

THE COMPARISON BETWEEN INDONESIAN CONSTITUTIONAL COURT AND RUSSIAN CONSTITUTIONAL COURT

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Abstract

After the third change of the basic Constitution 1945 being ratified, in the meantime of waiting the new formed Constitutional Court, People Deliberation Council (MPR) calls for the Supreme Court to do a functional interim as it has been stated in Verse III of Constitution 1945 transition as a result of the fourth change. The House of Representatives (DPR) and the government then form law on Constitutional Court. Hans Kelsen states that the implementation of constitutional regulation about legislation can be effectively guaranteed only if there is an organ other than legislative agency given a task to check out whether a law product is constitutional or not. For that purpose, there has to be a particular organ similar to a special court which is called constitutional court, or control towards the constitutionality of law judicial review given to ordinary court, especially Supreme Court like in the united States. This controlling Special organ is able to scrap the unconstitutional law all in all so that it cannot be applied y other organs.

This authority is run by the institution of justice authority implementer which stands apart from the Supreme Court, or being a part of Constitutional Court. However, if standing on its own, Constitutional Court will be a new phenomenon in the world of constitution. Almost all developed democratic countries, do not have Constitutional Courts which stand alone. Up to now, there have been 78 countries which form their court by their own.

Keywords: Comparison Between Constitutional Court

1. BACKGROUND

The initial history of Judicial Review started in the United States' Supreme Court under the sovereignty of John Marshall in the case of Marbury Vs Madison in 1803. Although the Constitution at that time did not mangle the giving of jurisdiction to the Supreme Court for administering judicial review, but by interpreting the profession oath which called for enforcement of the constitution, John Marshall considered the Supreme Court in charge of stating whether a law is against constitution.

Theoretically, the presence of the new Constitutional Court had not been introduced until 1919 by Austrian law expert, Hans Kelsen (1881-1973). Hans Kelsen stated that the constitutional implementation about legislation can be effectively guaranteed only if a particular organ other than legislative agency is given a task to check out whether a law product is constitutional or not, and not impose it if it is unconstitutional. For that purpose, there must be a particular organ which was called Constitutional Court. Along with the change of 1945 Constitution in the era of reformation (1999-2004), the idea of calling for a Constitutional Court in Indonesia became stronger. It had not reached its peak until 2001 when the idea was adopted in the change of 1945 Constitution made by People Deliberation Council (MPR), as it had been formulated in article 24 verse (2) and article 24C 1945 Constitution in the third change which next would follow up the order of the constitution, government with the House of Representatives would discuss the legislation on Constitutional Court. After a long discussion, eventually the legislation was approved and ratified in the House of Representatives plenary session in August 13th, 2003. Right in that day, this law of Constitutional Court was signed by the President Megawati Soekarnoputri and printed in the country's sheet, and then numbered as law 24 2003 about Constitutional Court (Country's Sheet year 2003 number 98, additional of Country's Sheet number 4316). Seen from time consideration, Indonesia is the 78th country which form Constitutional Court and also as the first in 21st century. so August 13th, 2003 is commemorated as Indonesian Constitutional Court day.

THE HISTORY OF RUSSIAN CONSTITUTIONAL COURT

Constitutional court in Uni Soviet is the peak of country's justice system, which is later maintained by Russia. Like other justice institution, constitutional court is responsible for protecting and interpreting constitution. This matter is done by overcoming conflict over political jurisdiction (including conflict among federal authority) and making sure legislative and executive branches are obedient to the constitution. Russian Constitutional Court has 19 members which are nominated for 12 years job by president and ratified by Federation Council. Its task is limited, especially, because its members are not protected by strong constitution so that its members can not choose the right position the country's justice system of new Russia. Beside Constitutional Courts, Russia also has Supreme Court. In Russia it stands for the highest court which administers civil, pidana, and administration court also has jurisdiction for watching its sub-division activities. Meanwhile, Supreme Arbitrary Court is responsible for economic, business, and this constitution features single and centered- charge.

Based on the description above, the problems of this research will be as follows:

- a. How is the position of the Indonesia Constitutional Court and Russian Constitutional Court in their respective constitutions?
- b. How is the comparison between Indonesian and Russian Constitutional Court?

2. THE METHODOLOGY OF RESEARCH

The method which will be used in this research is by juridical normative and empiric which will use secondary and primary data through collection and field study, and qualitative data analysis. The procedure of collecting data and data analysis, after the data being collected then will be analyzed by sing juridical analysis which is done by arranging and giving description towards the systematically collected data for the purpose of giving general outline in answering the problems based on the result of the research.

3. FRAME OF THEORY

Constitution is a French derivation *Constituer* and *Constitution*, the first means forming, establishing, or arranging, and the second means arrangement or society. Therefore, constitution means: The inception of every rule related to a country. Generally, the initial step for studying the constitutional law of a country is starting from the constitution of concerned country. Studying a constitution means studying the law of constitution of a country, so it is named constitutional law. In England, this term signifies the same meaning as a country's constitution. The use of the term is on account of the fact that in constitutional law the constitutional sense is more conspicuous.

4. DISCUSSION

4.1 THE PLACE OF INSTITUTION

Indonesian Constitutional Court (MK) is a new high institution which is on an equal footing with the Supreme Court (MA). According to Indonesian Constitution 1945 after the fourth change (in 2002), there are at least 9 sub-organs to whom the jurisdiction is directly given upon by the Constitution. Those sub-organs are (i) The House of Representatives DPR) (ii) The Regional House of Representatives (DPD) (iii) The People Deliberation Council (MPR) (iv) Financial Review Institution (BPK) (v) President (vi) Vice-President (vii) The Supreme Court (viii) Constitutional Court (ix) Judicial Commission. Other than those nine institutions, there are some other institutions which their jurisdiction is to be ruled by in Basic Constitution, they are (a) Indonesia National Army (TNI), (b) Indonesian Police Department, (c) Political Parties, (d) Regional Government. Besides, there are also other institutions that their functions are not mentioned, but to be ruled by Basic Constitution, they are: (i) Indonesian Bank (BI), (ii) General Election Committee which its name is not mentioned. Either Indonesian Bank or General Election Committee are independent institutions which get the jurisdiction from Constitution.

Therefore, we can firmly differentiate among national organ jurisdiction based on constitutionally entrusted power, and legislative entrusted power, even there are some organs which take their jurisdiction directly from the president. For instance, National Ombudsman Commission, National Law Commission, etc. While organizations which their jurisdiction are given by Constitution such as National Commission of Human Right, Indonesian Broadcast Commission, and PPAATK.

From the above explanation, Constitutional Court can be said as having high position and as equal as, if no more than, the Supreme Court. Both Constitutional Court and Supreme Court are independent judiciary which is separated from executive and legislature. Both courts are located in the capital of

Indonesia, Jakarta. Only their respective structures are different to each other. Constitutional Court as the first and the last law institution does not have as big organizational structure as the Supreme Court which is the peak of law system which its structure is vertically and horizontally stratified covering five law domains, general law domain, national administration domain, religious law domain, and military law domain.

Although not exactly the same, the Supreme Court can be analogized as the peak of law which is related to the demand of enforcement of law for either individual or other subjects, while the Constitutional Court has nothing to do with personal engagement, but it has with public concern which is far wider. Things brought up to the board are mainly about national institution's matters or political institutions which has things to do with public concern or related to the review of law norms which is general and abstractive, not personal business or injustice cases which is individual and concrete. The one which is related to personal business is only impeachment towards president or the vice president. Therefore, as I usually mention in order to easily differentiate, the Supreme Court is actually Court of Justice, while the Constitutional Court is a Court of Law. The first tries the injustice for enforcement of the justice while the second tries the system of law and the system of the justice itself.

As an organization of justice which concerns on justice, the Constitutional Court is independent, either structural or functional. To courage such independency, the Constitutional Court has its own plan which is apart from other institutions'. Only some administrative things are still bound to the ongoing law of constitution. Based on the suggestion from the chief of Constitutional Court, the General secretary and Court Clerk are still either appointed or dismissed by the President. Even the Constitution judge officially appointed and terminated by the president decreed

In its relation with other national institutions, it can be analogized as follows:

Three incumbent institutions

Nine Constitution judge positions are fulfilled by candidates chosen by 3 institutions, they are 3 by the House of Representatives (DPR), 3 by the President, 3 by the Supreme Court (MA). If there is any vacant position, the institution which will fill the position is the one which the former judge comes from. Supposed judge "A" vacates the position because of passing away or being terminated, so if the former promotion came from the government then the right of fulfilling the position will be bestowed upon the President. This process should work for other two institutions. In other words, in the Constitution judge recruitment, Constitutional Court tightly cooperate with those three national institutions, the President, the House of Representatives (DPR), and the Supreme Court (MA).

4.2 RELATIONSHIP WITH THE SUPREME COURT

Other than the above description, the relationship between the Constitutional Court and the Supreme Court is also something to be discussed in the judicial review. Any case being registered must be reported to the Supreme Court, so that the review of constitution related to the Supreme Court stuff can be temporarily stopped until the case being discussed reaches its conclusion. This is designed so that there is no contrary between the constitution of the Constitutional Court and the constitution of the Supreme Court.

Pertaining to the possibility of clash among national institutions, provisionally, based on law 65 constitution number 24 year 2003 about the Constitutional Court, the Supreme Court is excluded from being involved in Constitutional Court, especially in the one which is related to jurisdiction clash among institutions. Is this exception efficient? Actually this is not efficient, because there is no strong reason for excluding the Supreme Court from being 'potential party' in the case of jurisdiction. One reason why this exception comes into presence is that as an equal institution with the Constitutional Court, it is not appropriate for the Supreme Court to be having any case in the Constitutional Court. Any decision of the Supreme Court is as absolute as that of the Constitutional Court, it is feared that the Supreme Court's decision becomes no longer absolute if it is in contrast with the Constitutional Court, so the jurisdiction to take one side call is in Constitutional Court's hand. Therefore, a shortcut is taken by excluding the Supreme Court from being engaged in clash with Constitutional Court.

Practically, it is possible that the Supreme Court engages with other institutions about the jurisdiction conflict which is by nature a final decision. For instance, when the vacant vice-principle position of the Supreme Court is to be fulfilled, there was once a controversial, which institution has the authority to appoint such vice-principle. Based on the Basic Constitution's rule, the leader of the Supreme Court and its vice are chosen from and by the members of the Supreme Court. However, based on the regulation of the previous constitution about the Supreme Court which still stood at that time, the mechanism of choosing the vice-leader of the Supreme Court was still done by The House of Representatives (DPR). If

the controversial sustains and evokes conflict between the government and The House of Representatives as to the jurisdiction owned by DPR or MA, automatically, the Supreme Court must act accordingly as one side who has conflict in the Constitutional Court.

Regardless the above topic of discussion, at least Constitution Regulation number 24, 2003 about the exclusions by the Constitutional Court toward the Supreme Court is temporarily acceptable when the Constitutional Court itself is still in its very inception. If later it will have developed as such, it is possible at any time soon the law of Constitutional Court about this thing can be developed accordingly. Therefore, the relationship between the Constitutional Court and the Supreme Court related to the status of MA as one of the institutions holding the Constitution's judge and status of MA as the judicial reviewer under the constitution.

4.3 THE RELATIONSHIP WITH THE HOUSE OF REPRESENTATIVES (DPR)

DPR is the former of the constitution. That is why in checking the prospective constitution review, the Constitutional Court should carefully pay attention to and solemnly consider either oral or written detail from DPR. Besides, as explained above, DPR is also one of the institutions which has jurisdiction to fulfill three position of constitution's judge by proposing three chosen individuals to the President who later will issue presidential decree for appointing them accordingly.

DPR can possibly be involved in any conflict among national institutions. For instance, DPR might be in contrary against DPD in using its jurisdiction according to constitution. So that DPR might also be in clash with the President, BPK, or with MPR in doing its jurisdictions given by basic constitution to those institutions. Besides, DPR also has a role in deciding national budget, including in it is the budget of Constitutional Court (MK).

In other words, the relationship between DPR and MK might be in the matter of DPR as one of institutions that fulfill the position of constitution's judge, DPR as the former of the constitution, DPR as national institution which has possibility to be in clash with other institutions in doing its jurisdictions given by the constitution. Besides, the conflict in the result of the general election, and the DPR's statement that the President or the vice president has trespassed the regulation and is no longer deserved to be in his position based on the basic constitution 1945, and MK's decision. Here DPR is in the position of requesting the MK.

4.4 RELATIONSHIP WITH THE PRESIDENT/GOVERNMENT

As an administer of the higher national administration, and on account of that all the promotion of the officers, including constitution judges is done based on the President's decree, the President has three out of nine slots of positions of constitution judge. Besides, any regulation related to the organization and the way of working of MK must be eventually be referred to the President's decision. That is why, even though MK is an independent and free institution which cannot be interfered by other institutions including the government, but its general secretary and the judge helper (panitera) of MK are still parts of national administration system which ends in the President. One thing for sure, in doing his task, the general secretary and Panitera have responsibility to report to the leader of Constitutional Court, not the President. That is why the leader of MK besides acting as the leader of the court also as the responsibility holder of national administration in the area of Constitutional Court.

Besides, the president also acts as the co-legislator. Even though the responsibility of forming the constitution mainly belongs to DPR, because of his big role in the process of discussion with DPR regarding the constitution, the President also can stands as the co-legislator though a bit inferior to DPR. The inferiority is indicated by the fact that any legislation approved by the DPR, within 30 days since, though it is still not approved by the president, it is automatically considered a legal constitution based on the basic constitution 1945 law 20 verse (5).

As a co-legislator, any judicial review by MK cannot ignore the importance of either oral or written notification from the government. Moreover, other than only being a co-legislator, the government/the President is also one of executive constitutions. That is why, the government is the one who knows more about either the background, the use, or the lost happens because of whether or not the constitution related is present. That is why, in every judicial review, notification from the government like the one from DPR is really needed by MK, except in the cases that MK can handle them alone.

In the case of terminating a political party, government will be the one who propose the proposal. While in the conflict of general election votes, the government is not at all involved as the President, Governors, regents, and majors are elements of government which have concern in it, so they cannot interfere in the conflict of general election votes. In the formulation of the detail and realization of the national budget (APBN), even though the number has been approved accordingly by APBN, but still in

practice government's help is still needed in this case the Department of Finance (Depkeu). However, that cannot influence the separate relation between the government and the Constitutional Court, and cannot influence and disturb MK in doing its task in law.

4.5 THE RELATIONSHIP WITH JUDICIAL COMMISSION

Law 24B verse I the Basic Constitution 1945 states: "Judicial Commission is an independent commission which has jurisdiction about the appointment of the Supreme Judge and has other jurisdiction in a bid for keeping and enforcing the dignity, nobility, and the attitude of the judge". In verse 4 of the same law : "the structure, position, and the membership of judicial are ruled by constitution". When read etymologically, the subject to be put under surveillance of Judicial Commission is all the judges based on basic constitution 1945. It means that all judges who are under both the Constitutional Court and the Supreme Court are included in the understanding of judge in law 24B verse 1. Nevertheless, if briefly seen from the formulation of law 24B verse 1, the purpose which is mentioned in law 24B about judicial commission does not go for the condition of law 24C which puts everything about Constitutional Court in order. Initially, the function of the rule only goes for the Supreme Court which is mentioned in law 24A. Judicial Commission has jurisdiction to propose the appointment of the Supreme Court, and because that is a law subject which is under the supervision of Judicial Commission too are those supreme judges of the Supreme Court.

Therefore, as etymologically, law 24B verse 1 basic constitution 1945 only mentions words of "...also the attitude of the judge", not "...also the attitude of the supreme judge" so the function interpretation of the Judicial Commission based on this verse willy-nilly is not restricted only to the supreme judge, on the other hand to whole judges. However, those whole judges are only restricted to those who are under MA's supervision, and does not cover the meaning of constitutional judge. Either historically (historical interpretation) or systematic (systematic interpretation) that is by seeing the systematic order law by law, constitutional judges are indeed not included to those who are under supervision of Judicial Commission. However, based on etymological interpretation, constitutional judges too can be considered as judges who are under supervision based on the rule of law 24B (1). That is why, the constitution number 22 year 2004 about judicial commission adopt the last notion, that is interpreting the word "judge" in law 24B (1) basic constitution 1945 widely so it covers all the judges in MA and all judges in MK. This condition can be seen in chapter III about the jurisdiction and the task of Judicial Commission, that is in the condition of law until law 25 constitution number 22 year 2004. Therefore, Judicial Commission functions as supervisor of the constitution, which is through its jurisdiction in order to keep and enforce the dignity, the nobility, also the attitude of the constitution judges accordingly.

4.6 THE STRUCTURE OF THE ORGANIZATION

The organization of the Constitutional Court of the Republic of Indonesia consists of three components, they are (i) all the judges (ii) General Secretary (iii) judge association. The organization is the constitutional judges consists of 9 bachelors in law that are having qualification of national representation that masters the constitution and other requirements with 5 years of devotion and after that can only be reselected only for the next one period. All the judges are chosen from and by themselves, 1 leader and 1 vice-leader respectively for three years of being incumbent. For keeping the independency and the professionalism, those nine judges are chosen by three different institutions, 3 are chosen by DPR, 3 are chosen by MA, and the other 3 are chosen by the President. After being selected, those nine persons are called for constitutional judges with the President's decreed. This recruitment mechanism is meant to guarantee that those nine judges are free from any constraint neither to one of the three institutions the President, DPR, nor MA. In doing its duty, the Constitutional Court are hoped to be really independent and impartial.

Those nine judges are even can be seen as independent nine institutions reflecting nine pillars or nine source of truth and justice. In doing their duty, they are hoped to be able to reflect or represent outlooks of diverse society about the sense of justice. Supposed in there are nine different outlooks about justice in the society, so those nine constitutional judges are hoped to be able to reflect those nine outlooks. Constitutional justice and truth are actually in the process of discussion, or even in the quarrel for reaching the final decision that will be put on to board in the trial of the Constitutional Court. Therefore, the trial must be at least attended by those nine persons with the exception if there is one cannot attend, so the numbers of the judges should follow the trial must be at least seven judges. For that reason also, it can be concluded that MK only recognizes one judge board, unlike in MA.

The second organization is general secretariat of MK based on the law 24 year 2003 is separated from clerk organization. Law 7 of this constitution states: "for the purpose of doing its task, MK is helped by

one general secretariat and clerk organization”. The explanation of this law explains:”general secretariat does the administrative task, while the third organization that is clerk organization does justice administrative task”. The separation is meant to guarantee that justice administration under clerk organization not fused with non-justice administration which is the responsibility of general secretariat. Either general secretariat or clerk organization, respectively, is led by a high superior who is called for by the President’s decreed. Therefore, general secretariat and clerk are equally positioned as first echelons 1A. The clerk and the vice clerk are functional position not structural. However, the clerk is appointed by the President’s decreed so that is why it is equal with structural echelons 1A. for keeping the MK’s financial independency, the law 24/2003 also averts that MK has its own budget in APBN.

4.7 THE NATURE OF FORMING THE CONSTITUTIONAL COURT

The forming of MK is needed because our nation is doing a basic change in the Basic Constitution 1945. Within the first through the fourth change, our nation has adopted new principles in the system of constitution, among them are: the principle of the authority separation and “checks and balances” as substitute of former system of parliament. As the result, A. there must be a mechanism to stop the jurisdiction conflict that might happen among institutions which respectively has equal position, which their jurisdiction is called for in basic constitution, B. there must be law and justice contribution that can control the process and political decisions which mainly based their principle on “the rule of majority”. That is why, the function of judicial review about the constitution and the process of judicial review on the president termination and the vice-president is included in the function of MK. Besides, C. a mechanism is also needed to stop the conflict which emerges and cannot be solved by ordinary law process, like the conflict of general election vote and the termination of a particular political party. These cases are tightly related to right and freedom of people in the democratic system which is guaranteed by constitution. That is why those functions are also related to the MK’s jurisdiction.

Therefore, UUD 1945 decides that MK has four constitutional jurisdictions (constitutionally entrusted powers) and one constitutional obligation. Those four jurisdictions are: 1. Reviewing constitution on UUD, 2. Rule the jurisdiction conflict among institutions which their jurisdictions are given by UUD, 3. Rule the conflict of general election votes, and 4. Rule the dismiss of political party. While its obligation is to decide the DPR’s opinion that the President or its vice-president is alleged to be breaking the law or are no longer fit to be president or vice-president as mentioned in the Basic Constitution 1945.

4.8 CONSTITUTIONAL JURISDICTION CONFLICT AMONG NATIONAL INSTITUTIONS

Commonly, in interpreting jurisdiction conflict among these national institutions, people tend to approach it from their national institution point of view. This point of view I name it as subjective approach. From then, what is meant by Basic Constitution with “national institution” and any institution that can be included as national institution like mentioned in the basic Constitution? For answering those questions people at most cannot escape old paradigm when UUD 1945 had not been changed, that is the notion “national institution” is only regarded as national property which is doing legislative, executive, and judicative function which are usually known as high and the highest national institution.

Therefore, for broadening the outlooks, the second approach might be used, that is objective approach. Institutional is not the subject of the matter, but the object of jurisdiction, that is the jurisdiction given by basic constitution or that is called by constitutional jurisdiction. It means that as long as it is related to the jurisdictions given by basic constitution to the organs which are mentioned in the basic constitution, if the conflict happens in the practice done by institutions or among institutions mentioned by the basic constitution, so MK is considered to be the one who knows more about the purpose of constitution of giving those jurisdictions to one of institutions which is involved in the conflict.

With this outlook, it is easy for us to know what institutions are mentioned by the basic constitution and what jurisdictions are given to them by the basic constitution. Once there is any institution which is mentioned in UUD but its jurisdiction is not explicitly mentioned by UUD, but only by UU, it means that its jurisdiction is not given by UUD but by UU. For instance, in law 22E verse 5 about the general election commission which is written in small font, so its official naming and the detail of its jurisdiction are ruled and given by UU, not by UUD. The same thing happens to Bank Indonesia, which its name is not mentioned in law 23D, but only state: “the country has one central bank which its structure, position, jurisdiction, responsibility, and independency, are arranged by UU”. From this arrangement, it can be known that the naming and jurisdiction of the central bank are arranged by UU not by UUD.

On the contrary, Indonesian army and its Police Department either their name or their jurisdiction are mentioned in law 30 UUD 1945. If in practice there is conflict between them, MK will make the call for

their conflict. Even though TNI and POLRI have not been so far understood as national high institutions, but they become state organ which their jurisdiction is arranged by UUD.

4.9 THE CONFLICT ABOUT GENERAL ELECTION VOTES

Based on law 22E verse (2) UUD 1945, general election is aiming at select the president and the vice-President, members of DPR, DPD, and DPRD. There are three participants of the general election, they are (i) President and vice-President candidates (ii) political parties for DPR and DPRD, and (iii) individuals for DPD. The organizer of the general election is PANWASLU. If the conflict raises between the participants of the general election and its organizer, also if it cannot be solved by belligerents, then it can be solved through the process in MK.

The problem to be solved by MK is the result of the general election which has been announced by the committee before and this problem may affect to the position that is struggled upon. If it does not affect to the position, then the case will be considered unaccepted (*niet ontvankelijk verklaard*). If the margin being debated has significant influence, and there is enough strong evidence so the proposal will be accepted and the right result of the vote is issued by the constitution. The position being struggled will be given to the charging side. On the other hand, if the proposal is unreasonable and the evidence is not logic so the proposal will be rejected. These regulations are valid for electing members of parliament, house of representative, president election and its vice.

The dismissal of politic party

The independence of politic party or to get involved in a party is the reflection of the freedom to form a group. This is mentioned in law 28 E verse (3) Indonesian basic constitution 1945. That is why every individual is free to form a politic party and engage in any political activity. The dismissal of politic party is not influence by people outside the party. For keeping the freedom to form a group value, it has been decided that there will be a kind of procedural steps that should be followed when dismissing a politic party. Any evidence brought forward will be verified by the government and will be considered whether it is right or not. Thus, the principle of political freedom will not be disturbed by any individual who belongs to a particular politic party. This also can help in stopping the symptom where the winner in the election will ruin other politic party.

Responsibility procedure of President and vice President

The responsibility procedure of president and his vice is mentioned in basic constitution 1945 that the constitutional court must ponder of the DPR's opinion whether the president and his vice president have trespassed national regulation or betray the country. On this premise, it must be known that not the MK who will terminate the president and his vice president but M's only obligation is to rethink the DPR's opinion that the president and his vice president are guilty and then report it to MPR who has the real right to terminate them.

The decision whether the president and his vice president are guilty or not is already being absolute and cannot be altered. However, whether the case will be prolonged or not is still DPR's right. Also the right to terminate the president and his vice president is still MPR's right. This procedure has triggered many people to question and doubt that whether MPR will really terminate the president and his vice president based on the MK's law decision. On the other hand, MK's decision is absolute and must be appreciated.

The verification of basic constitution and the separation between MK and MA

The last authority or the fifth authority owned by the constitutional court is the authority to verify the constitutionality of a basic constitution. This authority to verify the constitution becomes the one which has the biggest part to be paid attention on in the world of science. There are actually two kinds of verifications based on the basic constitution 1945, the materiel and the formal verification. The first has many thing to do with the verification of chapters, laws, verses, sentences, or words which are mentioned in a constitution. The aim is to check whether all of those mentioned before are in line with the basic constitution 1945. The second is to make sure whether a constitution has gone through all the right procedures.

The emergence of judicial review started when case between Marbury VS Madison happened in 1803. Since then, the judicial review has been the most topic discussed by people. The founding father of Indonesia in BPUPKI also discussed this thing. It was Muhammad Yamin who suggested that the supreme justice/ supreme court must be given authority to verify the constitution. However his idea was rejected by Soepomo who stated that it was not in line with the principles of the basic constitution 1945.

The basic constitution embraced the idea of supremacy of MPR not *trias politica Montesquieu*, so it was impossible to insert constitution verification to the basic constitution 1945.

Up to now Indonesia basic constitution 1945 has undergone four times changes. Gradually the idea of MPR's supremacy has also changed. MPR no longer the only representative of people sovereignty in government since the president and the vice president are now directly chosen by people. We should also understand that beside MPR, DPR, and DPD, the president and the vice president have also become the representative of people sovereignty in terms of executive authority. After four time changes of the basic constitution 1945, there has been also a move of legislative authority from the president to DPR. So it must be understood that the basic constitution 1945 has embraced the idea of a clear authority split among legislative, executive, and jurisdiction by allegorizing the checks and balances correlation. That is why the idea of Soepomo in rejecting the verification of constitution is no longer valid so it is inevitable in the basic constitution 1945.

Like other countries which have changed their use of supreme sovereignty to the idea of democracy, the idea of constitution verification is included in their respective constitutional courts' domain not supreme courts'. This tendency has been shown by ex communist country. Of course there are various kinds of constitutional court in different countries. Like Venezuela where its constitutional verification is considered to be one of its supreme justice's task. The United States and other countries it has influenced embrace the same system of constitution verification. However, up to now there have been 78 countries which separate its constitutional court and its supreme court. The first country to implement such way is Austria in 1920, and the last country is Thailand in 1998 and next Indonesia to be the 78th country to implement it. Out of all facts, not all those 78 countries name their respective constitutional court by constitutional court. Some France-influenced countries call it Conseil Constitutionnel or Belgium which calls it Constitutional Arbitrage. French people call it in such way because it is actually not a court and people in it are not known as judges. Out of this diversity, in those 78 countries the constitutional court is different from the supreme court.

Why should both of these courts be separated? Because of actually both are different. The Supreme Court is likely to be somewhat more a court than the constitutional court. The second is more to be a court of law. It is right that both courts cannot be 100% distinguished. In the reality the basic constitution 1945 gives right to verify the constitution to the Supreme Court. In the other side the constitutional court is also given right to decide and prove the mistake and criminal responsibility of the president and the vice president which according to DPR has broken the law. In other words, the Supreme Court is still given right a court of law beside its role as court of justice. The constitutional court is also given right of court of justice beside its role as court of law.

According to law 24 verse (2) basic constitution 1945, both courts role as law authority enforcers. But, the constitutional court functions as the guardian of the constitution while the Supreme Court roles as the guardian of constitutional regulation.

4.10 COMPARED TO RUSSIAN CONSTITUTIONAL COURT

The constitutional court in Russia is a legacy of USSR. Russian constitutional court has 19 members which are supposed to be incumbent for 12 years period. The obligation of the constitutional court is limited due to the fact that its members are not backed up by any strong institution so that its members cannot claim certain position in new Russian constitutional institution. Beside the constitutional court Russia also has supreme court. The Supreme Court is the highest court which organizes court, crime, and administration and also has right to supervise any lower court. Meanwhile, the arbitration court handles economic, business, and this constitution is also equipped with single and central prosecution. The Supreme Court of Russian Federal is the highest court which solves any economical problem and other problems. The Supreme Court of Russian Federation, constitutional court, and the arbitration of the Supreme Court are chosen by federation house based on the president's request. The constitutional court of Russian federation has 19 judges. The constitutional court is the court with limited subject jurisdiction. The 1993 constitution uses the constitutional court to stop the clash between executive and legislative branch and between Moscow and regional and local government.

4.11 VALUE SYSTEM AND RUSSIAN POLITICAL CULTURE

Talking about political culture, it must have things to do with empirical belief, expressive symbols and values which emphasizes a situation where politics is being acted. If we see to the political culture, these things must be taken into account (value orientations, support for political institutions, interpersonal trust, post-materialist, secularization, ethnicity, religion, and tradition). Russian people are the same as other European countries' people, but they have different national culture from other countries. It can be said

that Russian people are more individual. It is indicated by their pride in promoting themselves to everyone (self-realization). There is also other culture like collectivism which was started from Orthodox Church. The changes happen in Russian politic do not alter the political culture there. The most important thing is their improvement in terms of economic and in their country. They think that whatever the politic is, as long as their goal for a better life can be reached, they will never care of the political situation. This is what is called by interpersonal trust. As Gabriel Almond said: there are there are three types of political cultures: Parokial, subject political culture, and participant political culture. In Russia, its governmet must be active in making its society be more active in politic. They know the changes in politic as the choose for the legislative and executive members, but they do not know anything about this as their only hope is to reach economic and prosperity development. They know the politic news but never feeling proud of it. They just do not like talking about politic.

5. CONCLUSION

There is one thing that Indonesia and Russia share in common that is in terms of constitutional court. Indonesia constitutional court has the right to review the constitution which is not on the right track and so has Russian.

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