

Legality of the Constitutional Court as a Party and at the Same Time as a Judge in Disputes over the Authority of State Institutions

Sumali^{1*} Echaib Samira²

^{1*}Faculty of Law, University of Muhammadiyah Malang, Malang, Indonesia

²Department of Law and Political Sciences, Abdallah Moursli University, Tipaza, Algeria

*Email: sumali@umm.ac.id

Abstract

The purpose of this study is to determine the legality of the constitutional court as a party and at the same time as an adjudicator in disputes over the authority of state institutions. The research method used is the normative legal research method. The results showed that the 1945 Constitution never allocated the authority to test executive legal products in the form of Perppu to the Constitutional Court but to the DPR which is commonly known as legislative review. However, the Constitutional Court through decision No. 138/PUU-VII/2009 has added its authority, namely adding Perppu as the object of the litical test of the judicial review law. The consequence of the addition of the authority to test the Perppu is of course likely to cause a conflict of authority between the Constitutional Court versus the DPR. The problem is that the authority to torture and adjudicate legal conflicts between state institutions according to the 1945 Constitution must be carried out through the courts of the Constitutional Court. Therefore, the juridical problem that arises is whether there is legality or constitutionality of the Constitutional Court to try cases concerning its own interests, while on the other hand there is a doctrine of nemo judex idoneus in propria causa which means that judges are not fit to try themselves because of a conflict of interest or conflict of interest.

Keywords: Legality; Party; Judges; Dispute.

Abstrak

Tujuan dari penelitian ini adalah untuk mengetahui legalitas mahkamah konstitusi sebagai salah satu pihak dan sekaligus sebagai adjudikator dalam sengketa kewenangan lembaga negara. Metode penelitian yang digunakan adalah metode penelitian hukum normatif. Hasil penelitian menunjukkan bahwa UUD1945 tidak pernah mengalokasikan kewenangan untuk menguji produk-produk hukum eksekutif dalam bentuk Perppu kepada Mahkamah Konstitusi melainkan kepada DPR yang biasa dikenal dengan judicial review legislatif. Namun, Mahkamah Konstitusi melalui putusan No. 138/PUU-VII/2009 telah menambah kewenangannya, yaitu penambahan Perppu sebagai objek uji litical test uu judicial review. Konsekuensi dari penambahan kewenangan untuk menguji Perppu tentu saja kemungkinan akan menimbulkan konflik kewenangan antara Mahkamah Konstitusi versus DPR. Masalahnya, kewenangan penyiksaan dan mengadili konflik hukum antar lembaga negara menurut UUD 1945 harus dilakukan melalui pengadilan Mahkamah Konstitusi. Oleh karena itu, permasalahan yuridis yang muncul adalah apakah ada legalitas atau konstitusionalitas Mahkamah Konstitusi untuk mengadili perkara-perkara yang menyangkut kepentingannya sendiri, sedangkan di sisi lain terdapat doktrin nemo judex idoneus dalam propria causa yang artinya hakim tidak layak untuk mengadili diri sendiri karena adanya benturan kepentingan atau benturan kepentingan.

Kata Kunci: Legalitas; Partai; Hakim; Perselisihan.



This work is an open access article under the Creative Commons Attribution-ShareAlike 4.0 Generic License

A. INTRODUCTION

One of the authorities attributed to the Constitutional Court (MK) as stated by Article 24C paragraph (1) of the 1945 Constitution is to decide disputes over the authority of state institutions whose authority is granted by the Basic Law. What is meant by a state institution dispute (SKLN) is a dispute or difference of opinion related to the exercise of authority between two or more state institutions. Meanwhile, related to the object of dispute (*objectum litis*) SKLN, Prof. Jimly Asshiddiqie stated that the object of the SKLN is a *dispute* over constitutional authority between state institutions. The main issue does not lie in the institution of state institutions, but lies in the question of constitutional authority, which in its implementation, if a dispute arises between interpretations between each other, then the Constitutional Court is the one who has the authority to decide which institution actually has the disputed authority. Thus, a dispute of authority is a dispute or difference of opinion relating to the exercise of authority between two or more state institutions.¹

Why can there be disputes or disputes among fellow state institutions? isn't the authority of each state institution already regulated in the constitution? In his other book Prof. Jimly Asshiddiqie in his book *The Procedural Law of the Constitutional Court* in the constitutional system adopted by the 1945 Constitution after the first amendment (1999), second (2000), third (2001), and fourth (2002), the mechanism of relations between state institutions is no longer vertical, but rather horizontal. If before the constitutional amendment, it was known that there were higher institutions and the highest institutions of the state, then after the constitutional amendment, the highest institutions of the state were no longer known. In this case, the People's Consultative Assembly (MPR) is no longer the highest state institution in Indonesia's constitutional structure, but rather its position is equal to other constitutional institutions such as the President, the House of Representatives (DPR), the Regional Representative Council (DPD), the Constitutional Court (MK), the Supreme Court (MA), and the Financial Audit Agency (BPK).²

That Law No. 24 of 2003 concerning the Constitutional Court does not explain further about which state institutions can be parties and have legal *standing* in the SKLN.³ But fortunately, then the vacancy of the limitations of state institutions that can be legal subjects in the SKLN is mentioned in Article 2 of the Constitutional Court Regulation Number 8 / PMK / 2006 concerning Guidelines for trial in Constitutional Disputes of State Institutions,

¹ Anna Triningsih and Nuzul Qur'aini Mardiyah, "Interpretasi Lembaga Negara Dan Sengketa Lembaga Negara Dalam Penyelesaian Sengketa Kewenangan Lembaga Negara," *Jurnal Konstitusi* 14, no. 4 (2017): 1–21, <https://doi.org/10.31078/jk1444>.

² Ahmad Fadlil Sumadi, "Hukum Acara Mahkamah Konstitusi Dalam Teori Dan Praktik," *Jurnal Konstitusi* 8, no. 6 (2011): 1–31, <https://doi.org/10.31078/jk861>.

³ Galuh Candra Purnamasari, "Kewenangan Mahkamah Konstitusi Dalam Melakukan Judicial Review Terhadap Undang-Undang Ratifikasi Perjanjian Internasional," *Refleksi Hukum Jurnal Ilmu Hukum* 2, no. 1 (2017): 1–16, <https://doi.org/10.24246/jrh.2017.v2.i1.p1-16>.

namely between other: the House; DPD; MPR; President; CPC; Local Government; as well as other state institutions whose authority is granted by the 1945 Constitution. Whereas the Supreme Court cannot be a party either as an applicant or a respondent as long as the object of the dispute relates to judicial technical affairs (vide Article 65 of the Constitutional Court Law).

What is interesting in the provisions of *pmk a quo* is that the Constitutional Court is not expressly mentioned (*expressive verbis*) as a party that can litigate in the SKLN either as an applicant or as a respondent, even though the Constitutional Court as per the fact is an institution a state whose authority is regulated in the 1945 Constitution.⁴ Compared to the Supreme Court which is institutionally the tandem of the Constitutional Court in holding judicial power, the Supreme Court is expressly stated that it cannot be a party to the SKLN even though it is limited to cases other than judicial technical affairs. For what reason the Supreme Court cannot be a party to the SKLN case whose litical object is in the form of judicial technical affairs, we do not find the answer in the procrastination regulations, that in the Explanation section of Article 65 of Law No. 23 of 2003 concerning the Constitutional Court only includes a fairly clear sentence.

He did not explicitly mention the position of the Constitutional Court as a party (*subjectum litis*) in the SKLN case both in the Constitutional Court Law and PMK No. 08/2006 according to the author can be understood, because this is more due to the authority of the Constitutional Court and the obligation to adjudicate *impeachment* cases is an absolute competence of the Constitutional Court and there is no duplication with other state institutions, making it almost impossible for SKLN to occur. Meanwhile, unlike the supreme court, which in fact in addition to judicial technical affairs, the Supreme Court also has administrative authority in terms of recruitment of prospective judges and supervision of judges' behavior, and for these last two affairs it is also true that there is an institution of the Judicial Commission (KY) which constitutionally also has the same authority as what the Supreme Court has, so that for such reasons, the Supreme Court inevitably has the potential to fall out with other state institutions. For example, in cases of: (1) Disputes over Authority between KY and the Supreme Court regarding the appointment of judges; (2) Disputes over Authority between KY and the Supreme Court regarding the supervision and imposition of sanctions on judges who violate the code of professional ethics of judges; (3) Dispute over authority between the DPR and the Supreme Court regarding the appointment of judges

With a different interpretation regarding the non-inclusion of the Constitutional Court as a party to the SKLN case in Article 2 of the *PMK aquo*, it is implicit to prevent the Constitutional Court from the possibility of the Constitutional Court facing a complicated situation and dilemma i.e. one side being the litigant and at the same time on the other hand the Constitutional Court must play a role and act to examine and prosecute it. Such a condition is doctrinally appropriate and in line with the universally accepted judicial principle of *nemo iudex in propria causa* which means that the judge cannot be a judge for

⁴ Sholahuddin Al-Fatih, "Model Pengujian Peraturan Perundang-Undangan Satu Atap Melalui Mahkamah Konstitusi," *Legality: Jurnal Ilmiah Hukum* 25, no. 2 (2017): 247-60, <https://ejournal.umm.ac.id/index.php/legality/article/view/6005>.

himself. That principle *nemo judex idoneus in propria causa* constitutes an ethical demand and obligation against judges in casu of the judiciary to be independent and impartial (impartial) to the case that is being examined and tried by him.⁵

However, the problem becomes another, when the Constitutional Court has added its authority beyond the provisions of the constitution, namely that the Constitutional Court has empirically tested several times the legal product in the form of Perppu, even though the constitutionality of the Perppu test is in the DPR, namely through the *legislative review* mechanism (Article 22 of the 1945 Constitution).⁶ Perppu itself in the theory of constitutional law is categorized as a conditional law (*voorwardelijke wetten*) or also interpreted by pseudo-law because its applicability is temporary and must be tested by the House in the following hearings, as a form of restriction and supervision of presidential power in extraordinary/precarious situations (*inherent power/discretionary power*).⁷ Thus it becomes clear that the Perppu is not a litical object of the authority of the Constitutional Court, although hierarchically and substantively the content of the Perppu is identical to the law

Testing of Perppu content material in MK has been ongoing since 2009. Based on the investigation to date in 2021, there have been about 29 applications -- some of which are the same Perppu testing object in the test more than once-- As for the Constitutional Court's ruling regarding the Perppu test, it has been declared inadmissible, rejected, and dismissed. Meanwhile, none of the Constitutional Court's rulings granted perppu's application for testing. This of course cannot be interpreted as the Constitutional Court having actually examined the case of testing the Perppu materially, because it is as real as the Constitutional Court has not entered into the substance of the main examination case, but the new examination is limited to the legal standing of the applicant and at the same time the Perppu tested in the Constitutional Court has been approved and promulgated by the DPR, so that the case it became dead because it had lost its *litis objectum*. With such a legislative ratio, it can be understood that so far there has not been or has not occurred a SKLN between the Constitutional Court *vis a vis* the House so far more because The Constitutional Court has not been included in the subject matter of the substantive case, in addition, it seems that the Constitutional Court seems to be *buying time* in the examination of perppu while pending the results of the *legislative review* decision conducted by the House. Imagine what happens when the Constitutional Court grants a request for a Perppu test which states that the Perppu is contrary to the constitution and has no power legally binding, while some time later the dpr institution through *legislative review* apparently accepted approving the Perppu which had been cancelled by the Constitutional Court to become Invite. Obviously this is a tangible form of legal conflict and legal uncertainty among state institutions which leads to disputes between state institutions (SKLN).

⁵ Yanis Maladi, "Benturan Asas Nemo Judex Idoneus In Propria Causa Dan Asas Ius Curia Novit," *Jurnal Konstitusi* 7, no. 2 (2010): 1–17, <https://doi.org/10.31078/jk721>.

⁶ Mohammad Zamroni, "Kekuasaan Presiden Dalam Mengelirakan PERPPU (President's Authority To Issue PERPPU)," *Journal Legislasi Indonesia* 12, no. 3 (2015): 1–38, <https://doi.org/10.54629/jli.v12i3.410>.

⁷ Zairin Harahap, "Menyoal Kewenangan Mahkamah Konstitusi Menguji PERPPU," *Jurnal Yudisial* 7, no. 3 (2014): 311–28, <http://dx.doi.org/10.29123/jy.v7i3.78>.

The testing of executive law products (President) in the form of perppu by the DPR institution through the legislative review mechanism is actually an authority given by the 1945 Constitution.⁸ Therefore, these changes in the authority of the Constitutional Court in testing the constitutionality of the Perppu are of course very potential to cause quite serious legal problems and should not be judged as something assumptive, and of course require a valid answer. Potential legal problems arise due to the existence of two state institutions that have the same and identical authority, namely: *First*, trigger a team of legal uncertainty or rather anomali law when each of the *aquo* state institutions (MK and DPR) use each other's authority to test the same object, while the legal products produced by the two institutions give birth to different decisions, so which decision should be followed; *Secondly*, what if the DPR reverses its direction no longer to make up with the Constitutional Court and then question the authority of the Constitutional Court in testing the Perppu through the SKLN mechanism where the Constitutional Court has the potential to become a party as Termohon, then what legal basis and doctrine legalize The Constitutional Court gained legal legitimacy as a party and judge at the same time, while on the other hand it still recognized the doctrine/principle of *nemo iudex idoneus in propria causa*.

Departing from the description above, this study is intended to seek answers to the possibility of the Constitutional Court adjudicating itself institutionally in the SKLN case, which so far has been the firmness and firmness of the Constitutional Court to declare itself to be a party or more specifically as a respondent. MK still seemed reluctant and seemed slow. This is clearly seen in the procedural law or guidelines for skln in the Constitutional Court designed by the Constitutional Court through PMK No. 08/2006 to remain unmoved by not regulating expressly (expressive verbiss) the Constitutional Court can become a party and at the same time have legal standing in cases that, even though it is true that the Constitutional Court has increased its authority to test the Perppu, which in fact is not regulated by the 1945 Constitution. Meanwhile, functionally the Constitutional Court as *the guardian of the constitution* and at the same time as *the sole judicial interpreter of the constitution* at least gives a wide open space to answer the above problems. Research Question:

1. Is there a basis for its legal legitimacy if the Constitutional Court acts as an institution that examines and adjudicates SKLN cases where one of the parties is the Constitutional Court itself?
2. Is there any legal urgency regarding the regulation of the *legal standing* of the Constitutional Court as the Petitioner/Respondent in the SKLN case whose object is perppu?

B. METHOD

The research method used in this study is a normative descriptive method⁹ that uses legal materials in the form of constitutions and other laws and regulations,¹⁰ Constitutional

⁸ Zamroni, "Kekuasaan Presiden Dalam Mengeluarkan PERPPU (President's Authority To Issue PERPPU)."

⁹ Sulistyowati Irianto, "Metode Penelitian Kualitatif Dalam Metodologi Penelitian Ilmu Hukum," *Jurnal Hukum Dan Pembangunan* 32, no. 2 (2002): 155–72, <https://doi.org/10.21143/jhp.vol32.no2.1339>.

¹⁰ David Tan, "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum," *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 8, no. 8 (2021): 2463–78, <http://dx.doi.org/10.31604/jips.v8i8.2021.2463-2478>.

Court decisions, Constitutional Court Regulations related to the hokum of the SKLN event, which is further analyzed by the principle, the doctrine of the law of pickle a constitution and carried out an analogy or qiyas method of interpretation intended to: (i) obtain a logical argumentative legal answer to a so-far unanswered issue relating to the possibility of the Constitutional Court having the authority to adjudicate its own diri in the SKLN case; (ii) Toanticipate the potential for disputes between the Constitutional Court vis a vis of the House of Representatives in the matter of the authority to test the Perppu;

C. RESULT AND DISCUSSION

1. Recapitulation of Cases in the Constitutional Court

From the establishment of the Constitutional Court in 2003 to 2002, the configuration of cases examined and tried by the Constitutional Court related to the authority and obligation to try (*jurisdictie compententie*) given by the 1945 Constitution turned out that not all types of cases had been or had been tried by the Constitutional Court. Cases that have never been tried by the Constitutional Court are cases of dissolution of political parties and cases of alleged DPR for violations committed by the President and or vice President according to the 1945 Constitution or commonly referred to as *impeachment*.

More details on the configuration and recapitulation of cases that have been examined and tried by the Constitutional Court during this period of almost 20 years, are as follows:

Recapitulation of the Verdict			
1	PUU	1549	46%
2	SKLN	29	1%
3	PHPU	676	20%
4	PHPKADA	1136	34%
	Total	3390	100%

(Source: Website MKRI 2002)

Based on the data above, the total cases entered into the Constitutional Court amounted to a total of 3390 (100%). The number of Cases of Law Testing (PUU) or *judicial review* dominated all cases in the Constitutional Court, namely 1549 (46%), followed by cases of Disputes over Regional Head Election Results amounting to 1136 (34%), and cases of Disputes over The Results of General Elections of legislative members (PHPU) namely 676 (20%) and cases of Disputes over the Authority of State Institutions (SKLN) were in the same order of 29 (1%). Meanwhile, with regard to the judgment of the Constitutional Court with regard to the incoming case, it was not entirely granted, but there was also an inadmissible case (*niet onvankelijk verklaard*) and was rejected.

Furthermore, the explanation further relates to the SKLN case which is the focus of this study, that of the 29 (1%) cases that went to the Constitutional Court, it turned out that only 1 case was decided to be granted by the Constitutional Court while the rest of the petitioner's application was decided inadmissible, rejected or the case was withdrawn by the petitioner. The applicant's application granted by the Constitutional Court is a dispute over the authority of state institutions between the General Election Commission (KPU) and the Papua Provincial Government. Where is the KPU as the Applicant and the Papuan Local Government as the Respondent. The decision is stated in Decision Number 3/SKLN-X/201. Regarding the small number of SKLN cases examined and tried by the Constitutional Court when compared to PUU and PHPU and PHPK cases, it is not only caused by the limited number of state institutions whose authority is regulated in the constitution but also related to the choice or alternative resolution of SKLN cases using a judicial review mechanism as well as the resolution of conflicts between the Supreme Court versus the Judicial Commission in constitutional terms. the absence of KY's involvement in the selection process of ad hoc Judges at the cassation level (MA). furthermore, the Constitutional Court through verdict Number 92/PU-XVIII/2020 stated that KY's authority in selecting ad hoc judges is constitutional.

2. *Legal Standing of the Constitutional Court in the SKLN Case*

That what is meant by a dispute over the authority of a state institution is a dispute or difference of opinion relating to the exercise of authority between two or more state institutions (Article 1 PMK NO. 8 / PMK / 2006 concerning Guidelines for Discourse in Disputes over the Constitutional Authority of State Institutions).

Furthermore, Article 2 of PMK NO. 8/PMK/2006 aquo outlines what types of state institutions have *legal standing* in cases of disputes over the constitutional authority of state institutions, namely: (a) the House of Representatives (DPR); (b) The Regional Representative Council (DPD); (c) the People's Consultative Assembly (MPR); (d) The President; (e) Financial Audit Agency (BPK); (f) Local Government (Pemda); or (g) Other state institutions whose authority is granted by the 1945 Constitution.

Based on the provisions of Article 2 letter g above, the Constitutional Court inevitably has legal standing in skln cases where the Constitutional Court is the holder of judicial power in addition to the Supreme Court, whose authority comes from the 1945 Constitution as found in Article 24 C. Therefore constitutionally the position of the Constitutional Court in the SKLN case can be as a party to the Petitioner or as a party to the Respondent.¹¹

3. *SKLN Litis Objectum Involving MK*

As mentioned in advance, the *objectum litis* that can attract the Constitutional Court as a party to the SKLN case is nothing but the authority to test the Perppu. This is because the

¹¹ Farhan Permaqi, "Politik Hukum Pembentukan Perppu Dalam Asas Hal Ikhwal Kegentingan Yang Memaksa (Kajian Yuridis Normatif Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2017 Tentang Perubahan Atas Uu Nomor 17 Tahun 2013 Tentang Organisasi Kemasyarakatan," *Jurnal Legislasi Indonesia* 14, no. 4 (2017): 407–20, <https://doi.org/10.54629/jli.v14i4.116>.

Constitutional Court has added its authority beyond the provisions of the constitution, namely the Constitutional Court has empirically tested legal products in the form of Perppu several times. Furthermore, the authority of the Constitutional Court to conduct a *judicial review* of the Perppu is further affirmed through the provisions of Article 1 paragraph (3) of PMK Number. 2 of 2021 meaning: The Test of the Law (PUU) is a constitutional case that is the authority of the Constitutional Court to be governed by The 1945 Constitution jo. The Constitutional Court Law includes the testing of Government Regulations in Lieu of Laws (Perppu) as referred to in the Constitutional Court Decision.

That based on the reading of Article 1 paragraph (3) of PMK Number 2 of 2021 *aquo* where the Constitutional Court declares the Perppu includes the testing of the Law,¹² then the *litical objectum* that has the opportunity to attract the Constitutional Court as a party in the SKLN case is a matter of authority Perppu testing, considering that the authority to test Perppu constitutionally is the authority of the legislative institution (DPR) as stipulated in Article 22 of the 1945 Constitution.

4. Legitimacy of the Constitutional Court Adjudicating Its Own Case

Basically, a rule is never complete or perfect, even often one step behind the acceleration of social dynamics. Realizing and anticipating reality is the basic rule of a rule always includes the principle of exception (*exception*), or commonly known as the phrase *there is no law without exception* or *nulla regula sine exceptione* Meaning lawmakers in consciously anticipate the possibility of a situation that is incompatible with the content and intent of a regulation that is made, not due to intentionality, but the abnormal situation occurs beyond the ability of the subject of law. This is *an excuse* or justification for the disregard of a statutory order.

The doctrine or principle of exclusion (*nulla regula sine exceptione*) was also recognized and used by the Constitutional Court in the regulation of skln guidelines. This is clearly seen from the editorial of Article 19 of PMK Number 8 / PMK / 2006 concerning Guidelines for Making Matters in Constitutional Disputes of State Institutions, especially with regard to the provisions regarding the withdrawal of applications for SKLN cases after the commencement of the examination of the case or cases is ongoing and has not led to a verdict. The withdrawal or revocation of the case resulted in the case not being able to be re-filed by the petitioner in the same SKLN case in the Constitutional Court. However, the provision on the non-re-filing of the case does not apply or is excluded if : (a) the substance of the dispute requires a constitutional settlement; (b) there is no other forum for resolving the dispute; and (c) the existence of a public interest that requires legal certainty.

From the content of article 19 of PMK Number 8 / PMK / 2006 *aquo*, it is actually the use of the *nulla regula sine exceptione* doctrine in the SKLN case. So this pattern can actually be an *entry point* for the possibility of the Constitutional Court adjudicating its own cases, because no other state institution is given the authority to settle cases constitutionally. The problem remains to be found out what method of interpretation is considered valid and relevant for the application of the *nulla regula sine exceptione* doctrine.

¹² Andi Yuliani, "Penetapan Kegentingan Yang Memaksa Dari Peraturan Pemerintah Pengganti Undang-Undang (PERPPU)," *Jurnal Legislasi Indonesia* 18, no. 3 (2021): 337–50, <https://doi.org/10.54629/jli.v18i3.778>.

The method of analogy or qiyas is considered the most appropriate to be used as a method of justification or endorsement (legitimacy) to the Constitutional Court to adjudicate cases involving itself in an institutional sense, namely by expanding or applying the provisions of Article 19 of PMK Number 8 / PMK / 2006 which excludes the re-examination of cases that have been withdrawn / revocation of cases by the applicant because is considered *ne bis in idem on the* grounds that (a) the substance of the dispute requires a constitutional settlement; (b) there is no other forum for resolving the dispute; and (c) the existence of a public interest that requires legal certainty. These three reasons are very appropriate to be used as the basis for the argument that the Constitutional Court can try its own case *in casu* the SKLN case whose party is dpr versus MK with regard to the question of who which is more constitutional in the testing of the Perppu.

To be more convincing how there is no obstacle for an individual or an institution to adjudicate its own case on the condition that the primacy of justice is ethically corrected in the Quran Surah An Nisaa verse 135 and also the Hadith of prophet Muhammad SAW which reminds how many previous people perished because of unjustly enforcing the law.

Similarly, if it is related to the status and role of the Constitutional Court Judges required by the constitution, namely that to serve as a Judge the Constitutional Court must have a statesman and fair nature, then it seems that there is no longer any reasonable concerns when the Constitutional Court becomes the judge of SKLN cases involving the legal interests of the Constitutional Court itself. This is in accordance with the provisions of Article 24C paragraph (5) of the 1945 Constitution which reads: constitutional judges must have integrity and impeccable personality, be fair, and statesmen who control the constitution and constitution and do not concurrently serve as state officials.

5. The Urgency of Affirming the Position of the Constitutional Court in the SKLN Case

That the juridical consequences of adding or expanding the authority of the Constitutional Court beyond the authority granted by the constitution, namely in the form of perppu testing through PMK No.2 of 2021 concerning PUU Guidelines inevitably have the potential to cause legal conflicts or a dispute over authority between the Constitutional Court and the DPR. This is logical because there are two different state institutions but have the exact same authority.

Furthermore, to anticipate the possibility of a dispute over authority between the Constitutional Court versus the DPR, the amendment or revision of PMK Number 8 / PMK / 2006 concerning Guidelines for Authority in Constitutional Disputes of State Institutions becomes urgent because : *First*, the provisions of the Aquo PMK have not expressly and completely regulated the matter of the ability of the Constitutional Court to become an Applicant or Respondent in the SKLN case; *Second*, the need for legal certainty regarding the constitutionality of the Constitutional Court as an institution that examines and adjudicates SKLN cases involving the Constitutional Court as a party; *The third* is related to Article 2 paragraph (2) of PMK Number 8 / PMK / 2006 which states: "The disputed authority as referred to in paragraph (1) is the authority granted or determined by the 1945 Constitution". This provision can be a hindrance, especially for the Constitutional Court when it wants to act as an Applicant in relation to the testing authority of the Perppu. Or by multiplying

differently these provisions *argumentum in contrario* actually weakens the Constitutional Court in terms of the authority to test perppu because the 1945 Constitution does not give this authority to the Constitutional Court but rather became the domain of the House. So that the above provisions become undoubtedly to be revised or expanded its *litic objecttum*, namely the disputed authority not only granted or regulated by the 1945 Constitution but also the authority born by the decision of the Constitutional Court. Revisions in the form of expanding the authority in these provisions become relevant, while the Constitutional Court remains in contention to increase its authority to test perppu and also to strengthen the legitimacy of the Constitutional Court.

D. CONCLUSIONS

Based on the description above, it can be concluded that the implications or juridical consequences of adding the authority of the Constitutional Court other than those given and regulated by the 1945 Constitution, namely the Constitutional Court is authorized to examine Perppu as a litical object through PMK No.2 of 2021 concerning Guidelines According to the PUU, it inevitably has the potential to cause legal conflicts or disputes over authority with other state institutions, in this case the DPR. Because Article 22 of the 1945 Constitution allocates the authority to test perppu to the DPR through political mechanisms in the legislature or commonly known as *legislative review*. The potential conflict between the DPR versus the Constitutional Court in the SKLN case so far there is no valid provision regarding which judicial institution will examine and adjudicate cases that are one of the his party is precisely the institution whose authority is to try the SKLN case.

Through the use of legal principles or doctrines *there is no law without exception* or *nulla regula sine exceptione* as well as interpretation through the method of analogy of hokum or qiyas method against the provisions of Article 19 pmk No. 8/PMK/2006 concerning Guidelines for Beracara in Constitutional Disputes of State Institutions, then constitutionally the Constitutional Court can adjudicate itself in SKLN cases as long as the case meets the requirements: (1) the substance of the dispute requires settlement in a constitutional; (2) there is no other forum for resolving the dispute; and (3) the existence of a public interest that requires legal certainty.

The suggestions or solutions offered to anticipate the possibility of an authority dispute involving the DPR versus the Constitutional Court include the need for the Constitutional Court to revise PMK No. 8 / PMK / 2006 concerning at least three things namely: *First* the need to expressly regulate the possibility of the Constitutional Court becoming an Applicant or Respondent in a SKLN case; *Second*, affirmation of the position of the Constitutional Court as an institution that examines and adjudicates SKLN cases involving the Constitutional Court as a party; *The three* expansions of the litic objecttum in the SKLN case not only question the authority granted or determined by the 1945 Constitution but also the authority born from the Constitutional Court Decision.

REFERENCES

Al-Fatih, Sholahuddin. "Model Pengujian Peraturan Perundang-Undangan Satu Atap Melalui Mahkamah Konstitusi." *Legality: Jurnal Ilmiah Hukum* 25, no. 2 (2017): 247–60.

<https://ejournal.umm.ac.id/index.php/legality/article/view/6005>.

- Harahap, Zairin. "Menyoal Kewenangan Mahkamah Konstitusi Menguji PERPPU." *Jurnal Yudisial* 7, no. 3 (2014): 311–28. <http://dx.doi.org/10.29123/jy.v7i3.78>.
- Huda, Ni'matul. "Pengujian Perppu Oleh Mahkamah Konstitusi." *Jurnal Konstitusi* 7, no. 5 (2010): 1–19. <https://doi.org/10.31078/jk754>.
- Irianto, Sulistyowati. "Metode Penelitian Kualitatif Dalam Metodologi Penelitian Ilmu Hukum." *Jurnal Hukum Dan Pembangunan* 32, no. 2 (2002): 155–72. <https://doi.org/10.21143/jhp.vol32.no2.1339>.
- Maladi, Yanis. "Benturan Asas Nemo Judex Idoneus In Propria Causa Dan Asas Ius Curia Novit." *Jurnal Konstitusi* 7, no. 2 (2010): 1–17. <https://doi.org/10.31078/jk721>.
- Permaqi, Farhan. "Politik Hukum Pembentukan Perppu Dalam Asas Hal Ikhwal Kegentingan Yang Memaksa (Kajian Yuridis Normatif Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2017 Tentang Perubahan Atas Uu Nomor 17 Tahun 2013 Tentang Organisasi Kemasyarakatan)." *Jurnal Legislasi Indonesia* 14, no. 4 (2017): 407–20. <https://doi.org/10.54629/jli.v14i4.116>.
- Purnamasari, Galuh Candra. "Kewenangan Mahkamah Konstitusi Dalam Melakukan Judicial Review Terhadap Undang-Undang Ratifikasi Perjanjian Internasional." *Refleksi Hukum Jurnal Ilmu Hukum* 2, no. 1 (2017): 1–16. <https://doi.org/10.24246/jrh.2017.v2.i1.p1-16>.
- Sumadi, Ahmad Fadlil. "Hukum Acara Mahkamah Konstitusi Dalam Teori Dan Praktik." *Jurnal Konstitusi* 8, no. 6 (2011): 1–31. <https://doi.org/10.31078/jk861>.
- Tan, David. "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum." *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 8, no. 8 (2021): 2463–78. <http://dx.doi.org/10.31604/jips.v8i8.2021.2463-2478>.
- Triningsih, Anna, and Nuzul Qur'aini Mardiya. "Interpretasi Lembaga Negara Dan Sengketa Lembaga Negara Dalam Penyelesaian Sengketa Kewenangan Lembaga Negara." *Jurnal Konstitusi* 14, no. 4 (2017): 1–21. <https://doi.org/10.31078/jk1444>.
- Yuliani, Andi. "Penetapan Kegentingan Yang Memaksa Dari Peraturan Pemerintah Pengganti Undang-Undang (PERPPU)." *Jurnal Legislasi Indonesia* 18, no. 3 (2021): 337–50. <https://doi.org/10.54629/jli.v18i3.778>.
- Zamroni, Mohammad. "Kekuasaan Presiden Dalam Mengeluarkan PERPPU (President's Authority To Issue PERPPU)." *Journal Legislasi Indonesia* 12, no. 3 (2015): 1–38. <https://doi.org/10.54629/jli.v12i3.410>.