

# *The Constitutional Court and Consolidation of Democracy in Indonesia*

## **Mahkamah Konstitusi dan Konsolidasi Demokrasi di Indonesia**

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Naskah diterima: 25/10/2017 revisi: 14/02/2018 disetujui: 20/02/2018

### ***Abstract***

The amendment of 1945 Constitution was stipulated and conducted gradually and became one of the agendas of the Meetings of the People's Consultative Assembly (Majelis Permusyawaratan Rakyat) from 1999 until 2002. It happened after the resignation of President Soeharto on May 21, 1998, that already in power for almost 32 years. In the reform era, Indonesia has taken comprehensive reform measures by bringing the sovereignty back to the hand of the people. To safeguard the supremacy of the 1945 Constitution, the Constitutional Court of Indonesia is formed as one of the judiciary authority organizing court proceedings to enforce the law and justice. This article analyzes the consolidation of democracy in Indonesia, the role of Constitutional Court of Indonesia based on its authority and describe how its decision has significant support for consolidation of democracy in Indonesia. The result of the research then shows that the Constitutional Court has made a positive influence in Indonesian consolidation of democracy. The Constitutional Court is also handy for upholding the constitutional norm, especially about state institutions and human rights. The Constitutional Court has taken an essential role in the consolidation of democracy in Indonesia through its decisions in judicial review of acts and resolving election disputes.

**Keywords:** Amendment of 1945, Consolidation of Democracy, Indonesian Constitutional Court.

## Abstrak

Perubahan UUD 1945 yang dilakukan secara bertahap dari 1999-2002 merupakan agenda utama pertemuan Majelis Permusyawaratan Rakyat. Perubahan konstitusi tersebut dilakukan pasca berhentinya Presiden Soeharto pada 21 Mei 1998 yang sudah berkuasa hampir 32 tahun. Pada era reformasi, Indonesia berupaya melakukan reformasi yang komprehensif untuk mengembalikan kekuasaan kembali kepada rakyat. Untuk menjaga supremasi konstitusi, dibentuklah Mahkamah Konstitusi Republik Indonesia sebagai bagian dari kekuasaan kehakiman yang menyelenggarakan peradilan ketatanegaraan dan menegakkan hukum dan keadilan. Tulisan ini menganalisis konsolidasi demokrasi di Indonesia, peran Mahkamah Konstitusi berdasarkan kewenangan konstitusionalnya, dan menjelaskan bagaimana putusan Mahkamah Konstitusi memberikan dukungan yang signifikan terhadap konsolidasi demokrasi di Indonesia. Hasil penelitian menunjukkan bahwa bahwa Mahkamah Konstitusi memang memberikan pengaruh positif terhadap konsolidasi demokrasi di Indonesia. Mahkamah Konstitusi berhasil menegakkan hukum berdasarkan konstitusi khususnya terhadap norma bagi lembaga negara dan hak asasi manusia. Mahkamah Konstitusi memberikan pengaruh penting dalam konsolidasi demokrasi melalui putusan-putusan pengujian undang-undang dan penyelesaian sengketa pemilihan umum.

**Kata kunci:** Perubahan UUD 1945, Konsolidasi Demokrasi, Mahkamah Konstitusi Republik Indonesia.

## INTRODUCTION

### A. Background

According to Jimly Asshiddiqie, the original text of the 1945 Constitution contains 71 points of provisions, then, after going through four amendments, between 1999 and 2002, the material of content of the 1945 Constitution covers 199 points of provisions.<sup>1</sup> The amendment was stipulated and conducted gradually and became one of the agendas of the Meetings of the People's Consultative Assembly (Majelis Permusyawaratan Rakyat) from 1999 until 2002.<sup>2</sup> It happened after the resignation of President Soeharto on May 21, 1998, that already in power for almost 32 years.<sup>3</sup>

<sup>1</sup> Jimly Asshiddiqie, "Struktur Ketatanegaraan Indonesia Setelah Perubahan Keempat UUD Tahun 1945", paper was presented in the Symposium convened by the National Law Fostering Agency (Badan Pembinaan Hukum Nasional), the Department of Justice and Human Rights, 2003, p. 1 on Jimly Asshiddiqie, "The Role of Constitutional Courts In The Promotion of Universal Peace and Civilization Dialogues Among Nations", paper was presented in the International Symposium on "the Role of Constitutional Courts on Universal Peace and Meeting of Civilizations", Ankara, April 25, 2007, p. 6-7.

<sup>2</sup> Jimly Asshiddiqie, *The Role of Constitutional Courts*, p. 5.

<sup>3</sup> Moh. Mahfud MD, in his speech of the World Conference on Constitutional Justice, Cape Town 2009, states, "In the era prior to the amendments to the 1945 Constitution made in 1999-2002, authoritarianism had always been the actual practice, despite the fact that Indonesia adheres

In the reform era, Indonesia has taken comprehensive reform measures by bringing the sovereignty back to the hand of the people. The peak of such efforts was the amendments to the 1945 Constitution which were made within four consecutive years, namely the First Amendment in 1999, the Second Amendment in 2000, the Third Amendment in 2001, and the Fourth Amendment in 2002. (MPR). The objectives of the Amendments were to complement the basic rules of living as a state, which caused the abuse of power in the past.<sup>4</sup>

There is a basic agreement for conducting the amendment using addenda gives rise to the consequence that the official text of the Constitution of 1945 consists of 5 (five) parts, namely:

- a. The Constitution of the State of the Republic of Indonesia of the Year 1945 (the original text);
- b. The First Amendment to the Constitution of the State of the Republic of Indonesia of the Year 1945;
- c. The Second Amendment to the Constitution of the State of the Republic of Indonesia of the Year 1945;
- d. The Third Amendment to the Constitution of the State of the Republic of Indonesia of the Year 1945;
- e. The Fourth Amendment to the Constitution of the State of the Republic of Indonesia of the Year 1945.<sup>5</sup>

The First Amendment that stipulated on October 19, 1999 was conducted in the General Meeting of the People's Consultative Assembly in 1999 which covers Article 5 paragraph (1), Article 7, Article 9, Article 13 paragraph (2), Article 14,

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to a democratic system in the formal provisions of the Constitution. During this era, many legislations were deemed to be contradictory to the Constitution, but there was only one way to have them amended, namely through legislative review. It was difficult to do considering that the legislative body was politically dominated by the President, either due to his position as a state body which is also involved in the law-making process together with the People's Legislative Assembly or his cooptation of all political parties. Such executive heavy configuration placed the President as the determiner of all national political agenda." Moh. Mahfud MD, "Speech" in *the World Conference on Constitutional Justice*, Cape Town, 2009, p. 2.

<sup>4</sup> Moh. Mahfud MD, "The Role of the Constitutional Court in the Development of Democracy in Indonesia", *paper is presented in the World Conference on Constitutional Justice*, Cape Town, January 23-24, 2009, p. 1.

<sup>5</sup> The Constitutional Court of Indonesia had publishes a compilation book containing the Constitution of 1945 in its standard official text namely by containing the composition of the text of the Constitution of 1945 prior to its amendment which is followed by the text containing the result of the amendment to the Constitution of 1945 in four stages as mentioned above. Nevertheless, besides containing the official text of the Constitution of 1945, this book also contains the Constitution of 1945 composed in one manuscript. The Chief of Constitutional Court in Foreword of the book said, "To be known, the making of the Constitution of 1945 in the said one text was initially an agreement of the Ad Hoc I Committee of the Workers Body of the People's Consultative Assembly during its session term 2001-2002. In the said agreement, the Constitution of 1945 in the said one manuscript is not an official text of the Constitution of 1945, but rather minutes of the session of the plenary meeting of the Annual Session of the People's Consultative Assembly of the year 2002. Therefore, with the intention for the society to understand easier the Constitution of 1945 systematically, holistically, and comprehensively, this book contains the Constitution of 1945 in One Manuscript containing the material content of the articles of the text of the Constitution of 1945 which have not been amended as well as the material content of the articles as amended by the four amendments." Arief Hidayat, "Foreword of Compilation UUD 1945 and Constitutional Court Law", The Office of the Registrar and the Secretariat General of the Constitutional Court of the Republic of Indonesia, Jakarta, 2015, p. v-vi.

Article 15, Article 17 paragraphs (2) and (3), Article 20, and Article 22 of the 1945 Constitution. Under the provisions of the amended articles, the objective of the First Amendment to the 1945 Constitution is to restrict the authority of the President and to strengthen the position of the House of People's Representatives as a legislative institution.<sup>6</sup>

The Second Amendment that stipulated on August 18, 2000 was conducted at the Annual Meeting of the People's Consultative Assembly in 2000, which covers Article 18, Article 18A, Article 18B, Article 19, Article 20 paragraph (5), Article 20A, Article 22A, Article 22B, Chapter IXA, Article 28A, Article 28B, Article 28C, Article 28C, Article 28D, Article 28E, Article 28F, Article 28G, Article 28H, Article 28I, Article 28J, Chapter XII, Article 30, Chapter XV, Article 36A, Article 36B, and Article 36C of the 1945 Constitution. This Second Amendment covers issues regarding state territory and regional governance, perfecting the first amendment in the matters about the strengthening of the position of the House of People's Representative, and detailed provisions regarding Human Rights.<sup>7</sup>

The Third Amendment that stipulated on November 9, 2001, was conducted at the Annual Meeting of the People's Consultative Assembly in 2001, which amended and or added the provisions of Article 1 paragraphs (2) and (3), Article 3 paragraphs (1), (3), and (4), Article 6 paragraphs (1) and (2), Article 6A paragraphs (1), (2), (3), and (5), Article 7A, Article 7B paragraphs (1), (2), (3), (4), (5), (6), and (7), Article 7C, Article 8 paragraphs (1) and (2), Article 11 paragraphs (2) and (3), Article 17 paragraphs (4), Chapter VIIA, Article 22C paragraphs (1), (2), (3), and (4), Article 22D paragraphs (1), (2), (3), and (4), Chapter VIIB, Article 22E paragraphs (1), (2), (3), (4), (5), and (6), Article 23 paragraphs (1), (2), and (3), Article 23A, Article 23C, Chapter VIIIA, Article 23E paragraphs (1), (2), and (3), Article 23F paragraphs (1), and (2), Article 23G paragraphs (1) and (2), Article 24 paragraphs (1) and (2), Article 24A paragraphs (1), (2), (3), (4), and (5), Article 24 B paragraphs (1), (2), (3), and (4), Article 24C paragraphs (1), (2), (3), (4), (5), and (6) of the 1945 Constitution. The material for the Third Amendment to the 1945 Constitution covers the provisions regarding the Principles for the foundation of state affairs, state institutions, relations among state institutions, and provisions regarding the General Election.<sup>8</sup>

<sup>6</sup> Jimly Asshiddiqie, *The Role ... Op.cit.*, p. 5.

<sup>7</sup> *Ibid.*, p. 5-6.

<sup>8</sup> *Ibid.*

The Fourth Amendment that stipulated on August 10, 2002 was conducted at the Annual Meeting of the People's Consultative Assembly in 2002. The Fourth Amendment covers Article 2 paragraph (1); Article 6A paragraph (4); Article 8 paragraph (3); Article 11 paragraph (1); Article 16, Article 23B; Article 23D; Article 24 paragraph (3); Chapter XIII, Article 31 paragraphs (1), (2), (3), (4), and (5); Article 32 paragraphs (1), (2), (3), and (4); Chapter IV, Article 33 paragraphs (4) and (5); Article 34 paragraphs (1), (2), (3), and (4); Article 37 paragraphs (1), (2), (3), (4), and (5); Articles I, II, and III of the Transitional Rules; Articles I and II of the Additional Rules of the 1945 Constitution. The provisions of the amendment in the Fourth Amendment are the provisions regarding state institutions and relations among state institutions, the elimination of the Supreme Consultative Board, provisions regarding education and culture, provisions regarding economics and social welfare, and transitional rules as well as additional rules.<sup>9</sup>

To safeguard the supremacy of the 1945 Constitution,<sup>10</sup> the Constitutional Court of Indonesia then formed as one of the judiciary authority organizing court proceedings in order to enforce the law and justice.<sup>11</sup> the Constitutional Court of Indonesia has four authorities and one obligation in accordance with those mandated by Article 24C (1) and (2) of the 1945 Constitution. Four authorities of the Constitutional Court of Indonesia are examining at the first and final level. The Court's decisions are final to judicial review the law against the Constitution; decide dispute over the authority of state institution whose authority is granted by the Constitution; decide the dissolution of political party; and decide dispute over the result of general election. Meanwhile, the obligation of the Constitutional Court of Indonesia is to provide decision based on the Constitution over the opinion of the House of People's Representative regarding the assumption of violation by the President and/or the Vice President.

According to Jimly Asshiddiqie, based on its authorities, the Constitutional Court of Indonesia is the guardian of the constitution about above mentioned four authorities and one obligation. It also brings a consequence to the Constitutional

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<sup>9</sup> *Ibid.*

<sup>10</sup> In the era prior to the amendments to the 1945 Constitution made in 1999-2002, authoritarianism had always been the actual practice, despite the fact that Indonesia adheres to a democratic system in the formal provisions of the Constitution. Moh. Mahfud MD., "Speech of The Chairperson of the Constitutional Court at The World Conference on Constitutional Court", *Speech in the World Conference on Constitutional Justice*, Cape Town, South Africa, 23-24 Januari 2009, p.2.

<sup>11</sup> Jimly Asshiddiqie states, "It is necessary to establish a new institution that can play the role as the guardian of the constitution, the balancing power in majoritarian democracy, protector of the citizens' constitutional rights, the final interpreter of the constitution, and as the balancing agent in the checks and balances mechanism among state institutions and among the branches of national power. For that purpose, Indonesia established the Constitutional Court in addition to the already existing Supreme Court." Jimly Asshiddiqie, "Creating a Constitutional Court in a New Democracy", paper presented in Australia, March 2009, p.2-3.

Court of Indonesia to function as the sole interpreter of the constitution. Constitution as the highest law stipulates the state governing based on the principle of democracy and one of the functions of the constitution is to protect human rights which are ensured in the constitution. Based on this idea, human rights become the constitutional right of the citizen. Consequently, the Constitutional Court of Indonesia also has functioned as the guardian of the democracy, the protector of the citizen's constitutional rights, and the protector of the human rights.<sup>12</sup>

As Moh. Mahfud MD states, all such authorities, and obligation of the Constitutional Court of Indonesia are closely related to the concept and implementation of democracy. This is in line with the basis of the establishment of Constitutional Court to guarantee the implementation of the constitution as well as to strengthen the system of constitutional democracy and the mechanism of checks and balances among the branches of state power.<sup>13</sup>

## **B. Research Questions**

As a very fundamental principle of the 1945 Constitution, checks and balances do not only serve as the primary norm but most importantly it also has functioned as the source of morality for the constitution, as well as for the practices of democracy in Indonesia.<sup>14</sup> The Constitutional Court of Indonesia can strengthen democracy based on its authority. Related to that, the question for this research is what is the role of the Court in the consolidation of democracy in Indonesia?

## **C. Research Method**

This article will analyze the consolidation of democracy in Indonesia, the role of Constitutional Court of Indonesia based on its authority and describe how its decision has significant support for consolidation of democracy in Indonesia. After that, I have picked and described some decisions that substantial and strengthened consolidation of democracy in Indonesia.

<sup>12</sup> Jimly Asshiddiqie, *Menuju Negara Hukum yang Demokratis*, Jakarta: Setjen dan Kepaniteraan MKRI, 2008, p. 39. Petra Stockman wrote, "The Court can become firmly rooted in the Indonesian political system and in Indonesia society and contribute its share to enhancing democracy, rule of law, and human rights protection." Petra Stockman, *The New Indonesian Constitutional Court, A Study Into Its Beginnings and First Years of Work* Jakarta: Hans Seidel Foundation, 2008, p. 105.

<sup>13</sup> Mahfud MD., Moh. "The Role of the Constitutional Court in the Development of Democracy in Indonesia", paper in the World Conference on Constitutional Justice, Cape Town, South Africa, 23-24 Januari 2009, p.6.

<sup>14</sup> Luthfi Widagdo Eddyono, "The First Ten Years of The Constitutional Court of Indonesia: The Establishment of The Principle of Equality And The Prohibition of Discrimination", *Constitutional Review*, Vol 1, No 2, 2015, p. 123.

## DISCUSSION

### 1. Consolidation of Democracy in Indonesia

Theoretically, according to Ikrar Nusa Bhakti, the transition from an authoritarian regime to democracy is understood to take place within various phases. There are at least four phases that Indonesian politics have supposedly undergone, namely: pre-transition, liberalization, democratic transition, and democratic consolidation. The final stage of democracy (maturation) is predicted to take place within a more extended period.<sup>15</sup>

In the opinion of Michael Hollaender, the consolidation of democracy should be a process that unfolds at various levels – the level of representation, the level of political institutions, and the level of integrating potential veto powers. This process should be supplemented by the formation of a democratic civil society whose concrete contribution towards democratizing a country is indispensable. “Further groups of particular importance in this process include the elites that hold governmental and political powers and functions, the business elites, and those leading elites of civil society that are friendly towards democracy.”<sup>16</sup>

Juan Linz more expressively explains what constitutes a consolidated democratic regime:

*“... when no significant national, social, economic, political, or institutional actors spend significant resources attempting to achieve their objectives by creating a nondemocratic regime or by seceding from the state. Additionally, a democratic regime is consolidated when a strong majority of public opinion, even in the midst of major economic problems and deep dissatisfaction with incumbents, holds the belief that democratic procedures and institutions are the most appropriate way to govern collective life, and when support for antisystem alternatives is quite small or is more or less isolated from pro-democratic forces. Constitutionally, a democratic regime is consolidated when governmental, and a-governmental forces alike become subject to, as well as habituated to, the resolution of conflict within the bounds of the specific laws, procedures, and institutions that are sanctioned by the new democratic process...”<sup>17</sup>*

<sup>15</sup> Ikrar Nusa Bhakti, “The Transition To Democracy In Indonesia: Some Outstanding Problems”, p. 200, [http://apcss.org/Publications/Edited%20Volumes/RegionalFinal%20chapters/Chapter12Bhakti.pdf], accessed 19/02/2018.

<sup>16</sup> Michael Hollaender, “Consolidating Indonesia’s Democracy by Educating Civil-society Leaders in Democratic Politics”, p.1, [http://www.kas.de/wf/doc/kas\_8899-544-2-30.pdf?060801125002], accessed 19/02/2018.

<sup>17</sup> R. William Liddle, *Crafting Indonesian Democracy* (Bandung: Mizan, 2001), p.28 on Ikrar Nusa Bhakti, “The Transition To Democracy In Indonesia: Some Outstanding Problems”, p. 203, [http://apcss.org/Publications/Edited%20Volumes/RegionalFinal%20chapters/Chapter12Bhakti.pdf], accessed 19/02/2018.

The amendment of 1945 Constitution was stipulated and conducted gradually and became one of the agendas of the Meetings of the People's Consultative Assembly (Majelis Permusyawaratan Rakyat) from 1999 until 2002. It happened after the resignation of President Soeharto on May 21, 1998, that already in power for almost 32 years. Suddenly, the hope of democratization blowing across Indonesia and brought from an authoritarian regime to the era of transition to constitutional democracy.

In the reform era, Indonesia has taken comprehensive reform measures by bringing the sovereignty back to the hand of the people. The peak of such efforts was the amendments to the 1945 Constitution which were made within four consecutive years, namely the First Amendment in 1999, the Second Amendment in 2000, the Third Amendment in 2001, and the Fourth Amendment in 2002. The objectives of the Amendments were to complement the core rules of living as a state, which caused the abuse of power in the past. These changes, according to Asshiddiqie, resulted in a blueprint of state administration system which is entirely different from the previous one. Two of the fundamental principles adopted and reinforced in the new formulation of the 1945 Constitution are: (i) the principle of constitutional democracy, and (ii) the principle of the democratic rule of law or "*demokratische rechtsstaat*."<sup>18</sup>

The objective of the First Amendment to the 1945 Constitution is to restrict the authority of the President and to strengthen the position of the House of People's Representatives as a legislative institution. The Second Amendment covers issues regarding state territory and regional governance, perfecting the first amendment in the matters about the strengthening of the position of the House of People's Representative, and detailed provisions regarding Human Rights. The Third Amendment to the 1945 Constitution covers the provisions relating to the Principles for the foundation of state affairs, public institutions, relations among public institutions, and rules regarding the General Election. The Fourth Amendment covers the provisions regarding state agencies and relationships among state institutions, the elimination of the Supreme Consultative Board, provisions regarding education and culture, provisions regarding economics and social welfare, and transitional rules as well as additional rules.<sup>19</sup>

<sup>18</sup> Jimly Asshiddiqie, "Creating a Constitutional Court in a New Democracy", paper presented in Australia, March 2009, p. 1.

<sup>19</sup> Tim Lindsay and Susi Dwi Harjanti wrote, "The amendments established totally new organs of state—including a powerful new Constitutional Court; the Dewan Perwakilan Daerah (DPD) or Regional Representatives Council, a form of senate to represent Indonesia's thirty provinces; and a judicial commission, to supervise judicial reform. The amendments also reformed existing institutions, laws, and mechanisms, including a dramatic expansion of human rights provisions to embrace most of the Universal Declaration of Human Rights; the introduction of a mechanism



To safeguard the supremacy of the 1945 Constitution, the Constitutional Court of Indonesia is formed as one of the judiciary authority organizing court proceedings to enforce the law and justice. The Constitutional Court of Indonesia is a high state institution which existence and authority are mandated by the 1945 Constitution and further stipulated in Law Number 24 of the Year 2003 regarding the Constitutional Court and Law Number 8 of the Year 2011 regarding the Amendment to the Law Number 24 of the Year 2003.

The Constitutional Court of Indonesia has four authorities and one obligation by those mandated by Article 24C paragraphs (1) and (2) of the 1945 Constitution. Four authorities of the Constitutional Court are examining at the first and final level. The Court's decisions are final to review the law against the Constitution; decide a dispute over the authority of state institution whose power is granted by the Constitution; decide the dissolution of a political party, and resolve a dispute over the result of the general election. Meanwhile, the Constitutional Court must provide decision-based on the Constitution over the opinion of the House of People's Representative regarding the assumption of violation by the President and the Vice President. The Constitutional Court of Indonesia has a function to strengthen democracy based on its authority, and it also influences the consolidation of democracy in Indonesia.

## 2. The Role of Constitutional Court of Indonesia

According to Decision 005/PUU-IV/2006, the presence of the Constitutional Court, as the state institution authorized by the 1945 Constitution to try and pass final decisions at the first and last level on state administration issues, is a logical consequence of the new state government system to be established by the 1945 Constitution following a series of amendments. Such new state government system is a system which basic ideas are intended to make Indonesia into a democratic constitutional state (*demokratische rechtsstaat*), namely a democratic state based on constitution (*constitutional democracy*), as reflected in the provisions of Article 1 paragraph (2) and paragraph (3) of the 1945 Constitution, which constitute the elaboration of the Preamble of the 1945 Constitution, especially the fourth paragraph. Therefore, the entire provisions of the 1945 Constitution,

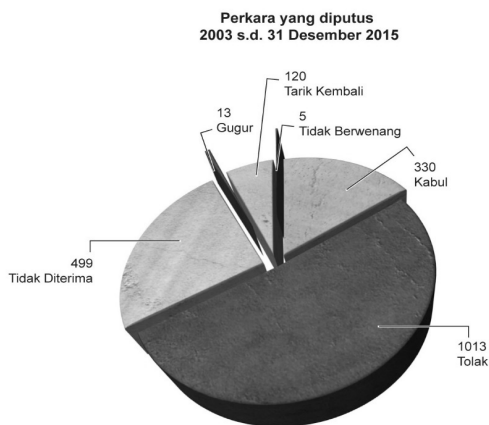
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for the direct election, for the first time, of the president and vice president; the abolition of appointed members of the Dewan Perwakilan Rakyat (DPR) or legislature and, thus, the end of the longstanding practice of reserving seats for the military; the redefinition and scaling down of the MPR's role; the abolition of the controversial Elucidation to the 1945 Constitution; and finally, the strengthening of the troubled post-Soeharto regional autonomy process through the grant of formal constitutional status for the transfer of power to regional authorities." Tim Lindsay and Susi Dwi Harijanti, "Indonesia: General Elections Test the Amended Constitution and The New Constitutional Court," *International Journal of Constitutional Law*, (Januari, 2006), p.1.

as an integrated system, constitute the further elaboration of the basic ideas and accordingly, they can be explained based on such fundamental concepts.<sup>20</sup>

Article 24C 1945 Constitution stated that the Constitutional Court has the authority to adjudicate at the first and final instance, the judgment of which is final, to review laws against the Constitution, to judge on authority disputes of state institutions whose authorities are granted by the Constitution, to judge on the dissolution of a political party, and to judge on discussions regarding the result of a general election. The Constitutional Court also shall render a judgment on the petition of the People's Representative Council regarding an alleged violation by the President and/or the Vice President according to the Constitution.

After its establishment in 2003, the Constitutional Court has played a very significant role in the development of democracy in Indonesia. Up to the end of 2015, the Court has registered 2.056 cases. From all the cases, 1.993 cases has decided with results: 330 cases granted (*dikabulkan*), 1.013 cases rejected (*ditolak*), 499 cases could not accept (*tidak diterima*), 13 cases dismissed (*tarik kembali*), 120 cases withdrawn (*gugur*), and 5 cases do not have authority (*tidak berwenang*) as shown in the chart below. While 63 cases had not been resolved and decided upon.<sup>21</sup> A decision of the Constitutional Court shall be final, namely that a judgment of the Constitutional Court shall obtain directly permanent legal force as of its pronouncement and there shall be no legal efforts that can be made.



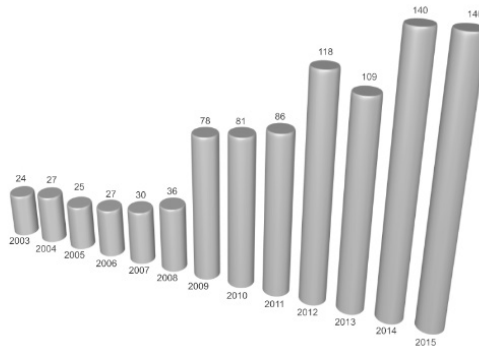
<sup>20</sup> Indonesian Constitutional Court Decision Number 005/PUU-IV/2006, August 23, 2006.

<sup>21</sup> Mahkamah Konstitusi Republik Indonesia, "Refleksi Kinerja Mahkamah Konstitusi 2015 dan Proyeksi 2016, *Dinamika Penegakan Keadilan Sosial dan Demokrasi Lokal*", 2015.

**a. Review of a Law against the Constitution**

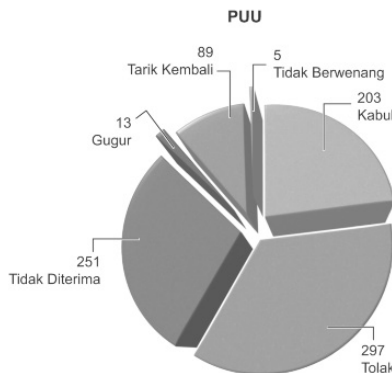
This authority is probably the most important authority of the Court. In the petition, the petitioner shall describe precisely that: a. the enactment of law does not comply with a provision under the 1945 Constitution; and/or b. The material contained in a section, article, and/or part of the law is deemed contrary to the 1945 Constitution.

Perkara Pengujian Undang-Undang diregistrasi Tahun 2003-2015



Until the end of 2015, the Court has registered 921 cases judicial review against the Constitution. From all the cases, 858 cases have decided with results: 203 cases granted (*dikabulkan*), 297 cases rejected (*ditolak*), 251 cases could not accept (*tidak diterima*), 89 cases dismissed (*tarik kembali*), 13 cases withdrawn (*gugur*) and 5 cases do not have authority (*tidak berwenang*) as shown in the chart below. While 63 cases had not been resolved and decided upon.<sup>22</sup>

Putusan PUU Tahun 2003-2015



<sup>22</sup> *Ibid.*

Related to all its power, Moh. Mahfud MD states that the Constitutional Court was established as a manifestation of collective awareness, as well as a consequence of the mass desire to materialize a democratic constitutional state and a democratic rule of law state.<sup>23</sup>

*"In reality, it has been frequently the case that decisions made based on a democratic mechanism, particularly in terms of the lawmaking process involving the People's Legislative Assembly and the Government are not necessarily in accordance and in line with the 1945 Constitution, even though the 1945 Constitution as the supreme law of the state should actually serve as reference in formulating regulations. It is, therefore, necessary to have a state institution which is authorized to review rules against the Constitution."*<sup>24</sup>

According to Iwan Satriawan, et al., there are a number decisions made by the Constitutional Court which could be considered as giving positive influence to the working of democratic consolidation about elections.<sup>25</sup> The Constitutional Court, through its decision, has become an essential institution in supporting the quality of votes. Through its decisions, the Constitutional Court has played a significant role in protecting the fundamental rights of citizens through the judicial review of election acts that secures the quality of democracy.<sup>26</sup>

#### **b. Authority Dispute of State Institutions Whose Authorities are Granted by the Constitution**

The petitioner shall be a state institution whose authority is granted by the 1945 Constitution having a direct interest in the power in dispute. The Constitutional Court may issue a determination that rules the petitioner and/or the respondent to temporarily suspend the execution of its jurisdiction in debate pending to a judgment of the Constitutional Court.

A judgment of the Constitutional Court whose verdict declares that the respondent has no authority to execute the power in dispute, the respondent shall complete the said judgment within a time period of seven business days

<sup>23</sup> Moh. Mahfud MD, "Constitutional Review: Doctrine and Practise Under Indonesia's Constitutional System", Paper presented at the International Conference "Constitutional Review: Doctrine and Practice" held on the commemoration of the 20th Anniversary of the Constitutional Court of the Russian Federation, on October 28-30, 2011 at Palace's of Congresses, Saint Petersburg, Russia, p.3.

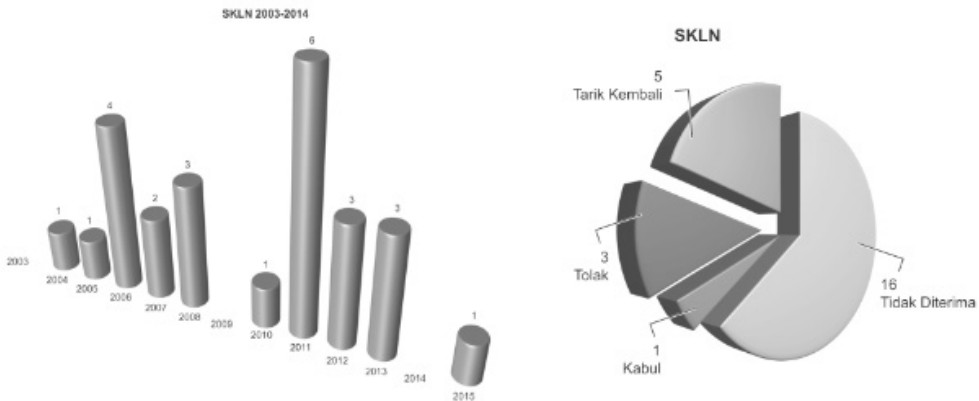
<sup>24</sup> *Ibid.*

<sup>25</sup> Iwan Satriawan, et.al, "The Role of the Constitutional Court in Consolidating Democracy in Indonesia: An Evaluation after Ten Years", [[https://www.academia.edu/16159460/The\\_Role\\_of\\_the\\_Constitutional\\_Court\\_in\\_Consolidating\\_Democracy\\_in\\_Indonesia\\_An\\_Evaluation\\_after\\_Ten\\_Years](https://www.academia.edu/16159460/The_Role_of_the_Constitutional_Court_in_Consolidating_Democracy_in_Indonesia_An_Evaluation_after_Ten_Years)], accessed 25/10/2017, p.9.

<sup>26</sup> *Ibid.*, p.24.

at the latest as of the decision is received. If the said judgment is not executed within a time period, the execution of the authority of the respondent shall be null and void.

Until the end of 2015, the Court has registered 25 cases. All the instances have decided with results: 1 case granted (dikabulkan), 3 cases rejected (ditolak), 16 cases could not accept (tidak diterima), 5 cases dismissed (tarik kembali) and 13 cases withdrawn (gugur) as shown in the chart below.<sup>27</sup>



### c. Dispute regarding the Result of General Elections and Local Election.

Until 2015 the Constitutional Court never received any petition related to Dissolution of a Political Party and Opinion of the DPR Regarding an Allegation of Violation by the President and/or the Vice President. However, disputes regarding the result of general elections and the local election was majority cases that handled by the Court.

According to Iwan Satriawan, et al. the Constitutional Court has successfully given a contribution to the working of the general election in 2004 and the general election in 2009.<sup>28</sup>

*In both general elections, the Constitutional Court had secured the fundamental rights of a citizen in the general elections and had also given contribution in settling disputes over the result of general elections in 2004 and 2009. Having these achievements, the Constitutional Court has created a more conducive political situation in the process of general election and after the general elections. Accordingly, the*

<sup>27</sup> *Ibid.*

<sup>28</sup> Iwan Satriawan, et.al, *Op.Cit.*, p.10.

*Constitutional Court is considered to have a meaningful contribution in securing the two turn over test in the process of consolidation of democracy in Indonesia.*<sup>29</sup>

### **3. Significant Indonesian Constitutional Court Decisions that Strengthened Consolidation of Democracy in Indonesia**

Between 2003 to 2015, the Constitutional Court of Indonesia (CCI) has made several decisions on some petitions. These decisions are significant to the conceptual shifts within the Indonesian state administration system especially about the consolidation of democracy<sup>30</sup> in Indonesia.

#### **a. Decision Number 011-017/PUU-I/2003 (Right to Be a Candidate)**

CCI has passed a decision in a case of a petition for judicial review of the Law 12/2003 (the General Election Law). Article 60 sub-article g of General Election Law determines the criteria for DPR, DPD, Province DPRD and Regency/Municipality DPRD candidate members as not being former members of banned organizations of the Indonesian Communist Party (Partai Komunis Indonesia or PKI), including its mass organizations, or being directly or indirectly involved in the September 30, 1965 Movement by Indonesian Communist Party (G30S/PKI) or other banned groups.

The Court states that the 1945 Constitution prohibits discrimination as stated in Article 27 (1), Article 28D (1), Article 28I (2) of the Constitution. However, the Article above 60 sub-article g of Law 12/2003 prohibits a group of Indonesian Citizens from being nominated and from exercising the right to be elected based on political beliefs they once adopted.

Article 1 (3) of Law 39/1999 regarding Human Rights as an explanation of the provisions of Article 27 and Article 28 of the 1945 Constitution does not justify discrimination based on differences in religion, nationality, race, ethnicity, group, social status category, economic, status, gender, language, politics. According to the Court, Article 27 (1), Article 28D (1), Article 28I

<sup>29</sup> *Ibid.*

<sup>30</sup> According to **Raja M. Ali Saleem**, the most famous of minimalist definitions of a consolidated democracy was given by the eminent scholar Samuel P. Huntington. "He argued that a democracy becomes consolidated when it passes the two turnover test i.e. power is peacefully transferred twice after the democratic transition (Huntington, 1993). Other scholars, like Gasiorowski & Power (1998), have also considered regular elections and constitutional transfer of power key conditions for democratic consolidation. Most scholars, however, think of these as necessary, but not sufficient conditions of democratic consolidation." That is why, Saleem said that Indonesia became a consolidated democracy, according to Huntington criterion, in 2004. The first constitutional transfer of power happened in 2001 when President Megawati Sukarnoputri took over from President Abdurrahman Wahid and the second transfer of power happened when President Megawati handed the reins of government to President Yudhoyono in 2004. **Raja M. Ali Saleem**, "A Comparison of Democratic Consolidation in Indonesia and Turkey", [<http://rumiforum.org/a-comparison-of-democratic-consolidation-in-indonesia-and-turkey-2/>], accessed 15/10/2017.

(4) of the 1945 Constitution were also in line with Article 21 the Universal Declaration of Human Rights (UDHR) and Article 25 of ICCPR.

The Court states that the constitutional rights of citizens to vote and right to be a candidate is a right guaranteed by the Constitution, laws and international conventions, then the restriction lapses, elimination, and removal of the rights referred to a violation of human rights of citizens. It is true that Article 28J (2) of the 1945 Constitution contains a provision that allows restriction of the rights and freedoms of a person by law, but the limits on these rights must be by the great reasons, reasonable, proportionate and not excessive. Such restrictions can only be used with the intent “the sole purpose of guaranteeing recognition and respect for the rights of others and to fulfill the requirements of justice and taking into consideration morality, religious values, security, and public order in a democratic community”; but restrictions on the right to be a candidate as the provisions of Article 60 sub-article g of General Election Law only use precisely because political considerations. In addition, the restrictions on the right to vote (both active and passive) in the general election typically based solely on the review of factors such as age and incompetence of the state mental hospital, as well as the impossibility such as have their voting rights revoked by a court ruling final and binding and in general is individual and not collective.

The prohibition against specific groups of citizens to run for the legislative position based on Article 60 sub-article g General Election Law clearly contains shades of political punishment referred to the team. As state based on law, any restrictions that have a direct connection with the rights and freedoms of citizens must be based on court decisions that have binding legal force. A criminal responsibility can only be held accountable for the perpetrator (*dader*) or participating (*mededader*) or help (*medeplichtige*), then it is an act which is contrary to law, justice, the rule of law and the principles of the state based on law where the responsibility imposed on a person who is not directly involved.

**b. Decision Number 055/PUU-II/2004 (the General Election Crime)**

CCI has passed a decision in a case of a petition for judicial review of the Law 12/2003 (General Election Law). Article 133 (1) which provides that the conclusion of a District Court that penalizes a defendant for committing an

offense subject to no more than 18 months' imprisonment, and the decision of a District Court of the court of the first and final level with a final decision, provides no opportunity for the Petitioner as a defendant to obtain a second opinion in the appellate level examination, unlike a defendant in a quick case of traffic violation as set forth in Article 205 of the Criminal Procedural Code and Article 211 (5) of Law 31/1997 regarding the Military Tribunal. This is regarded by the Petitioner as discrimination that contravenes the 1945 Constitution.

According to the Court, Article 28D (1) which contains the recognition, the guarantee, the protection and fair legal certainty as fundamental rights protected by the Constitution, and therefore the attention and the protection of the fundamental rights are not absolute; however, certain limitations are justified as set forth in Article 28J (2) which provides that "In exercising his/her right and freedom, every person must submit to the restrictions stipulated in laws and regulations with the sole purpose to guarantee the recognition of and the respect for other persons' rights and freedom and fulfill fair demand in accordance with the considerations of morality, religious values, security, and public order in a democratic society".

It is admitted that in determining the deviation from Article 205 of the Criminal Procedural Code which is regarded as the procedural law regulation that governs the rights of a defendant to file an appeal in summary proceedings for criminal cases. However, there are inconsistencies in stipulating the categories of quick instances and minor facts known in the penal legal system and penal procedural code, through which it is evident that the legislators did not have a specific parameter as the standard with general application, which is regarded as a weakness to such an extent that a traffic violation case as a quick case has an option for an appeal effort if the punishment involves the deprivation of freedom, while on the other hand in the case of general election crime subjected to a maximum imprisonment of 18 months, such legal remedy is not available. However, the Court is of the opinion that due to the nature of the General Election crime which requires a summary decision, the regulation of which being related to the state administration agenda that needs legal certainty, such particular control is sufficiently grounded and does not contravene the 1945 Constitution.



**c. Decision Number 006/PUU-III/2005 (Only Political Parties or Coalition of Political Parties Can Propose a Pair of Regional Head/Regional Deputy Head Candidates)**

CCI has passed a decision in the case of a petition for judicial review of the Law 39/2004 (the Regional Government Law). The Petitioner has argued that Article 59 (1) and (3) the Regional Government Law, which stipulates that only political parties or coalition of political parties can propose a pair of regional head/regional deputy head candidates, which has eliminated the opportunity for an individual suggest him/herself directly and independently as a local head candidate, is deemed to be contradictory to the 1945 Constitution.

According to the Court, equal status and opportunities in the government which could also mean without discrimination is a different issue than the democratic mechanism of recruitment for government positions. It is true that the rights of every citizen to obtain equal opportunities in government is protected by the Constitution insofar as the citizen above meets the requirements determined in law-related with it, among others, the criteria of age, education, physical and mental health as well as other elements. Such provisions will apply to every citizen, without distinguishing people, regarding, tribe, race, ethnicity, group, classification, social status, economic status, gender, language and political beliefs. Meanwhile, the definition of discrimination which is prohibited in said Article 27 (1) and Article 28D (3) of the 1945 Constitution has been elaborated further in Article 1 (3) of Law 39/1999.

The requirements for the nomination of a pair of regional head/regional deputy head to be nominated by a political party, is the mechanism or procedure on how the election of the intended local leader is to be implemented, and does not eliminate the individual right to participate in the government, insofar as the conditions of nomination through a political party is conducted, so that with the formulation of discrimination as elaborated in Article 1 (3) of Law 39/1999 and Article 2 of ICCPR, which is insofar as the distinction carried out is not based on religion, tribe, race, ethnicity, group, classification, social status, economic status, gender, language and political beliefs, then the nomination through a political party cannot be deemed contradictory to the 1945 Constitution because the choice of such system is a legal policy which

cannot be tested unless conducted haphazardly (*willekeur*) and exceeding the legislators' authority (*detournement de pouvoir*). The restrictions on political rights are validated by Article 28J (2) of the 1945 Constitution, insofar as the proposed limits are outlined in the law.

Moreover, the granting of the constitutional rights to nominate for a candidate pair of regional head/regional deputy head to political parties, shall not be construed that it will eliminate the citizen's constitutional right, in case the Petitioner to become a local head, insofar as the Petitioner meets the requirements of Article 58 and be conducted through the procedures mentioned in Article 59 (1) and (3) of the Regional Government Law, and that such requirements shall constitute a binding mechanism or process to every citizen who will become a candidate for regional head/regional deputy head;

**d. Decision Number 006/PUU-IV/2006 (The Commission for the Truth and Reconciliation Law in Its Entirety Not Having Binding Legal Force)**

CCI has passed a decision in the case of a petition for judicial review of the Law 27/2004 concerning Commission for the Truth and Reconciliation (KKR Law) against the 1945 Constitution. According to the Court, there is confusion and contradiction existing in Article 27 of the KKR Law are related to the emphasis on the perpetrators as an individual in individual criminal responsibility, whereas the perpetrators and victims, as well as witnesses of human rights violation incidents prior to the application of the Law on Human Rights Court, can no longer be found.

Reconciliation between the perpetrators and victims intended becomes almost impossible to be achieved if it is conducted by applying individual criminal responsibility approach. With such method, which depends on amnesty must be only restitution, namely compensation granted by the perpetrators or a third party. On the other hand, if the purpose is to achieve reconciliation and the approach applied is not of individual nature, the starting point shall be a gross violation of human rights and the existence of victims serving as a parameter of reconciliation by granting compensation and rehabilitation. Those two approaches, about restitution, compensation, and recovery, cannot be rendered dependant on an irrelevant issue because amnesty is a prerogative right of the President, the granting or refusal of which is up to the President. Moreover, there is no legal grounds and reasons

for the granting of amnesty, mainly due to the stipulation is only applicable for the gross violation of Human Rights occurring prior the application of the Law on Human Rights Court. Beside that, the formulation of the provisions and the possible implementation of the requirements to achieve the expected reconciliation, CCI is of the opinion that the basis and purpose of the KKR, as set forth in Article 2 and Article 3 of the Law, are impossible to be achieved due to the lack of guarantee of legal certainty (*rechtsonzekerheid*). Therefore, the Court has reviewed this Law against the 1945 Constitution, and it must accordingly be declared as not having binding legal force.

**e. Decision Number 16/PUU-V/2007 (Electoral Threshold)**

CCI has passed a decision in the case of Petition for Judicial Review of Law 12/2003 (the General Elections Law). The Court is of the opinion that the provisions of Article 9 (1) and (2) of the General Elections Law related to Electoral Threshold (ET) are not contrary to Article 28I (2) of the 1945 Constitution regarding the right to be free from discriminatory treatments because the aforementioned requirements to be able to participate in the following general elections apply to all political parties after having democratically passed the competition through general elections. Whether or not the ET provision is fulfilled as the requirements to participate in the following general elections depends on the relevant political parties and the constituents' support, and therefore it will not imply that the law is flawed if such requirements are not fulfilled. Such matter is also not discrimination according to the human rights perspective as intended in the Human Rights Law and ICCPR.

Based on the General Elections Law, it is true that political parties which have obtained the a status as a legal entity according to the Political Parties Law cannot automatically participate in general elections, since they are still obliged to fulfill the requirements provided for by the General Elections Law, such as administrative verification and factual verification performed by the General Elections Commission (*vide* Article 7 of the General Elections Law), and hence the existence of political parties and the participation of political parties in general elections are two distinct issues and not to be confused. At the very least, such matters are the legal policy of the legislators and such systems are not contrary to the 1945 Constitution because in fact, the 1945

Constitution has in effect mandated the freedom for legislators to regulate such matters, including the requirements to participate in the following general elections by means of the ET provision.

**f. Decision Number 11/PUU-VI/2008 (The Autonomy of the Special Capital Region of Jakarta)**

CCI has passed a decision in the case of Petition for Judicial Review of Law 32/2004 and Law 29/2007. The Petitioner argues that the regulation which places the autonomy of the Special Capital Region of Jakarta only at the provincial level as provided for in Article 227 (2) of Law 32/2004, is a discriminatory treatment towards the people of Jakarta.

According to the Court, the absence of the Petitioner's right to be elected as the mayor of the Special Capital Region of Jakarta, and the lack of the power of Jakarta people to choose the members of Regional People's Legislative Assembly of municipality/regency in the Special Capital Region of Jakarta, cannot be regarded as discrimination because it is equally applicable to all citizens without exception or bias. Even more, the granting of limited autonomy at the level of the Special Capital Region of Jakarta Province is irrelevant either to be considered as an unequal treatment which may cause constitutional impairment to the citizens due to the fact that they cannot elect and be elected as a regent/mayor and members of the Regional People's Legislative Assembly of regency/municipality in Jakarta. Such impairment may possibly arise when the position of regent/mayor and members of the Regional People's Legislative Assembly of regency/municipality directly elected by the people indeed exists in Jakarta, but there are sure people whose right to select and/or be elected has been hindered. With the exclusive regulation of the Special Capital Region of Jakarta in Law regarding Regional Government and Law regarding the Government of the Province of Special Capital Region of Jakarta, the autonomy has been placed at the provincial level so there will be no citizen losing the right to elect and/or be elected.

Likewise, the Petitioner's argument that Article 227 (2) of Law 32/2004 and Articles 19 and 24 of Law 29/2007 are contradictory to Article 27 (1) of the 1945 Constitution. According to the Court, the regulation which places the autonomy of the Special Capital Region of Jakarta only at the provincial

level causes the direct election of regent/mayor and members of the Regional People's Legislative Assembly of regency/municipality by the people within Jakarta's territory becomes unnecessary. It has no implication whatsoever on the equal position of citizens before the law and government. All citizens shall be entitled to elect and/or be elected to assume the existing governmental positions in the government system of Indonesia without exception, insofar the requirements about it are met. The Court is of the opinion that such regulation is not contradictory to the 1945 Constitution.

**g. Decision Number 12/PUU-VI/2008 (The Transition Period from the Electoral Threshold to Parliamentary Threshold Principle)**

CCI has passed a decision in the case of a petition for judicial review of Law 10/2008. The Petitioners question the constitutionality of Article 316 Sub-Article d of Law 10/2008 that is, "having seats in DPR RI from the result of the 2004 General Elections". Basically, the Political Parties Participants in the 2004 General Elections which do not fulfill the provisions of Article 315 of Law 10/2008 are supposed to have no more right to become participants in the 2009 General Elections, because they do not perform the electoral threshold provisions, except if they meet the requirements of Article 9 (2) of Law 12/2003. The Court is of the opinion that the condition of Article 316 Sub-Article d of 10/2008 is not explicit in its *ratio legis* if related to the transition period from the electoral threshold to parliamentary threshold principle.

The provisions of Article 316 Sub-Article d of Law 10/2008 have indeed shown unequal and unjust treatment towards fellow Political Parties Participants in the 2004 General Elections which do not fulfill the electoral threshold [Article 9 (1) of Law 12/2003 *juncto* Article 315 of Law 10/2008]. Such unjust treatment is shown by the fact that there are Political Parties which only gained one seat in DPR, even though their vote acquisition was less than that of the Political Parties which do not have positions in DPR, could be automatically free to become participants of in the 2009 General Elections; whereas the Political Parties which had more vote acquisition, but did not obtain seats in DPR, precisely have to go through a lengthy process to be able to participate in the 2009 General Elections, namely through the administrative verification or factual verification phase by KPU.

**h. Decision Number 22-24/PUU-VI/2008 (Options Between the Principles Provided for in the 1945 Constitution and the Demand for Policy Based on the CEDAW)**

CCI has passed a decision in the case of a petition for the Judicial Review of Law 10/2008. According to the Court, the provision of Article 214 sub-articles a, b, c, d, and e of Law 10/2008 stipulating that the elected candidate is the candidate acquiring votes more than 30% (thirty percent) of the Voter's Denominator (BPP), or positioned at smaller candidacy number, if there are no candidates acquiring votes of 30% (thirty percent) of the BPP, or placed at smaller candidacy number, those earning votes of 30% (thirty percent) of the BPP more than the proportional seats purchased by a political party participating in the General Election is unconstitutional. It is illegal because it is contradictory to the substantive meaning of the sovereignty of people as described above and qualified as opposed to the principle of justice as outlined in Article 28D (1) of the 1945 Constitution. It constitutes a violation of the sovereignty of people if the people's aspiration reflected from their choice is disregarded in designating the legislative members, this will indeed violate the freedom of people and equity. If two candidates are acquiring remarkably different votes, it is inevitable that the candidate obtaining majority vote is conquered by the candidate earning minority vote because he/she assumes a position with a smaller candidacy number.

With the recognition of equality and opportunity before the law as adopted in Article 27 (1) and Article 28 D (3) of the 1945 Constitution, it means that every legislative member candidate has equal position and opportunity before the law. The application of different legal provisions for two similar conditions is as unfair as applying similar legal clauses for two different situations. According to the Court, the rule of Article 214 of Law 10/2008 contains double standard so that it may be deemed as unfair as it applies different laws for a similar condition.

The Court states that affirmative action is the policy that has been accepted by Indonesia which originates from Convention to Eliminate All Forms of Discrimination Against Women (CEDAW), however because in the petition the Court is given the options between the principles provided for in the 1945 Constitution and the demand for policy based on the CEDAW, the 1945

Constitution must be prioritized. In so far as it is related to the provision of Article 28H (2) of the 1945 Constitution whereas “every person shall be entitled to obtain special treatment” the stipulation of 30% quota for woman candidate and one woman candidate from every three legislative candidates, the Court is of the opinion that it has met the provision of special treatment.

**i. Decision Number 56/PUU-VI/2008 (The Candidate Pair of President and Vice President Shall be Nominated and Registered by a Political Party or Coalition of Political Parties)**

CCI has passed a decision in the case of a petition for Judicial Review of Law 42/2008. The substance of the formulation of Article 1 sub-article 4, Article 8, Article 9, and Article 13 (1) of Law 42/2008 is to determine that the Candidate Pair of President and Vice President shall be nominated and registered by a political party or coalition of political parties participating in the general election (meeting the requirements) prior to the implementation of the general election. Such formulation according to the Court is not discriminatory because any person meeting such conditions may be nominated and registered by a political party or coalition of political parties to become President and/or Vice President without having to become the Management or Member of a Political Party.

The Court states that in a condition where people are free to establish political parties at present, a candidate may develop his/her own party along with the vision and mission of the side which is going to be set if he/she is not interested in the existing parties without any obstacle so that the reason for the nomination of President beyond political parties shall be irrelevant or groundless.

**j. Decision Number 3/PUU-VII/2009 (Parliamentary Threshold Policy)**

CCI has passed a decision in the case of Petition for judicial review of Law 10/2008 related to Parliamentary Threshold. According to the Court, the policy on Parliamentary Threshold policy stipulated in Article 202 (1) of Law 10/2008 utterly does not disregard the principles of Human Rights contained in Article 28D (1) and (3) of the 1945 Constitution, since every person, every citizen, and every Political Party Participating in the General Election is treated equally and obtains equal opportunity through democratic competition in the General Election. Indeed, there is a possibility that there

are parties which are succeeded and failed in a competition referred to as General Election, but the chance and opportunity remain equal.

The Court is of the opinion that the provision of Article 202 (1) of Law 10/2008 entirely does not contain discriminatory nature and elements, since it is only applied objectively to all Political Parties Participating in the General Election and the entire candidate members of the People's Legislative Assembly from the Political Parties Participating in the General Election without any exception.

## CONCLUSION

The first requirement for every country applying the principles of the rule of law and constitutional democracy is constitutionalism principle. This principle placing the constitution as the highest law, the substance of which is contained in the Fourth Paragraph of the Preamble of the 1945 Constitution, as the realization of the statement of the country's independence, which is reflected among others in the sentence, "*... Indonesia's national independence shall be formulated in a Constitution of the State of Indonesia*".<sup>31</sup>

After the resignation of President Soeharto on May 21, 1998, that already in power for almost 32 years, Indonesia have tried to consolidate its democracy and the role of the Constitutional Court is very crucial in the consolidation of democracy. The Constitutional Court is also handy for upholding the constitutional norm, especially about state institutions and human rights. I agree with the conclusion of Iwan Satriawan, et al. that said, the Constitutional Court has taken an essential role in the consolidation of democracy in Indonesia through its decisions in judicial review of acts and resolving election disputes.<sup>32</sup> Until 2015, the Constitutional Court still makes a positive influence in Indonesian consolidation of democracy.

In deciding the decision, the Constitutional Court, primarily related to egalitarian principles also succeeded in formulating essential policies that are important in the implementation of the constitutional law in Indonesia. It is showed in decisions as I resume in this paper. Nevertheless, the Constitutional Court must also be prepared to face a tougher challenge because development of problems and the state ideological struggle will be more complicated in later

<sup>31</sup> Indonesian Constitutional Court Decision Number 005/PUU-IV/2006, August 23, 2006.

<sup>32</sup> Iwan Satriawan, et.al, *Op. Cit.*, p.24.



years. In fact, this is a very global problem that needs to be handled correctly even in a consolidated democracy country.

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