensive analysis was made of the legal and practical aspects of Constitutional Court of the Republic of Indonesia, covering the Constitution, Constitutional Court Act (Law No 24 of 2003).

Finding

The Constitutional Court is one of the state institutions, which independently carries out judicial powers in order to administer justice and thereby upholding the law and justice. The Indonesian Constitutional Court is able to introduce in the Indonesian legal system a new legal culture based on the rule of law principles. The Indonesian Constitutional Court safeguards the rights in the Constitution of the Republic of Indonesia. Although the conceptualization of the Constitutional Court in the Constitution cannot be said to be perfect, at least it has been trying to establish itself as a strong and respectable institution.

Discussion

Brief History of the Constitutional Court

The opening history of the Constitutional Court started with the adoption of the idea of the establishment of Constitutional Court in the Constitution of the Republic of

Indonesia (hereinafter referred to 1945 Constitution). An important focus of this article is to evaluate to what extent these broad objectives have been achieved within these respective constitutional systems through the establishment of a Constitutional Court. The emergence of the Constitutional Court and its existence in the state administration reform of Indonesia has a long history.

The culmination point of this progress occurred in 2001 when the People's Consultative Assembly, through the third amendment of the 1945 Constitution of the Republic of Indonesia, decided to establish a Constitutional Court in order to verify laws against the Constitution. The creation of a Constitutional Court, which, following a constitutional amendment in 2001 and a Constitutional Law passed in 2003, opened its doors in August 2003, and was due to a combination of general and specific factors. According to the Constitutional Law theory, this institution was referred to the guardian of the Constitution and the interpreter of the Constitution.

Appointment

Since a state organ has its own function, Constitutional Court has an equal rank to other constitutional state organs. It is not an appellate court. Constitutional Court as a judicial organ would be free from intervention of other state organs. Based on the provision of Law Number 24 of 2003, selections towards candidates of the Constitutional Court Justices were held by three State institutions, namely House of Representatives, President, and Supreme Court. Based on the provision of Law Number 24 of 2003, selections towards candidates of the Constitutional Court Justices were held by three State institutions, namely House of Representatives, President, and Supreme Court. Later this proposal was accepted as the judicial appointment clause in the Constitution of the Republic of Indonesia. Afterward, President issued a Presidential Decree for appointment of the Constitutional Court Justices.

Term

Constitutional Court Justices shall hold an office for a term of five years and may subsequently be re-elected for one further term only.

Removal

According to Article 17 of Law No 24 of Year 2003, during hold the office judges of Constitutional Courts are prohibited to hold the positions of:

- (a) others state officials;
- (b) members of any political parties;
- (c) doing business;
- (d) legal advocates;
- (e) public servants.

Article 23 (1) of Law No 24 of Year 2003 provides that a constitutional judge will be honorably dismissed in the following cases:

- (a) his/her death;
- (b) by voluntary resignation submitted to the Chairman of the Constitutional Court;
- (c) he/she has reached 67 years of age;
- (d) he/she has reached the end of his/her term of office; or
- (e) he/she suffers from a permanent physical or mental illness as substantiated by a statement from a physician.

According to Article 23 (2) of Law No 24 of Year 2003, a constitutional judge will be dishonorably dismissed in the event of:

- (a) Conviction by a final and binding court decision for a criminal act punishable by a prison sentence of 5 years or more;
- (b) Commission of an act of misconduct;
- (c) Non-attendance at trials, which are part of his/her duty and obligation, 5 times in succession without valid reasons;
- (d) Violation of the official oath or pledge;
- (e) Intentionally delaying the Constitutional Court from passing a decision within the time prescribed by Article 7B paragraph (4) of the 1945 Constitution of the Republic of Indonesia;
- (f) Violating the prohibitions as stipulated in Article 17; or
- (g) No longer meeting the requirements for being a constitutional judge.

Dismissal of a constitutional judge shall be determined by Presidential Decree upon the recommendation of the Chairperson of the Constitutional Court.

A constitutional judge, prior to his/her dishonorable dismissal, shall be temporarily suspended from his/her position by Presidential Decree upon the recommendation of the Chairperson of the Constitutional Court, excepting for the reason as stipulated in Article 23 paragraph (2) letter a.

In the event that an order for the arrest of a constitutional judge is issued, the judge concerned shall be temporarily suspended from his/her position. The Constitutional Court is obliged to pass a decision on the opinion of the House of Representatives which alleges that the President and/or Vice-President has committed a violation of the law in the form of treason against the state, engaged in corruption, bribery, committed other serious criminal offences or misconduct, and/or no longer fulfils the requirements to be a President and/or Vice-President.

The Constitutional Court's jurisdiction over the impeachment process was one of the most important factors in the establishment of the Indonesian Constitutional Court. The importance of the Court's jurisdiction over the impeachment process should be understood in the context of the political upheaval in Indonesia prior to establishment of the Constitutional Court. In July 2001, the People Consultative Assembly decided to impeach *President Wahid Case No.008/PUU-I/2003*, based on the allegation that he used his name to illegally secure US\$ 4,000,000 worth of funds from the State Logistic Agency. Following the impeachment, the Assembly pushed the Vice President, Megawati, to be Wahid's successor.

When the Assembly decided to impeach President Wahid, they were in the midst of the debate about whether judicial review should be vested in a Constitutional Court or the Supreme Court. However, in September 2001, two months after the impeachment, the Indonesian Democratic Party (PDI-P) bloc suddenly came out with a proposal to establish a Constitutional Court with the authority to adjudicate the presidential impeachment process. It was obvious that the proposal was driven by the experience of Wahid's impeachment. *Akil Mochtar*, who was Chief Justice of Indonesia's Constitutional Court between 2010 and 2013, has been found guilty of accepting bribes in exchange for favourable rulings in regional election disputes. So, Indonesia's Jakarta Anti-Corruption Court sentenced in July 2014 former Chief Justice of the country's Constitutional Court Akil Mochtar to life imprisonment as he was found guilty of corruption as well as money laundering. Mochtar was arrested in October 2013 by the Corruption Eradication Commission after investigators had been tapping his telephone.

Qualifications

The requirements for holding the office of justice shall be

- (a) possess a strong integrity and good personality;
- (b) just; and
- (c) statesman who have sufficient knowledge of the Constitution and state administration and
- (d) shall not hold any position as a state official.

To be appointed a constitutional judge, a candidate must meet the following requirements:

- (1) Hold an Indonesian citizenship;
- (2) Hold law degree;
- (3) Aged at least 40 years old at the time of appointment;
- (4) Have never been imprisoned based on enforceable court decision for committing a crime punishable by at least 5 years of imprisonment;
- (5) Not declared bankrupt by a court decision; and
- (6) Have the experience in field of law for at least (10) years.

The Constitutional Court shall review, adjudicate and render a decision in a plenary hearing of the Constitutional Court attended by 9 constitutional judges, except under special circumstances where 7 constitutional judges, presided over by the Chairperson of the Constitutional Court, may be in attendance.

Submission

Respective person and group of persons can request the Constitutional Court to examine the Constitutionality or not. An appellant is a party who claims that his/her/its constitutional rights and/or competency are injured by the enactment of a law. Such party constitutes:

- (a) A person of Indonesian nationality;
- (b) A community group espousing customary law in existence and in conformity with development in society within the principles of the Unitary State of the Republic of Indonesia as prescribed by law;
- (c) A public or a private legal entity; or
- (d) A state institution.

The appellant is a State institution whose jurisdiction is conferred by the 1945 Constitution of the Republic of Indonesia and which holds direct interest in the disputed competency. In opinion of the Government alleging the contrary to

the Constitution by the principles, the objects, the program and the activities of the political party, the appellant is the Government.

In dispute about the results of a general election, the appellant is:

- (a) An Indonesian citizen competing in the general elections as candidate member to the Regional Representative Council (*DPD*);
- (b) A President and Vice President Candidate pair competing in the general elections for the presidency and vice-presidency; and
- (c) A political party competing in the general elections.

In opinion of the House of Representatives (DPR) alleging violations committed by the President and/or by the Vice-President, the appellant is the House of Representatives.

Functions and Powers

The Indonesia Constitutional Court serves as a constitutional judge deciding upon constitutional disputes between State organs. This court is also the institution holding the authority as the final interpreter of the Constitution.

Based on Article 24C of the 1945 Constitution, the Constitutional Court has four authorities and one obligation. All such authorities and obligation of Constitutional Court are closely related to the concept and implementation of democracy.

The Constitutional Court is authorized to hold trials at the first and final stage and will produce final decisions on the following:

First, through the authority to review laws against the 1945 Constitution, the Constitutional Court has the role to ensure that the provisions of laws formulated by the legislators are truly in accordance with the 1945 Constitution.

The second Constitutional Court authority is to resolve disputes between state institutions whose authorities are granted by the 1945 Constitution.

The third Constitutional Court authority is to decide on the dissolution of political parties.

The fourth authority of the Constitutional Court is to decide the dispute on general elections results.

Beside those four jurisdictions Indonesian Constitutional Courts is involved in the process of impeachment to remove the President and or Vice President during his /her terms of office. Constitutional Court has a duty to decide whether the President

and or Vice President is guilty in doing the acts prohibited by Constitution as allege and proposed by House of Representative. The jurisdiction of Constitutional Court is limited only to the issue of law but not the removal of President and or Vice President from his/her office which is the People Consultative Assembly's authority.

Conclusion

The Indonesian Constitutional Court is able to introduce in the Indonesian legal system a new legal culture based on the rule of law principles. The Indonesian Constitutional Court safeguards the rights in the Constitution of the Republic of Indonesia. Although the conceptualization of the Constitutional Court in the Constitution cannot be said to be perfect, at least it has been trying to establish itself as a strong and respectable institution.

Indonesia Constitutional Court is involved in the process of impeachment to remove the President and/or Vice President during his/her of office. The jurisdiction of Constitutional Court is limited only to the issue of law but not the removal of President and/or Vice President from his/her office which is the People Consultative Assembly's authority. Removal of a constitutional judge shall be determined by Presidential Decree upon the recommendation of the Chairperson of the Constitutional Court.

It can be seen that the Constitutional Court has jurisdiction over the adjudications on constitutionality of statutes, impeachment, and dissolution of political parties' competence disputes between State agencies and local governments and constitutional complaint. Constitutional Court has a duty to decide whether the President and/or Vice President is guilty in doing the acts prohibited by Constitution as allege and proposed by House of Representative. The Indonesia Constitutional Court does not interfere with the matters of State institutions. The leadership of other State institutions has never attempted to influence any decision made by the Constitutional Court. As a principle, the Constitutional Court cannot examine any matter on its own initiative. Indonesian Constitutional Court deeply exercises much protection on the individual rights.

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References

- Law No. 24 of Year 2003 on the Constitutional Court of Indonesia
- The Constitution of the Republic of Indonesia, 2002
- Andrew Harding and Peter Leyland, Constitutional Courts: A Comparative Study, First published, Wildy, Simmonds & Hill Publishing, 2009
- Andrew Harding and Peter Leyland, The Constitutional System of Thailand, A Contextual Analysis, Oxford and Portland, Oregon, 2011
- Benny K.Harman, The Role of the Constitutional Court in Indonesian Legal Reform, 2006
- Daniela Cristina Valea, European Model of the Law's Constitutionality Control, 2006
- Harjono, The Indonesian Constitutional Court, 2006
- Moh.Mahfud MD, the Role of the Constitutional Court in the development of democracy in Indonesia, 2009

Websites

- <http://en.wikipedia.org/wiki/Constitutional-court-of-Indonesia>
- <http://www.codices.coe.int/NXT/gateway>
- <http://www.leidenlawblog./articles/is-the-indonesian-constitutional-courtcorrupt>
- www.aseanlawassociation.org/papers/Constitutionl.pdf
- www.ccourt.go.kr/home/history/world/pdf/05.pdf

Cases

- Abdurrahman Wahid, Case No. 008/ PUU-I/2003
- AkilMochtar, Case No. 125/ PUU-I/2013