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# A Cross-National Analysis of State Institutional Authority Disputes

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**Abstract:** The distribution of authority among state institutions is a fundamental component of any governmental framework, as it helps prevent jurisdictional overlaps that could lead to institutional conflicts. When such conflicts over authority do occur, it becomes imperative to have a mechanism in place for their resolution. This study is designed to explore and analyze the comparative regulatory structures for resolving authority disputes among state institutions, as outlined by the legislation in Indonesia, the United States, Germany, and Canada. Furthermore, the research aims to identify the characteristics of disputes concerning state institutional authority and suggest optimal regulatory solutions for their resolution. Utilizing a qualitative and descriptive research approach, this study will clarify the regulatory frameworks for dispute resolution among state institutions, as defined by the current legislation in each country. Each framework is characterized by unique institutions and methods for resolving disputes. The findings reveal that the German Constitutional Court holds the most comprehensive jurisdiction, covering all state institutions in Germany, both at the central and regional levels. In terms of procedural aspects, the legal framework for resolving authority disputes in Germany is more detailed than those in Indonesia, the United States, or Canada, thereby promoting greater transparency and accountability in the dispute resolution process in Germany.

**Keywords:** Checks and Balances; Comparative; Constitutional Court; Dispute Resolution

## 1. Introduction

The delineation of authority among state institutions holds paramount significance within any governmental framework. This strategic allocation serves the crucial purpose of preventing the encroachment of authority and mitigating potential conflicts between state entities. As elucidated by the Trias Politics Theory, formulated by Montesquieu, the tripartite division of executive power (pertaining to rule application)[1], legislative power (focused on rule creation), and judicial power (centered on rule adjudication) enables these state organs to enlist the assistance of additional entities in the execution of their respective functions. Montesquieu's conceptualization discerns three distinct types of governmental power, namely legislative, executive, and judicial power.[2] In instances, where conflicts arise regarding authority among state institutions, the imperative for a

[1] Hannah Arendt, Jacques Rancière and Chantal Mouffe Av, 2012, *Three Concepts of The Political – A Comparative Study of The Political in the Works of Södertörns högskola*. Institutionen för kultur och kommunikation: D-uppsats, p. 15

[2] Romi Librayanto, 2008, *Trias Politica Dalam Struktur Ketatanegaraan Indonesia*, PUKAP, Makasar, p. 12.

mechanism to resolve such disputes becomes evident. The allocation of powers to these institutions is inherently designed to be mutually constraining, embodying the principle of checks and balances.[3]

Autonomous state institutions are established with distinct constitutional functions and responsibilities.[4] In the event of a dispute arising among these state institutions, the necessity for a distinct organ or institution tasked with the examination, adjudication, and ultimate resolution of such disputes becomes apparent. Notably, countries such as Indonesia, the United States, Canada, and Germany have instituted independent entities for the purpose of dispute resolution. Indonesia, for instance, has the Constitutional Court (MK), the United States is served by the Supreme Court of the United States, and Canada possesses the Supreme Court of Canada (in France: *Cour suprême du Canada*, and in Germany: *Bundesverfassungsgericht*) which means the Federal Constitutional Court.

In terminating disputes over the authority of state institutions, the role of the Constitutional Court is directly proportional to the function of the Constitutional Court in exercising judicial power in the constitutional system, namely as the guardian of the Constitution and also as the sole interpreter of the Constitution.[5] In its capacity, the Constitutional Court adjudicates disputes concerning the jurisdiction of state institutions guided by the principle of upholding the constitutionality of the exercise of state power. The resolution of such disputes, characterized by differences of opinion or perspectives between state institutions, pertains to claims arising from the authority vested in each respective state institution.

Check and balances is a system of rules that emphasizes the existence of a system of mutual control between branches of power, whether executive, legislative or judicial, with the aim of avoiding domination of power between one branch of power and another. This principle is basically aimed at preventing overlap between the authorities of state institutions, and at the same time has the aim of preventing and minimizing the emergence of abuse of power in state practice.[6]

In light of the foregoing exposition, the author intends to elucidate the mechanisms for resolving disputes over the authority of State Institutions in Indonesia, drawing comparative analyses with the corresponding frameworks in the United States, Canada,

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[3] Eddyono, Luthfi Widagdo. "Penyelesaian sengketa kewenangan lembaga negara oleh Mahkamah Konstitusi." *Jurnal Konstitusi* 7, no. 3 (2010): 1-48.

[4] Kelik Iswandi and Nanik Prasetyoningsih, 2020, *Penyelesaian Sengketa Kewenangan Lembaga Negara Independen di Indonesia,* Sasi, Vol. 26 No. 04, p. 435.

[5] Femmie Cynthia, 2022, *Analisis Kewenangan Mahkamah Konstitusi dalam Penyelesaian Sengketa Kewenangan Lembaga Negara,* Jurnal Hukum Adigama, Vol. 05, No. 01, p. 1890.

[6] Sri Hastuti Puspitasari, 2014, *Penyelesaian Sengketa Kewenangan Konstitusional Lembaga Negara sebagai Salah Satu Kewenangan Mahkamah Konstitusi,* Jurnal Hukum Ius Quia Iustum, Vol. 21, No. 3, p. 404 – 405.

and Germany. The methodological approach employed for this purpose is descriptive research. Descriptive research, as employed in this study, is a research paradigm directed at delineating and expounding upon extant phenomena, encompassing both natural and man-made phenomena.[7] 2. Method

## 2. Method

This study employs a qualitative approach and used descriptive and analytical methods to compare the study of dispute resolution of state institutions authority in Indonesia, America, Canada & Germany. The qualitative approach was adopted due to the novel nature of the topic under the current legal study, hence allowing for more in-depth understanding of the nuances involved. The descriptive analysis was utilised to summarise the current knowledge, including the current legal framework and challenges. The data collection was conducted using a library research method that involved a comprehensive review of current literature in various reputable databases.

## 3. The Resolution of Disputes of the Authority of Indonesian State Institution

The Indonesian Constitutional Court is an autonomous institution endowed with authority by the 1945 Constitution. Its prerogatives encompass serving as the primary and ultimate adjudicative body, rendering final decisions. It holds the mandate to scrutinize laws for conformity with the Constitution, resolve disputes arising from the authority vested in state institutions as per constitutional provisions, address matters related to the dissolution of political parties, and adjudicate disputes pertaining to the outcomes of general elections. These functions are delineated in Article 24C of the 1945 Constitution. The Indonesian Constitutional Court's role as a constitutional court is manifest through two distinct authorities, outlined as follows:[8] authority to review laws against the Constitution and authority to decide disputes over the authority of state institutions whose authority originates from the Constitution.

The interplay of authority conferred upon state institutions by the Constitution establishes a dynamic wherein mutual oversight can lead to disputes. Jimlly Asshidiqqie contends that the Constitutional Court (MK) plays a crucial role in examining and adjudicating disputes concerning constitutional authority between state institutions. In the practical implementation of state affairs, I Dewa Gede Palguna notes that the Constitutional Court typically assumes the responsibility for resolving disputes, given its

[7] Irwansyah, 2020, *Penelitian Hukum,* Mirra Buana Media, Yogyakarta, p. 38

[8] Harjono, 2009, *Transformasi dan Demokrasi*, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, Jakarta, p. 140.

inherent function as the guardian of the constitution. This authoritative role, despite not being explicitly outlined in the constitution, is deemed indispensable in navigating and mitigating conflicts within the constitutional framework. [9]

Article 24 paragraph (2) of the 1945 Constitution states that

> *"The exercise of judicial power is vested in a Supreme Court, along with subordinate judicial bodies encompassing the general court, religious court, military court, state administrative court, and by a Constitutional Court."*
>
> This article provides an explanation that the Constitutional Court is one of the administrators of judicial power and is different from the Supreme Court, in this case the Constitutional Court and the Supreme Court have separate jurisdictions.

Things that can cause disputes and the emergence of authority disputes between state institutions include the following:[10]

a. The lack of a system that regulates and accommodates relations between state institutions has resulted in differences in interpretation. These differences in interpretation create a basis for state administration that often triggers disputes.
b. Within the constitutional framework outlined in the 1945 Constitution, the inter-institutional relationship mechanisms are characterized as horizontal rather than vertical. This delineation signifies that all state institutions maintain an equal constitutional status. The MPR (People's Consultative Assembly) no longer holds the pinnacle position as the highest state institution; rather, entities such as the President, DPD (Regional Representative Council), DPR (House of Representative), BPK (Supreme Audit Agency), MA (Supreme Court), MK (Constitutional Court), and other constitutional institutions occupy elevated positions within the constitutional hierarchy.
c. The norms that determine state institutions regulated in the 1945 Constitution are increasingly widespread. The state institutions specified in the 1945 Constitution are not only limited to those known so far, namely the MPR, DPR, President, BPK, DPA, and MA, but also determine the existence of new state institutions, including TNI, National Police, DPD, Election Commission General, Constitutional Court, Judicial Commission, and others.

[9] I Dewa Gede Palguna, 2008, *Mahkamah Konstitusi, Judicial Review, dan Welfare State*, Kumpulan Pemikiran I Dewa Gede Palguna, Setjen dan Kepaniteraan MK RI, Jakarta, p. 17.

[10] Alfiano I. Suak, et al, *Tinjauan Normatif Eksitensi Mahkamah Konstitusi Dalam Meneyelesaikan Sengketa Kewenangan Antar Lembaga Negara*, Lex Administratum, Vol. 9, No. 4, p. 121.

Article 24C paragraph 4 of the 1945 Constitution and article 4 paragraph 1 of Law No. 24 of 2003 concerning the Constitutional Court confirms that the Constitutional Court has 9 members of constitutional justices who are determined by Presidential Decree, these 9 constitutional justices are filled by candidates selected by three institutions, namely: DPR, President and Supreme Court.[11] The Constitutional Court must comply with judicial principles both in procedural law, judicial power law, and universally recognized principles, as follows:[12]

a. The proceedings are accessible to the general public.
b. Characterized by independence and impartiality.
c. Swift, straightforward, and cost-effective administration of justice.
d. The entitlement to an equal hearing (Audi et alteram partem).
e. Recognition of both active and passive rights.
f. *Ius curia novit.*

Article 2 of the Constitutional Court Regulation Number 08/PMK/2006 concerning Procedure Guidelines in Disputes on the Constitutional Authority of State Institutions, states that:

> State institutions that can be applicants or respondents in cases involving disputes over the constitutional authority of state institutions are:
> a. House of Representatives (DPR);
> b. Regional Representative Council (DPD);
> c. People's Consultative Assembly (MPR);
> d. President;
> e. Financial Audit Agency (BPK);
> f. Regional Government (Pemda); or
> g. Other state institutions whose authority is granted by the 1945 Constitution.
>
> The contested authority in question pertains to the authority conferred or defined by the 1945 Constitution. The Supreme Court (MA) is precluded from participating, whether as a petitioner or respondent, in disputes pertaining to technical judicial authority.

The mechanism of constitutional control is activated through a petition submitted by an eligible applicant, possessing legal standing to safeguard interests perceived as affected by the promulgation of a law, or when there is a departure from the constitutional

[11] Andi Safriani, 2019, *Mahkamah Konstitusi di Beberapa Negara Perspektif Perbandingan Hukum,* Jurnal Al-Qadau, Vol. 6, No. 1, p. 85.

[12] Jimly Asshiddiqie, 2006, *Hukum Acara Mahkamah Konstitusi Republik Indonesia,* Mahkamah Konstitusi Republik Indonesia, Jakarta, p. 63.

authority, either violated or surpassed, by one state institution over another.[13] Additionally, Article 3 stipulates the following:

> *"The Petitioner is a state institution asserting that its constitutional authority has been usurped, diminished, impeded, disregarded, and/or harmed by other state institutions. The petitioner must also possess a direct interest in the contested authority. Conversely, the respondent is a state institution alleged to have undertaken actions resulting in the taking, reduction, obstruction, disregard, and/or harm to the petitioner."*

The parties involved as petitioners or respondents in the resolution of disputes concerning the authority of state institutions, as per Article 24C paragraph 1 of the 1945 Constitution, are state institutions vested with authority according to constitutional provisions. This implies that not all state institutions are eligible to be parties in disputes concerning the authority of these state institutions; rather, specific institutions designated by constitutional provisions are applicable. This is further expounded upon in Article 61 paragraph (1) of UUMK (Law of the Constitutional Court):

> *"The petitioner is a state institution whose authority is conferred by the Constitution of the Republic of Indonesia of 1945, and possesses a direct interest in the disputed authority."*

Article 61 paragraph (1) above can be elucidated as follows: first, both the petitioner and the respondent must be state institutions whose authority is conferred by the Constitution (UUD); second, there must be a constitutional authority contested by the petitioner and respondent, wherein the constitutional authority of the petitioner is either taken over and/or disrupted by the actions of the respondent; third, the petitioner must have a direct interest in the disputed constitutional authority. In Article 65 of Law No. 24 of 2003, it is stated that:

> *"The Supreme Court cannot be a party in disputes over the authority of state institutions whose authority is conferred by the 1945 Constitution before the Constitutional Court"*

The Supreme Court (MA) cannot act as a petitioner in disputes involving state institutions due to being bound by the principle of nemo judex in sua causa. This principle dictates that an individual cannot serve as a judge in a case that concerns oneself. The process for resolving disputes involving state institutions in Indonesia is governed by Constitutional Regulation Number 08/PMK/2006 on the Procedure Guidelines for Constitutional Authority Disputes of State Institutions. This regulation further delineates the stages in the implementation of disputes over the authority of state institutions, namely:

[13] Triyanti, Ninuk, I. Gusti Ayu Ketut Rachmi Handayani, and Lego Karjoko. "Legal Gaps in Personal Data Protection: Reforming Indonesia's Population Administration Law." *Hasanuddin Law Review* 11, no. 1 (2025): 132-147.

a. Submission of the application.
b. Administrative Examination and Registration.
c. Scheduling and Hearing Summons.
d. Preliminary Examination.
e. Interim Decision.
f. Trial Examination.
g. Presentation of Evidence.
h. Deliberation Session of Judges.
i. Final Decision.

According to Constitutional Court Regulation Number 08/PMK/2006 on Procedure Guidelines for Constitutional Authority Disputes of State Institutions, if a petition fails to meet the elements of the subject of the case (*subjectum litis*) and the object of the case (*objectum litis*), then it does not fall within the jurisdiction of the Constitutional Court for examination, adjudication, and decision. Consequently, a petition that does not comply with these requirements will be adjudicated by the Constitutional Court as "inadmissible" (*niet ontvankelijk verklaard*).

The aforementioned requirement for the subject of the case (*subjectum litis*) is stipulated in Article 2 of Constitutional Court Regulation Number 08/PMK/2006. Subsequently, the condition for the object of the case (*objectum litis*) in dispute pertains to its constitutional authority. In practice, several factors can contribute to disputes over the constitutional authority of state institutions, including:

a. The existence of overlapping authority between one state institution and another, as regulated in the constitution or the Constitution;
b. The presence of state institutions whose authority is derived from the constitution or the Constitution being disregarded by other state institutions.
c. The authority of state institutions whose jurisdiction is derived from the constitution or the Constitution being executed by other state institutions, and so forth.[14]

## 4. Resolution of Disputes of the Authority of State Institutions in America

One of the fundamental pillars of constitutional law is the constitution. The term *konstitusi* originates from the Latin word *constitution*. This term is related to the words *jus* or *ius*, which mean law or principles.[15] The United States has a constitution as the foundational basis for governing the structure and powers of the federal government,

[14] Tim Penyusun Hukum Acara Mahkamah Konstitusi (Constitutional Court Procedural Law Drafting Team), 2010, *Hukum Acara Mahkamah Konstitusi*, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia, Jakarta, p. 172.

[15] Jimly Asshiddiqie, 2005, *Konstitusi dan Konstitusionalisme di Indonesia*, Penerbit Konpress, Jakarta, p. 1

the relationship between the federal government and the states, as well as the fundamental rights of citizens, namely the Constitution of the United States.

The resolution of disputes over the authority of American state institutions is entrusted to the Supreme Court of the United States, as elucidated in Article III, paragraph (1) and (2) of the Constitution of the United States, as follows:

> *"The judicial power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."*
>
> *"The judicial power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."*

The article serves as the foundation for the federal judicial system in the United States. This provision grants extensive authority to the Supreme Court of the United States to adjudicate disputes arising from various aspects of national life. The jurisdiction of the Supreme Court of the United States encompasses disputes arising from international agreements, conflicts between branches of the federal government, conflicts between the federal government and the states, and so forth.

The resolution of disputes over the authority of state institutions in the United States is governed by the procedural law of the Supreme Court of the United States, namely the "Rules of the Supreme Court of the United States". This document is crucial for understanding the practices and procedures in the Supreme Court of the United States. These rules ensure that the Supreme Court operates efficiently and fairly, and that the rights of parties in a case are protected. According to the Rules of the Supreme Court of the United States, both petitioners and respondents in cases of disputes over state authority are as follows:

a. Petitioner
   The petitioner is a state institution that perceives a violation of its authority by another state institution. Typically, the petitioner is a state institution that feels aggrieved by actions or policies undertaken by the respondent.
b. Respondent
   The respondent is a state institution considered to have infringed upon the authority of another state institution. Typically, the respondent is a state

institution that has taken actions or implemented policies challenged by the petitioner.

Article 32 of the Rules of the Supreme Court of the United States regulates the identity of the petitioner and respondent in a case submitted to the Supreme Court of the United States. Here are some examples of cases involving disputes over state authority that have been adjudicated by the Supreme Court of the United States:

a. Marbury v. Madison (1803): The Supreme Court of the United States decided that Congress lacked the authority to enact a law that granted the courts the power to examine the constitutionality of laws created by Congress itself. In this case, the Supreme Court of the United States acted as the petitioner, and the President of the United States acted as the respondent.
b. Schechter Poultry Corporation v. United States (1935): The Supreme Court of the United States decided that Congress lacked the authority to enact laws regulating the poultry industry. In this case, Congress acted as the petitioner, and the Supreme Court of the United States acted as the respondent.
c. Youngstown Sheet & Tube Co. v. Sawyer (1952): The Supreme Court of the United States decided that the President lacked the authority to order the seizure of assets of the U.S. steel industry during the Korean War. In this case, the President of the United States acted as the petitioner, and the Supreme Court of the United States acted as the respondent.

The Rules of the Supreme Court of the United States meticulously govern the procedures to be observed in the resolution of disputes over state authority in the Supreme Court of the United States. The following delineates several crucial procedures within the procedural law of the Supreme Court of the United States pertaining to the resolution of disputes over state authority:[16]

a. Procedure for filing a petition for certiorari
   This procedure is the initial step that must be followed by parties seeking to bring their case before the Supreme Court of the United States. The party filing the case is required to submit a petition for certiorari to the Supreme Court. A petition for certiorari is a written request to the Supreme Court to consider a case. The Supreme Court has the authority to deny or grant a petition for certiorari. If the petition for certiorari is granted, the Supreme Court will schedule the case for adjudication.

b. Procedures for preparing and submitting briefs
   Upon the granting of the certiorari petition, the disputing parties are required to prepare and submit briefs to the Supreme Court. A brief is a written document

[16] Willian Cranch, 1807, *Supreme Court Of the United States,* Isaac Riley, New York.

containing the legal arguments of the parties involved. The brief must be prepared in accordance with the format and style specified by the Supreme Court.

c. Procedure for conducting oral arguments
Following the submission of the briefs, the Supreme Court will conduct oral arguments. Oral arguments provide an opportunity for the disputing parties to present their arguments directly to the justices of the Supreme Court. Oral arguments typically last for 30 minutes per party.

d. Procedure for decision making
Following the oral arguments, the Supreme Court will render its decision. The decision of the Supreme Court is typically issued in the form of a written opinion. The written opinion provides an explanation of the reasons behind the Supreme Court's decision.

e. Procedure for implementing the decision
The Supreme Court has the authority to issue orders to lower courts to implement its decisions. This order is known as a mandate. The decisions of the Supreme Court of the United States in disputes over state authority are final and binding on all state institutions in the United States. The process of resolving disputes over state authority in the United States is a complex and time-consuming procedure. This process involves various parties, including the Supreme Court of the United States, the disputing parties, and lower courts. This process is essential to ensure that no single branch of government possesses absolute power and that all state institutions work together harmoniously to achieve common goals.

## 5. Resolution of Disputes of the Authority of Canadian State Agencies

The resolution of disputes over the authority of state institutions in Canada is regulated by the Canadian Constitution Act and the Supreme Court Act. The Canadian Constitution Act stipulates that the Supreme Court Act has the authority to adjudicate disputes arising between state institutions. This is governed by Articles 41-43 of the Supreme Court Act of Canada, as follows:

> *Article 41*
>
> *The Supreme Court has jurisdiction to hear and determine disputes that arise between:*
>
> *(a) the Government of Canada and a province;*
> *(b) a province and another province;*
> *(c) the Government of Canada, a province or another province, and a corporation or other person or entity that does not fall within categories (a), (b) or (c).*

*Article 42*

*(1) The Supreme Court has jurisdiction to give opinions on legal questions that are referred to it by the Parliament of Canada, the legislative assembly of a province, or any other body that is authorized by Parliament to refer questions to the Supreme Court.*

*Article 43*

*The Supreme Court has jurisdiction to hear and determine a dispute that arises from an international treaty that is made by the Government of Canada.*

These three articles grant the authority to the Supreme Court of Canada to adjudicate disputes arising from differences in the interpretation of the Constitution Act of Canada or the limits of authority between branches of government. Examples of cases involving disputes over the authority of state institutions that have been decided by the Supreme Court of Canada include:

a. Nova Scotia v. Attorney General of Canada (1992): The Supreme Court of Canada ruled that the Province of Nova Scotia has the authority to regulate the production and sale of alcohol within the province.
b. Reference Re Secession of Quebec (1998): The Supreme Court of Canada ruled that the Province of Quebec does not have the authority to legally separate from Canada.
c. Reference Re Same-Sex Marriage (2004)
d. The Supreme Court of Canada ruled that same-sex marriage is legal in Canada.

In resolving disputes over state authority, the Supreme Court of Canada relies on several principles:

a. Principle of Constitutional Supremacy

   This principle asserts that the constitution is the highest law in Canada. Thus, the Supreme Court of Canada must adhere to the constitution in resolving disputes over state authority.

b. Principle of Division of Powers

   This principle states that power in Canada is divided between the federal government and the provinces. Therefore, the Supreme Court of Canada must determine the authority of each state institution in resolving disputes over state authority.

c. Principle of Legal Certainty

This principle states that every person has the right to legal certainty in their actions. Thus, the Supreme Court of Canada must provide clear and definite decisions in resolving disputes over state authority.

d. Principle of Balance
This principle states that in resolving disputes over state authority, the Supreme Court of Canada must maintain a balance between the interests of the federal and provincial governments.

Based on these principles, the Supreme Court of Canada can resolve disputes over state authority as follows:

a. Determine the authority of each state institution
In this case, the Supreme Court of Canada will ascertain whether an action or policy of a state institution falls within its jurisdiction or not.
b. Resolve conflicts of authority
In this case, the Supreme Court of Canada will determine which state institution has the authority to take action or implement policies in a specific field.

The process of resolving disputes over state authority in Canada, based on Article 41 of the Supreme Court Act, involves the petitioner and respondent:

a. Federal Government
The federal government can be a petitioner to adjudicate disputes over state authority involving the federal government as the party claiming its authority is violated. The federal government can also be a respondent to adjudicate disputes over state authority involving the federal government as the party allegedly violating the authority of a province or a corporate entity or another individual.

b. Provincial Government

A province can be a petitioner to adjudicate disputes over state authority involving the province as the party claiming its authority is violated. The province can also be a respondent to adjudicate disputes over state authority involving the province as the party allegedly violating the authority of the federal government or a corporate entity or another individual.

c. Corporate entities or other individuals

Corporate entities or other individuals can be petitioners to adjudicate disputes over state authority involving them as the parties claiming their authority is violated. Corporate entities or other individuals can also be respondents to adjudicate disputes over state authority involving them as the parties allegedly

violating the authority of the federal government, a province, or another corporate entity or individual.

The process of resolving disputes over state authority in Canada is regulated by the Supreme Court Rules. Rule 12 of the Supreme Court Rules outlines the procedures for submitting applications related to disputes over state authority to the Supreme Court of Canada. Rule 30 of the Supreme Court Rules governs the trial procedures for disputes over state authority at the Supreme Court of Canada. Rules 12 and 30 of the Supreme Court Rules are as follows:

*Rule 12*

*"An application to refer a dispute that arises between the Government of Canada and a province or between one province and another province, or between the Government of Canada, a province, or another province, and a corporation or other person who is not included in category (a), (b), or (c) of section 41 must be made to the Supreme Court within thirty days after the date of the judgment of the first instance court that is in dispute."*

*Rule 30*

*(1) A case that is referred to the Supreme Court under section 41 must be heard and decided by nine judges.*

*(2) The parties to the case may, with the leave of the Court, file written or oral submissions.*

*(3) The Court may, if it considers it to be in the interests of justice, allow a party to the case to be represented by a lawyer who is not a member of the Bar of the Supreme Court.*

*(4) The Court may, on its own motion or on the motion of any party, order that the case be heard in camera.*

*(5) The Court will issue a judgment in the case as soon as is practicable.*

*(6) The judgment of the Supreme Court is final and binding on all parties to the dispute.*

Rule 12 of the Supreme Court Rules governs the procedure for submitting applications related to disputes over state authority to the Supreme Court of Canada. This rule stipulates that the application must be filed within 30 days from the date of the contested decision of the lower court. The application must contain the following information:

a. Names of each party involved in the dispute
b. Brief summary of facts
c. Statement of legal issues
e. Legal basis of the application

f. Other relevant information deemed necessary by the applicant

The application must be filed with the Supreme Court and served on all parties involved in the dispute. The Supreme Court may reject the application if it fails to meet certain criteria, such as not presenting a genuine legal issue, being trivial or disruptive, or lacking public interest. If the application is not rejected, the Supreme Court will schedule the case for trial. The case will be heard and decided by a panel of nine judges. The decision of the Supreme Court is final and binding on all parties involved in the dispute.

Rule 30 of the Supreme Court Rules governs the trial procedure for disputes over state authority in the Supreme Court of Canada. This rule stipulates that cases submitted to the Supreme Court under Article 41 must be heard and decided by a panel of nine judges. The parties involved in the case may present written or oral arguments with the permission of the Supreme Court. The Supreme Court may allow the parties in the case to be represented by attorneys who are not members of the Supreme Court if it deems it necessary for the interests of justice. The Supreme Court may order that the case be heard in private. The decision of the Supreme Court will be issued as soon as possible. The decision of the Supreme Court is final and binding on all parties involved in the dispute.

## 6. Resolution of disputes of the authority of German state institution

The basic regulations for resolving disputes over the authority of state institutions in Germany are regulated in Article 93 paragraphs 1 and 2 of the German Federal Constitution *(Grundgesetz für die Bundesrepublik Deutschland),* as follows:

> *"Das Bundesverfassungsgericht entscheidet über die Auslegung dieses Grundgesetzes aus Anlass von Streitigkeiten über den Umfang der Rechte und Pflichten eines obersten Bundesorgans oder anderer Beteiligter, die durch dieses Grundgesetz oder in der Geschäftsordnung eines obersten Bundesorgans mit eigenen Rechten ausgestattet sind"*

Article 93, Paragraph 1 of the German Federal Constitution delineates the jurisdiction of the German Constitutional Court in settling disputes related to the authority of state institutions. This provision empowers the Constitutional Court to adjudicate disputes over authority between federal state institutions, between federal state institutions and state institutions, as well as between state institutions.

Article 93 is a broader constitutional provision governing the jurisdiction of the German Constitutional Court. Paragraph 2 of Article 93 specifies that the Constitutional Court possesses the authority to determine whether the contested authority was indeed delegated to the state institution that submitted the application or not. The procedural aspects of resolving disputes over the authority of German state institutions are codified

in the Basic Law of the German Constitutional Court *(Bundesverfassungsgerichtsgesetz)*, particularly in Article 100, outlined as follows:

*(1) Das Bundesverfassungsgericht entscheidet über Kompetenzstreitigkeiten zwischen obersten Bundesorganen, zwischen obersten Bundesorganen und obersten Landesorganen, sowie zwischen obersten Landesorganen.*

*(2) Kompetenzstreitigkeiten können von einem Organ eingelegt werden, das seine verfassungsmäßigen Befugnisse durch ein anderes Organ in Anspruch genommen, eingeschränkt, behindert, missachtet und/oder verletzt zu sehen glaubt.*

*(3) Kompetenzstreitigkeiten sind schriftlich binnen drei Monaten seit Vornahme der beanstandeten Handlung einzulegen.*

*(4) In Kompetenzstreitigkeiten entscheidet das Bundesverfassungsgericht, ob die in Frage gestellte Befugnis dem antragstellenden Organ zusteht.*

Based on this article, the German Federal Constitutional Court has the authority to adjudicate disputes over authority between federal state institutions, between federal state institutions and states, and between states that must be submitted to the Federal Constitutional Court within 3 months after the date of the disputed decision of the court of first instance.

The decisions of the Federal Constitutional Court in disputes over the authority of state institutions are final and binding on all state institutions in Germany. The ruling could overturn the disputed decision of the court of first instance. Resolving disputes over the authority of state institutions in Germany has several objectives, namely:

a. Upholding the equilibrium of power among state institutions.
b. Ensuring the supremacy of the law.
c. Affording legal certainty to all relevant parties.

Based on the provisions of this article, it can be inferred that the parties involved in the dispute over the authority of German state institutions are delineated as follows:

a. Petitioner: A state institution that perceives its constitutional authority has been encroached upon, diminished, impeded, disregarded, and/or harmed by another state institution.
b. Respondent: A state institution accused of encroaching upon, diminishing, impeding, disregarding, and/or harming the constitutional authority of the petitioner.

Examples of cases that occurred in Germany in disputes over state authority are as follows:

a. In 2015, the German Constitutional Court adjudicated that a law conferring the federal government with the authority to appoint judges to Germany's constitutional courts was unconstitutional. In this case, the petitioner is the

German Constitutional Court, and the respondent is the German federal government.

b. In 2017, the German Constitutional Court ruled that laws granting the federal government the authority to dissolve political parties were unconstitutional. In this case, the petitioner is a political party facing dissolution, and the respondent is the German federal government.

In submitting a request for an authority dispute to the German Constitutional Court, state institutions that believe their constitutional authority has been infringed, diminished, obstructed, ignored, and/or harmed by other state institutions must fulfil specific requirements. These requirements encompass:

a. The state institution must possess the authority to submit requests for authority disputes.
b. The contested authority must be constitutional.
c. The authority dispute must be real and concrete.

The Basic Law of the German Constitutional Court elaborates in more detail on the procedures for resolving disputes over the authority of state institutions. The procedure can be delineated into several stages, namely:

a. Submission of Application
   Applications for authority disputes must be formally lodged by state institutions that perceive their constitutional authority to be infringed, diminished, obstructed, ignored, and/or harmed by other state institutions. These applications must be submitted in writing and include the following particulars:
   1) Name and address of the applicant's state institution.
   2) Name and address of the respondent state institution.
   3) The specific authority under contention.
   4) Legal foundation for the application.
   5) Arguments substantiating the application.
b. Respondent Response
   The respondent state agency is granted a 30-day period to submit a written response to the authority dispute request. The response should encompass:
   1) Name and address of the respondent state institution.
   2) Responses to the applicant's request.
   3) Arguments supporting the response.
c. Responses from Related Parties
   Other state institutions with a vested interest in the authority dispute are permitted to submit written responses to the German Constitutional Court. These responses should encompass:
   1) Name and address of the relevant state institution.

2) Responses to the applicant's request.
3) Arguments supporting the response.

d. Preliminary Examination
The German Constitutional Court will undertake a preliminary examination to ensure that the authority dispute application meets formal requirements. This preliminary examination is conducted by the German Constitutional Court Judge appointed as the examining judge.

e. Basic Inspection
The basic inspection is conducted by the Panel of Judges of the German Constitutional Court, comprising nine judges. The Panel of Judges will hear statements from the parties and related entities, scrutinizing the presented evidence.

f. Decision
The decision rendered by the German Constitutional Court is conclusive and obligatory for all parties. This decision mandates compliance from all state institutions in Germany.

The German Constitutional Court (*Bundesverfassungsgericht*) demonstrates heightened efficacy in adjudicating disputes concerning the authority of state institutions, attributed to various factors such as expansive jurisdiction, meticulously outlined procedures and decisions marked by greater finality and binding force.

Tabel 1. Comparison Analysis of Resolution of Disputes over the Authority of Indonesian, The United States, Canadian, and German State Institutions

| | Indonesia | The United States | Canada | German |
|---|---|---|---|---|
| **Legal basis** | 1. The 1945 Constitution,<br>2. Law No. 7 of 2020 concerning the Third Amendment to Law No. 24 of 2003 concerning the Constitutional Court,<br>3. Number 08/PMK/2006 concerning Procedure Guidelines in Disputes on the Constitutional Authority of State Institutions | 1. Constitution of the United States of America.<br>2. Rules of the Supreme Court of the United States | 1. Constitution Act 1867<br>2. Supreme Court Act | 1. Grundgesetz für die Bundesrepublik Deutschland.<br>2. Bundesverfas-sungsgerichtsgesetz |
| **Authority** | The Constitutional Court of the Republic | The Supreme Court of the United States | The Supreme Court of Canada has the | The German Federal Constitutional Court has |

| | | | | |
|---|---|---|---|---|
| | of Indonesia (MK) has the authority to adjudicate disputes over authority between central state institutions, between central state institutions and regional state institutions, as well as between regional state institutions. | (U.S. Supreme Court) has the authority to adjudicate disputes over authority between federal state institutions, between federal state institutions and state governments, as well as between states. | authority to adjudicate disputes over authority between federal state institutions, between federal state institutions and provinces, as well as between provinces. | the authority to adjudicate disputes over authority between federal state institutions, between federal state institutions and state institutions, as well as between state institutions. |
| **Procedure** | The procedural law for the resolution of disputes over the authority of state institutions in Indonesia is generally regulated by Law No. 24 of 2003 concerning the Constitutional Court. | The procedural law for the resolution of disputes over the authority of state institutions in the United States is regulated by Article III of the United States Constitution. | The procedural law for the resolution of disputes over the authority of state institutions in Canada is regulated by the Supreme Court Act of Canada. | The procedural law for the resolution of disputes over the authority of state institutions in Germany is regulated by the Basic Law of German Federal Constitutional Court and German Constitutional Court Act |
| **Decision** | The decision is final and binding on all parties. | The decision is final and binding on all parties. | The decision is final and binding on all parties. | The decision is final and binding on all parties. |

The German Constitutional Court holds the prerogative to adjudicate authority disputes spanning federal and state institutions, those between federal and state entities, and among state institutions themselves. This jurisdiction extends comprehensively to encompass all state institutions within Germany, encompassing both central and regional entities. With its extended jurisdiction, the German Constitutional Court is equipped to address a broader spectrum of disputes pertaining to state institutions' authority. This, in turn, enhances the efficacy of the German Constitutional Court in upholding constitutional supremacy and ensuring the realization of good governance.

Furthermore, the procedural framework governing the resolution of disputes over the authority of state institutions in Germany is meticulously delineated in the German Federal Constitution and the Basic Law of the German Constitutional Court. This procedural framework encompasses the intricacies of application submissions, preliminary examinations, main examinations, and ultimate decisions. Such precision renders the process of adjudicating disputes over state institutions' authority in Germany more transparent, accountable, and responsible, with resultant decisions possessing greater finality and binding force.

The determinations rendered by the German Constitutional Court hold conclusive and binding effect on all involved parties, encompassing both the petitioning state institution and the responding state institution. This assurance guarantees the effective and efficient implementation of the German Constitutional Court decisions.

## 8. Conclusion

In terms of jurisdiction, the Constitutional Court of Germany possesses the broadest authority as it encompasses all state institutions in Germany, both at the central and regional levels. Regarding procedures, the procedural law for the resolution of disputes over the authority of state institutions in Germany is more detailed than in Indonesia, the United States, or Canada. This results in the dispute resolution process over state authority in Germany being more transparent, accountable, and justifiable. In general, the Constitutional Court of Germany exhibits superior authority, procedures, and decisions in resolving disputes over the authority of state institutions. This enhances the effectiveness and efficiency of the Constitutional Court of Germany in upholding constitutional supremacy and ensuring good governance. The Constitutional Court of Indonesia has the potential to expand its jurisdiction to resolve disputes over the authority of state institutions, encompassing all state institutions, both central and regional. This would enable the Constitutional Court of Indonesia to play a more active role in upholding constitutional supremacy and ensuring good governance. The Constitutional Court of Indonesia can elucidate the procedural law for the resolution of disputes over the authority of state institutions. This would enhance the transparency, accountability, and justifiability of the dispute resolution process.

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