

The Constitutional Court Adjudication and Its Implications for the Justice Seekers

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Abstract

The Constitutional Court adjudication, as the nature of a court decision, implies the rights that the justice seekers will appreciate. It is unfortunate, however, that the appeal procedures for those who dissatisfied with such adjudication has yet to be issued, and this may produce the disadvantages for the purpose of affording justice. For such reason, the amendment on Procedures of the Constitutional Court, particularly in the appeal procedures, is very much needed.

Keyword: *Adjudication, Verdict, Constitutional Court, Legal Consequence, Justice Seeker*

Introduction

The birth of the Constitutional Court marks a new era in the power of the judiciary system in Indonesia. Besides its other authorities as stipulated in the amended Constitution of Year 1945 (UUD 1945), the Constitutional Court can now put its hands on the once considered as obstinate and untouchable area, such as the judicial review of legislations. The emergence of the Constitutional Court as a power in the judiciary system is expected to encourage the establishment of the modern judiciary system in Indonesia.

However, as a new judicial institution, there are many issues that require further studies, particularly the ones that related to the provisions and procedures, for there are some differences with the provisions and procedures of other laws in general. On the other hand, it can be generally concluded that some people, especially the justice seekers (*justiciabellen*), do not fully understand the rule of the game and the procedures of the examination including the Constitutional Court adjudication and its implications for them.

One issue that has become a controversy is that currently it is very unlikely to appeal to the Constitutional Court adjudication. Normatively, the Procedure of the Constitutional Court (Hukum Acara Mahkamah Konstitusi), as stipulated in Law No. 24 Year 2003 on Constitutional Court, does not accommodate any legal actions toward an adjudication that has been made by the Constitutional Court. The Constitutional Court adjudication is final and binding, that is, the adjudication is both once and final. Hence, the justice seekers (*justiciabellen*) do not have other options but to accept the adjudication anyway, whether they like it or not.

In this very context, this paper discusses some issues regarding the Constitutional Court adjudication and its implications for the justice seekers (*justiciabellen*). Generally, the problems of the Constitutional Court adjudication lie in the settings of the adjudication itself, its content and characteristics, the summary of the last adjudication, some important Constitutional Court adjudications, and the improbability for the parties to appeal to the adjudication, and the nature of irrevocability of such adjudication that makes it impossible for anybody to appeal. The description of this paper will hopefully give clarity in the most questioned problems in the Constitutional Court adjudication.

The Constitutional Court adjudication

One of the duty of the Constitutional Court Judges is to adjudicate or to constitute the cases between the disputing parties. Before giving an adjudication or constituting a case, the judge must first learn the case and then qualify it.

Basically, the adjudication is a statement made by the judges—as state officials who are given authority for it—spoken in the court of law which aims to settle a case or to end dispute between the opposing parties¹. The adjudications are expected to provide certainty and justice to the disputing parties.

The provisions relating to the Constitutional Court adjudication are stipulated in Article 45 to 49 of the Law of Constitutional Court (Undang-Undang Mahkamah Konstitusi). Article 45 stated that: (1) Constitutional Court makes adjudication based on the Constitution of Year 1945 of the Republic of Indonesia, in accordance with the evidence and the judge's convictions; (2) the Constitutional Court adjudication that grants a consent to a petition must be based on at least two means of evidence; (3) the Constitutional Court adjudication must include the facts and findings that were revealed in the trial and also the legal consideration of a decision; (4) the adjudication referred to in the paragraph (3) is taken in the deliberation forum of the plenary hearing of the constitutional judges, led by the head of the council; (5) in the deliberation forum of the plenary hearing, each constitutional judge must state the constitutional consideration or submit a written opinion toward the petition; (6) in the case of the deliberation forum of the plenary hearing of the constitutional judges referred to in paragraph (4) cannot make an adjudication, such plenum will be suspended and deferred for the next session; (7) in the case of no unanimous adjudication can be reached, even after all efforts have been done in the deliberation forum of the plenary hearing of the constitutional judges, the judges will vote and the adjudication will be made based on the number of the votes; (8) in the case of the plenum of the constitutional judges referred to in paragraph (7) cannot make an adjudication based on the votes, the last vote made by the head of the council makes the adjudication; (9) the Constitutional Court adjudication can be decreed on the same day or deferred to other day which previously agreed upon between the disputing parties; (10) in the case of no unanimous adjudication can be reached as referred to in paragraph (7) and paragraph (8), the dissenting opinions of the member of the judges should be included in the adjudication.

The provisions stated in the Article 45 above mentioned about the basis and procedures or mechanisms of the decision making in the deliberation forum of the plenary hearing of the constitutional judges.

¹ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, Liberty, Yogyakarta, page 175.

The Constitutional Court gives adjudication based on the Constitution of Year 1945 of the Republic of Indonesia, in accordance with the evidence and the judge's convictions. As a constitutional constituent, the Constitutional Court was designed to safeguard as well as to interpret the Constitution of Year 1945 through its adjudications.

Evidence and the judge's conviction are cumulative condition that must be fulfilled for the legality or validity of a case in the verification and examination. In giving the adjudication that grants a consent to a petition, such adjudication must be based on at least two means of evidence. The judge must also make his conviction based on those evidence, and must not make an instant conviction on groundless beliefs.²

As in other verdict, the Constitutional Court adjudication must include the facts and findings that were revealed in the trial and also the legal basis of a decision. The facts revealed in the trial and the legal consideration are the basis for the judge in making a reasonable and responsible adjudication. The reasons and legal consideration in an adjudication will give such adjudication the sense of authority as well as the objective values.³

The Constitutional Judges' adjudication must be taken in the deliberation forum of the plenary hearing of the constitutional judges, led by the head of the council. In the deliberation forum, each constitutional judge must state the constitutional consideration or submit a written opinion toward the petition. Hence, based on this provision, there should not be any abstain vote. In the case of the deliberation forum of the plenary hearing of the constitutional judges cannot make an adjudication, such plenum will be suspended and deferred for the next plenary meeting.

In the case of no unanimous adjudication can be reached, even after all efforts have been done in the deliberation forum of the plenary hearing of the constitutional judges, the judges will vote and the adjudication will be made based on the number of the votes. In the case of the plenum of the constitutional judges cannot make an adjudication based on the votes, the last vote made by the head of the council makes the adjudication.

It is not unusual, however, to have the familiar "dissenting opinion" in the Constitutional Court adjudication. It happens whenever no unanimous adjudication can be reached by the judges, and the dissenting opinions of the member of the judges will be included in the adjudication. The Constitutional Court adjudication can be decreed on the same day or, with objective reasons, deferred to other day which previously agreed upon between the disputing parties.

The dissenting opinion in the Constitutional Court adjudication happens in the case when the adjudication is made through vote, instead of the unanimous decision in the deliberation forum. This adjudication will include the opinion of the dissenting judge, so that the people will know the reason behind such adjudication as well as the integrity and quality of each Constitutional Judge. However, dissenting opinion is exempted and excluded in the case of impeachment. Such case entails complicated aspects of politics which can psychologically affect the Constitutional Judges in making their opinions dan decisions.⁴

² Bambang Sutiyoso, *Hukum Acara Mahkamah Konstitusi Republik Indonesia*, Citra Aditya Bakti, Bandung, 2006, page 120.

³ Sudikno Mertokusumo, *Op. Cit.*, page 186.

⁴ A. Fickar Hadjar, et. al., *Pokok-Pokok Pikiran dan Rancangan Undang-Undang Mahkamah Konstitusi*, KRHN dan Kemitraan, 2003, page 51.

The Constitutional Court adjudication is signed by the judges who examine, adjudicate and decide, and the registrar. The Constitutional Court adjudication has its permanent legality as soon as it is decreed in the plenary public trial. Thus, the adjudication becomes final and no appeals or other legal actions is possible.⁵

The Content of the Constitutional Court adjudication

Based on the provisions in Article 56, there are basically three kinds of adjudications of the Constitutional Judge: the petition is dismissed/not accepted, the petition is denied, and the petition is granted. Meanwhile, the adjudication is cancelled and *verstek* are unstipulated in the Procedure of the Constitution Court. In the event of nonappearance of both the opposing parties—the claimant/plaintiff and the defendant—in the trial, the examination will still proceed. Such absence will only cost their own opportunity to make statements and to defend their arguments.⁶

1. Petition is Dismissed/Not Accepted (*niet onvankelijk verklaard*)

The Constitutional Judges' adjudication declares a petition is dismissed/not accepted (*niet onvankelijk verklaard*) when the petition is against the law or groundless. In this case, the Constitutional Court argues that the claimant/plaintiff and/or the petition does not meet the requirements referred to in Article 50 and Article 51, hence, the petition is dismissed/not accepted.

Article 50 says that the law that can be appealed and invoked are the law that was enacted after the amendment of the Constitution of Year 1945 of the Republic of Indonesia. While Article 51 states the following: (1) the claimant/plaintiff is the party who considers his/her constitutional right is violated with the enactment of certain law, namely: a. individual Indonesian citizens; b. group or society who lives under a custom-traditional law and in accordance with the overall development of society and the principles of the Republic of Indonesia as regulated by the law; c. public and private legal entity; or d. state institutions; (2) the claimant/plaintiff must construe his/her petition on his/her constitutional rights and/or his/her constitutional authority referred to in paragraph (1); (3) in the petition referred to in paragraph (2), the claimant/plaintiff must state clearly that: a. the establishment of certain law does not meet the conditions based on the Constitution of Year 1945 of the Republic of Indonesia; and/or b. the substance in the articles, paragraphs, and/or parts of the law are considered incompatible and contradictory with the Constitution of Year 1945 of the Republic of Indonesia.

Here, the Constitutional Court can act as a negative legislators: it can grant or deny the petition. There is also a possibility that the petition is dismissed/not accepted as such petition does not meet the formal requirements. Constitutional Court decision can annul a state-of-law or create certain rights or authorities. In other words, the adjudication brings consequences that will affect a particular state-of-law or certain rights and authorities.⁷

2. Petition is Denied (*ontzegd*)

⁵ Bambang Sutiyoso, *Op. Cit.*, page 122.

⁶ *Ibid.*

⁷ Maruarar Siahaan, *Hukum Acara Mahkamah Konstitusi Republik Indonesia*, Konstitusi Press, Jakarta, 2005, page 213.

The Constitutional Judges' adjudication will deny the petition if the petition is unsubstantiated. It means that the law being appealed does not contradict the Constitution of Year 1945 of the Republic of Indonesia, both the in the establishment of the law and in the part and/or the whole substance of the law. Hence, the adjudication will deny the petition.

If, according to the Constitutional Court adjudication, the substance in the articles, paragraphs, and/or parts of the law are contradicting the Constitution of Year 1945 of the Republic of Indonesia, then the substance in those articles, paragraphs, and parts of the law do not have any binding legal power. Similarly, according to the Constitutional Court adjudication, if the establishment of certain law does not meet the requirements, which must be based on the Constitution of Year 1945 of the Republic of Indonesia, then such law does not have any binding legal power.

3. Petition is Granted

The petition is granted when the Constitutional Court believes that the petition is well-grounded or the establishment of the law does not meet the requirements of establishing a law, which must be based on the Constitution of Year 1945 of the Republic of Indonesia, and the adjudication states that the petition is granted. In this case, the Constitutional Court explicitly declares the substance of the articles, paragraphs, and/or parts of the law that contradict the Constitution of Year 1945 of the Republic of Indonesia.

The Constitutional Court adjudication that grants consent to a petition must be published in the State Document at no more than 30 (thirty) work-days after the adjudication was decreed. The substance of the content of the article, paragraph, and/or parts of the reviewed law can never be re-reviewed (*nebis in idem*). The Constitutional Court adjudication on the judicial review against the Constitution of Year 1945 of the Republic of Indonesia is then submitted to the House of Representatives, Regional Representative Council, the President, and Supreme Court.

In addition to the various adjudications as described above, to give better illustration of the various adjudications, the following will discuss further the cases within the Constitutional Court authority since each case has its own characteristic.

The Adjudication in the Judicial Review

The case of judicial review against the Constitution of Year 1945 is specifically regulated in Article 50 to 60 in the Law on Constitutional Court. Based on the provisions of Article 50, the laws that can be reviewed are the ones that were enacted after the amendment of the Constitution of Year 1945 of the Republic of Indonesia. It must be taken into account, though, that according to the Constitutional Court, Article 50 is no longer binding. However, even though the law is being reviewed by the Constitutional Court, it is still considered enacted and valid until an adjudication clearly states that such law contradicts the Constitution of Year 1945 of the Republic of Indonesia.

Furthermore, in Article 51 paragraph (1) Law on the Constitutional Court mentioned that: "Claimant/plaintiff is a party that believes his/her constitutional rights and/or authority are violated by the introduction of the Law." Then, the Article also regulates the legal standing of the claimant/plaintiff, namely: a) individual citizens; b) group or society who lives under a custom-traditional law and in accordance with the

overall development of society and the principles of the Republic of Indonesia as regulated by the law; c) public and private legal entity; d) state institutions.

In a closer look, the provisions in the Article above is actually ambiguous which can make it hard for the judges to prove and correlate the violation stated by the claimant/plaintiff against the Constitution of Year 1945. Article 51 paragraph (1) point (d) of Law on Constitutional Court gives legal standing to state institutions, which should have defined more clearly as to which institution is classified as state institution because there are currently plenty state institutions such as the DPR, DPD, MPR, the President and Vice President, MA, BPK, Judicial Commission, KPU, the TNI/Polri and other regional state institutions.⁸

The Adjudication in the Dispute about Authority Between State Institutions

Based on Article 24C paragraph (1) of the Constitution of Year 1945, one of the authority of the Constitutional Court is to give adjudication on the dispute about authority given by the Constitution of Year 1945 between state institutions. The concept of authority given by the Constitution of Year 1945 to the state institutions can be interpreted in several ways. This is due to the amended Constitution of Year 1945 does not provide a clear concept about the state institutions. At the same time, the Law on Constitutional Court itself apparently does not provide such clear concept about the state institutions either.⁹

The dispute about authority given by the Constitution of Year 1945 between state institutions is further stipulated in the provisions of Article 61 to 67 in Law on Constitutional Court. As an exception, as stipulated in Article 65, the Supreme Court cannot become the party in the dispute about authority given by the Constitution of Year 1945 between state institutions in the Constitutional Court.

After the examination process, the Constitutional Court can give several possibilities of adjudication, namely: petition is dismissed/not accepted, petition is granted or petition is denied. The adjudication declares the petition is dismissed/not accepted if the Constitutional Court believes that the claimant/plaintiff and/or the petition does not meet the requirements referred to in Article 61. The adjudication declares the petition is granted if the Constitutional Court believes that the petition is reasonable. In the case of the petition is granted, the Constitutional Court expressly states that the defendant does not have the authority to implement the authority being disputed. In the case that the Constitutional Court believes that the petition is groundless then the adjudication declares the petition is denied.

The Constitutional Court adjudication which declares that the defendant does not have the authority to implement the authority being disputed, then the defendant is to carry out the adjudication in no more than 7 (seven) work-days after the adjudication is received. If the decision is not carried out in the time period referred to in paragraph (1), then the authority of the defendant is legally canceled. After that, the Constitutional Court adjudication on the dispute about authority is submitted to the House of Representatives, Regional Representative Council, and the President.

⁸ Compare it to Ahmad Syahrizal's, *Peradilan Konstitusi Suatu Studi Tentang Adjudikasi Konstitusional Sebagai Mekanisme Penyelesaian Sengketa Normatif*, Pradnya Paramita, Jakarta, 2006, page 312.

⁹ Fatkhurohman, et. al., *Memahami Keberadaan Mahkamah Konstitusi di Indonesia*, Citra Aditya Bakti, Bandung, 2004, page 35.

The Adjudication on the Liquidation of Political Party

The liquidation of political party is regulated in Article 68 to 73 of Law on Constitutional Court. As in other cases, there are three possible adjudications of the Constitutional Court for the petition on liquidation of political party, namely: petition is dismissed/not accepted, petition is granted or petition is denied. The adjudication declares the petition is dismissed/not accepted if the Constitutional Court believes that the petition does not meet the requirements referred to in Article 68. The adjudication declares the petition is granted if the Constitutional Court believes that the petition is reasonable. If the Constitutional Court believes that the petition is groundless then the adjudication declares the petition is denied.

The Constitutional Court adjudication on the petition on the liquidation of political party must be reached within a period of 60 (sixty) work-days after the petition is registered in the Constitutional Case Registration Book. Then, the adjudication on the petition on liquidation of political party is delivered to the political party concerned.

The Constitutional Court adjudication on the petition on the liquidation of political party is yet to express explicitly and firmly whether to liquidate the political party or, upon receiving the adjudication, order the political party to liquidate itself. However, the execution of the adjudication is done by canceling the political party's registration in the government office (the Ministry of Justice and Human Rights), and announcing the adjudication in the State Document within 14 (fourteen) work-days after the adjudication is received.¹⁰

The Adjudication on the Disputes about the General Election Results

The dispute about the results of general elections is set further in Article 74 to 79 of the Law on Constitutional Court. Some of the possible adjudications of the Constitutional Court on the dispute about general election results are: petition is dismissed/not accepted, petition is granted or petition is denied.

The adjudication declares the petition is dismissed/not accepted if the Constitutional Court believes that the claimant/plaintiff and/or the petition does not meet the requirements referred to in Article 74. The adjudication declares the petition is granted if the Constitutional Court believes that the petition is reasonable. In the case that the petition is granted then the Constitutional Court declares the cancellation of the general election results announced by the General Election Commission (KPU) and set the corrected results. If the Constitutional Court believes that the petition is groundless then the adjudication declares the petition is denied.

The time period of the Constitutional Court adjudication on the dispute about the general election results is specified in Article 78. Article 78 states that the Constitutional Court adjudication on the petition on dispute about general election results must be within: (a) at least 14 (fourteen) work-days after the petition is registered in the Constitutional Case Registration Book for the Presidential and Vice Presidential election; (b) at least thirty (30) work-days after the petition is registered in the Constitutional Case Registration Book for the Legislatives (DPR), Regional Representatives Council (DPD),

¹⁰ Agung Susanto, *Hukum Acara Perkara Konstitusi*, Mandar Maju, Bandung, 2006, page 51.

and the Regional Legislatives (DPRD) election. Then, the Constitutional Court adjudication on the dispute about general election results is submitted to the President.

The Adjudication on Allegations of Violations of the President and/or Vice President

The allegations of misconduct of the President and/or Vice President is stipulated in Article 80 to 85 of the Law on Constitutional Court. In this case, the claimant/plaintiff is the House of Representatives (DPR).

As described in Article 83, there are three (3) possibilities in the Constitutional Court adjudication for this case: the adjudication declares that petition is dismissed/not accepted (*niet onvankelijk verklaard*), the adjudication declares that petition is granted, that is, the adjudication agrees with the House of Representatives (DPR), and the adjudication declares that petition is denied. The adjudication declares the petition is dismissed/not accepted if the Constitutional Court believes that the petition does not meet the requirements referred to in Article 80. The adjudication declares that the petition is granted if the Constitutional Court believes that the President and/or Vice President is guilty from treason, corruption, bribery, other serious crime, or other disgraceful misconduct and/or it is proven that the President and/or Vice President is no longer qualify as a President and/or Vice President. If there is no prove that the President and/or the Vice President is guilty from treason, corruption, bribery, other serious crime, or other disgraceful misconduct and/or there is no prove that the President and/or Vice President is no longer qualify as a President and/or Vice President, then the adjudication declares the petition is denied.

The Constitutional Court adjudication on the petition from the House of Representatives over allegations of violations referred to in Article 80, must be reached within 90 (ninety) work-days after the petition is registered in the Constitutional Case Registration Book. The Constitutional Court adjudication on the petition from the House of Representatives must be submitted to the House of Representatives (DPR) and the President and/or Vice President.

The Summary of the Last Constitutional Court adjudication

According to its authority, cases that have been handled by the Constitutional Court are judicial reviews, disputes about general election (cases) and disputes about authority between the institutions. In a Constitutional Court convention, Todung Mulya Lubis praised the works of the Constitution Court which in a few years of its establishment the Constitutional Court has made milestone adjudications. Meanwhile, Chairman of the Constitutional Court Jimly Asshiddiqie said that he has been working to make the Constitutional Court to become a modern and trusted judiciary institution. Such trust is built through, among others, its adjudications.¹¹

The list of summary of judicial review from year 2003 until June 25, 2005 shows that of 149 cases plus the last year's excess cases, 140 cases have been successfully settled and closed. Further summary can be seen in the following table:¹²

¹¹ www.hukumonline.com, accessed on January 2, 2005.

¹² www.mahkamahkonstitusi.go.id.

Table 1
List of Summary of Judicial Review Cases

No	Year	Las t Year's Exces s	Accept ed	Tot al 3+4	Verdict				Numb er of Adjudi - cation (6+7+ 8+9 =10)	This Year's Exces (5-10)	Numb er of Judici al Review	Not e
					Grant ed	Denie d	Dismiss ed	Withdra wn				
-	-2	-3	-4	-5	-6	-7	-8	-9	-10	-11	-12	-13
1	200 3	-	24	24	-	-	3	1	4	20	16	(8) 2 are unaut ho- rized
2	200	20	27	47	11	8	12	4	35	12	14	
3	200	12	25	37	10	14	4	-	28	9	12	
4	200	9	27	36	8	8	11	2	29	7	9	
5	200	7	30	37	11	11	7	5	27	10	12	
6	200	10	16	26	4	4	6	3	17	9	6	
Total			149	-	37	45	43	15	140	9	69	

The list of summary of disputes about authority between the State Institutions from year 2003 until June 25, 2005 shows that 10 cases were settled and closed. Complete list of summary is presented below:¹³

¹³ *Ibid.*

Table 2
List of Summary of Disputes about Authority Cases

No	Year	Las t Year's Exces s	Accept ed	Tot al 3+4	V e r d I c t				Number of Adjudic ation (6+7+8 +9 =10)	This Year's Excess (5-10)	Note
					Grant ed	Denie d	Dismiss ed	Withdra wn			
-	-2	-3	-4	-5	-6	-7	-8	-9	-10	-11	-13
1	200	-	-	-	-	-	-	-	-	-	-
2	200	-	1	1	-	1	-	-	1	0	-
3	200	-	1	1	-	-	-	-	0	1	-
4	200	1	4	5	-	-	2	1	3	2	-
5	200	2	2	4	-	1	1	-	2	2	-
6	200	2	2	4	-	-	2	2	4	0	-
Total			10	-	0	2	5	3	10	-	

As a new judicial institution, the Constitutional Court appears to have effectively carry out its duty and authority, as indicated by the completion and the closing of many cases. However, it is also admitted that some of the adjudications of the Constitutional Court has raised controversy and yet to be fully understood and accepted by the people.

Some Important Adjudications

During several years of its establishment, the Constitutional Court has made some important adjudications. Such adjudications are:¹⁴

Recognition of the right to vote for the former PKI members (Register no. 011-017/PUU-I/2003)

After years of being isolated from their political rights, the former PKI members begin to feel the wind of change. On February 24 this year, the Constitutional Court made an adjudication stating that Article 60, Letter g, Law No. 12 Year 2003 on General Elections does not have any binding legal power. The article barred the labeled ex-PKI to vote and be voted. Although the adjudication came with a dissenting opinion from the Constitutional Judge Achmad Roestandi, the Constitutional Court adjudicated the petition filed by Payung Salenda and friends is granted.

In its *petitum*, the Constitutional Court believes that regulation such as Article 60, Letter g, is no longer relevant to the national reconciliation efforts. Although many believe in the involvement of PKI in the G30S incident—and the TAP MPRS No. XXY/1966 is still enacted and very much valid to this day—former PKI members should

¹⁴ www.hukumonline.com, accessed on January 2, 2005.

be treated equally and without discrimination. The adjudication has created controversy among the people, but such adjudication will greatly lessen the political isolation that has been instated for decades against the so-called ex-PKI.

The Abolition of Retroactive Principle in the Bali Bombing Case (Register No. 013/PUU-I/2003)

The world's attention were set on the trial of the perpetrators of the Bali Bombing, when the Constitutional Court unexpectedly gave its controversial adjudication. On July 23, 2004, the Constitutional Court adjudicated that Law No. 16 Year 2003 on Law on Crime of Terrorism Act could not be used as a penal law to the perpetrators of Bali Bombing. The Law, according to the Constitutional Court, contradicts the Constitution. However, such adjudication was made through fierce debate and significant dissented opinions among the judges, hence, the vote was 5 to 4.

The reason why the Constitutional Court abolished the Law No. 16/2003 was because of the Retroactive Principle, that is, exercising the Law to an incident that occurred before the Law was enacted, which in this case, was Law No. 15/2003 on The Eradication of Terrorism Crime Act. According to the Constitutional Court, the Retroactive Principle can only be used for the cases of serious violation of Human Rights.

Law on Electricity for the Masses (Register No. 001, 021-022/PUU-I/2003)

Economic authorities were flabbergasted upon hearing the Constitutional Court adjudication on the petition made by APKI, PLN Workers Union, and the Association of PLN Retired Workers. The adjudication, decreed on December 15, stated that Law No. 20 Year 2002 on Electric Power was annulled. This Law, according to Constitutional Court, contradicts the basic principle of Article 33 of the Constitution of Year 1945, because electricity is a major part in the people's life, hence, must be controlled by the state and be used as much as possible for the prosperity of the people. The petition was initially only on Article 16, 17 dan 68, however, since the three Articles are actually the heart of the Law on Electric Power, the Constitutional Court then declared that the whole substance no longer has the binding legal power. The Chairman of the Constitutional Court Jimly Asshiddiqie said that the dynamics of the economy must be subject to the law, and that the Constitution of Year 1945 does not necessarily refuse privatization and liberalization.

The Abolition of the Penal Law to the Self-claimed Lawyers (Register No. 006/PUU-II/2004)

On December 13, 2004, the Constitutional Court stunned the lawyers society by canceling the enactment of Article 31 of Law on Lawyers. The Work Committee of Indonesian Lawyers (KKAI) expressed their strong reaction and condemned such adjudication, saying that the adjudication would destroy the existing law order because the penal law no longer had legal power on the self-claimed lawyers. It would be hard for the authoritative body to oversee and control the so-called fake lawyers.

However, the judge of the Constitutional Court had different considerations. Six of the nine judges thought that the Article could give uncertainty to the law and injustice to the people. According to the Article 31, a lecturer who got paid after giving "advice

and assistance” regarding the law is against the law and can be prosecuted. The abolition was lauded by the lecturers who work in university’s Legal Aid Offices (LBH). Indeed, the petition was filed by the LKPH Universitas Muhammadiyah Malang.

The Price of Fuel is Controlled by the Government (Register No. 002/PUU-I/2003)

The session when the judge read their adjudication on the trial of Judicial Review on Law No. 22 Year 2001 on Oil and Gas could be, by far, the most celebrated trial session. Moreover, the session was held only two days after the government raised the fuel price. The courtroom was packed, many people listened to the judges from outside the room. Meanwhile, thousands of people rallied on the street in front of the building. The crowd was as such that the police had to close but one lane the Merdeka Barat street. Even the otherwise exclusive busway lane became everybody’s lane.

Contrast to the situation outside the building, the judges in the courtroom calmly read the unanimous adjudication. Even though the judges did not grant consent to all the petitions filed by APHI, PBHI, Yayasan 324, SNB, and the Pertamina Workers Union, the Constitutional Court was to restore the management concept of oil and gas to the basic principles of Article 33 of the Constitution of Year 1945.

In addition to revising part of the Article 12 paragraph (3), and Article 22 paragraph (1) of Law on Oil and Gas, the Constitutional Court was also to abolish the binding power of Article 28 paragraph (2) and paragraph (3). It was indeed the latter Article that stated the price of fuel is determined by the market. The Court argued that the government intervention in setting the price of fuel must become the priority for the best interest of the people, despite the fact that the government can still set the price of fuel according to the market price.

The Trimming Down of the Indonesian Broadcasting Commission’s Authority (Register No. 05/PUU-I/2003)

As the implementation of a Law, government will issue regulation (PP), which is very much within its authority—in this case the president and government officials. However, the Law No. 32 Year 2002 incorporates the Indonesian Broadcasting Commission (KPI) in the process of issuing a Government Regulation (PP). In an adjudication on July 28, the Constitutional Court corrected the seemingly trivial error. The Constitutional Court stated that the clause “KPI together with...” listed in Article 62 paragraph (1), or the clause “or protest occurred” in Article 44 paragraph (1) contradicts the Constitution of Year 1945.

The adjudication answered the petition on judicial review filed by various broadcasting institutions. The adjudication has trimmed down the KPI’s authority in every way, and KPI no longer has the authority to make regulations on Public Broadcasting Institutions, cross ownership, foreign broadcasting’s coverage, the network station system, licensing procedures of subscription-based broadcasting institution, broadcasting licensing and administrative sanctions.

Legal Basis May be Canceled, but the Government Remains (Register No. 18/PUU-I/2003)

If a regulation is canceled, the institution that was established under that regulation should also be liquidated. But that is not the case with the Constitutional Court

adjudication on the expansion of Papua. In its adjudication on November 11, the Constitutional Court stated that Law No. 45 Year 1999 no longer has any legal power. However, the establishment of West Irian Jaya province and a number of districts that was based on the Law is not to be dissolved. The reasons are that the government is already in place, and the adjudication is not retroactive, that is, it is effective after the adjudication is declared.

The Obliteration of Unfairness in the Law on Manpower/Employment (Register No. /PUU-1/2003)

At the end of October 2004, the Constitutional Court adjudicated petition on Law no. 13 Year 2003 on Manpower/Employment (UUK) is partly granted. The Constitutional Court revoked Article 158 and 159, and deleted some clauses in Article 160 paragraph (1), Article 170, Article 171 and Article 186. Even two Constitution Judges had dissenting opinions and asked the Court to grant consent to more Articles.

Article 158 gives power to employers to lay-off labor without trial and without supporting evidence. This Article contradicts Article 160 of the same Law which stated that labor under the police custody other than by employer's lawsuit will still have some of his/her rights. Understandably, employers prefer to exercise Article 158 in any case. Unfortunately, if taken to court, the labor must procure and provide all means of evidence, which is even more unfortunate because labor has always been on the weaker side.

For that reasons, the Constitutional Court believed that the Law was discriminatory, hence, the adjudication stated that Article 158 and 159 no longer have any binding legal power. However, the adjudication stated that petition on judicial review on Articles on outsourcing is denied.

Courts Do Not Have to be Under the Supreme Court (Registration No. 004/PUU-II/2004)

Under the one-roof policy, all judiciary institutions, without exception, should be under the Supreme Court. Strangely though, the Tax Court stands under its own roof, controlled by the Ministry of Finance. This raises some concerns as to how the condition will affect the independence of the judges. Cornelio Moningka Vega, an entrepreneur, filed a petition for judicial review against the Law No. 14 Year 2002 on Tax Court. The director of PT Apota Wibawa Pratama believed that Law on Tax Court contradicts the concept of judicial power in Article 24 of Constitution of Year 1945.

However, in its adjudication on December 12, 2004, the Constitutional Court had another opinion. Just because the appeal procedure is unknown in the Tax Court, does not mean it is outside the 'main roof' of the Supreme Court. The Directorate General of Taxes Hadi Purnomo said that the MA had a fixed role in the Tax Court such as appointing a judge, although the organizational and financial control are under the Ministry of Finance.

The End of Struggle of KPKPN Members (Register No. 006/PUU-I/2003)

On the last days of March, the Constitutional Court made important adjudication stating petition on judicial review on Law No. 30 Year 2002 on Corruption Eradication Commission (KPK) is denied. The petition was filed by KPKPN and individuals who

work in that Commission. The adjudication, however, had dissenting opinions from the Constitutional Judges Maruarar Siahaan dan Sudarsono.

The adjudication ended the struggle of KPKPN members in maintaining the existence of their Commission. The adjudication supported the liquidation of the Commission dealing with the state officials' wealth. Naturally, KPKPN was to melt in with the KPK, although, in reality, the spirit of transparency that has been shown by KPKPN has yet to be seen from KPK. Ironically, KPK initially refused to make the state officials' wealth list open to public, saying that such matter is yet to have the clear legal basis.

Legal Actions Against Unknown Adjudication

According to the provisions of Article 47 of Law on the Constitutional Court, the Constitutional Court adjudication has its legal power after being declared in an open plenary session. In addition, the Law on Constitutional Court does not regulate the possibility of pursuing legal action on the Constitutional Court adjudication for the objecting parties.

Therefore, after it has been declared in an open plenary trial session, the Constitutional Court adjudication is a final, definitive and has direct legal consequences. After the adjudication has been declared, all disputing parties must accept, whether they like it or not, because according the regulations there will not be any legal action that can be pursued for anybody.

Thus, the Constitutional Court adjudication is final, binding, permanent, and non-retroactive. This is, of course, extraordinary and very much different with the ordinary laws. In the procedures of several courts such as Criminal Court, Religious Court, Military Court, and even State Administrative Court (PTUN), it is explicitly set the procedures for objecting parties to file their objections toward the adjudication and then plea for appeals.

It is understandable that judges are nothing but human who are fallible and prone to err. Judge's verdict is not God's, hence, imperfection is very likely. For that reason, for the sake of the truth and justice, judge's verdict must stand corrected or even canceled if there is mistake in it. In such case, the law provides means to correct the mistake. Legal action is the rights of the parties concerned, therefore it is them who should make the efforts in filling the appeal to the court through the authoritative bodies. The judges cannot compel or prevent the parties from pursuing their legal actions as those parties are just exercising their rights.

Based on the above arguments, the existence of possibility in pursuing legal action against the Constitutional Court adjudication is inevitable and the people should be able to do such effort. Given the fact that the current Procedures of the Constitutional Court is yet to accommodate the effort on legal action, it is necessary to amend the Law No. 24 Year 2003 on Constitutional Court. If all of this are done, it will give assurance to the people that they will be able to pursue and fight for truth and justice. As for the authoritative institutions, especially the legislatives and the executives, supporting the people in getting their rights is only the right thing to do.

Conclusion

The justice seekers should understand that the Constitutional Court adjudication is a linking chain of mechanism in a examination process. They need to understand this because the adjudication will have implications on their rights and interests, which should have been studied well from the very beginning. One of the implications that they need to know about is the fact that there will be no available mechanism to pursue legal action against the Constitutional Court adjudication once it has been decreed. This could cost them their rights as well as their interests. Therefore, it is necessary to have a better Procedures of Constitutional Court in times to come, particularly the one that deals with legal action against the Constitutional Court adjudication.

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