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Home | Submit Manuscript | New Manuscripts (0) | Back

list of Submitted Articles:

Contents: This page lists all submissions that have been assigned to an Editor, for which the Editor's decision has not yet been made. This includes submissions with invited Reviewers, submissions out for review, submissions requiring a decision, and submissions which have a subordinate Editor's decision but not a decision from the top Editor in the decision-making chain.

Action Links	Manuscript Number	Article Title/File Inventory	Article Type	Editor Name	Initial Date Submitted	Status Date	Current Status	Editor Assigned Date
Action Links	jleri-21-5711	FORMULATION OF ASYMMETRIC CRIMINAL SANCTIONS: INDONESIAN EXPERIENCE Edit/View file Inventory	Commentary Article	Grubbs J. Keaton No Response No Comments	Jul 10, 2021	Sep 30, 2021	Withdrawn	Jul 13, 2021
Action Links	jleri-21-4850	INDONESIAN CONSTITUTIONAL INTERPRETATION: CONSTITUTIONAL COURT VERSUS THE PEOPLE'S CONSULTATIVE ASSEMBLY Edit/View file Inventory	Commentary Article	Pamela P. Stoke EDITOR APPROVED Feedback	Jan 15, 2021	May 31, 2021	Accepted Articles	May 31, 2021
Action Links	jleri-20-422	INDONESIAN CONSTITUTIONAL AMANDEMENT IN 4.0 ERA: PROSPECT FOR THE FUTURE Edit/View file Inventory	Perspective	Grubbs J. Keaton EDITOR APPROVED Feedback	Jun 10, 2020	Nov 18, 2020	Accepted Articles	Nov 18, 2020

INDONESIAN CONSTITUTIONAL INTERPRETATION: CONSTITUTIONAL COURT VERSUS THE PEOPLE'S CONSULTATIVE ASSEMBLY

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Abstract

The discourse on the interpretation function of the constitution raises two ways of the mind, the first to assess the Constitutional Court is the right institution to perform the function of the final commentators, both of which are strengthened in the institution of the People's Consultative Assembly that is the most appropriate because of the people's Consultative Assembly which has the authority to change and establish the Constitution as this article is intended to formulate a future scenario that can be considered in the implementation of the interpretation function of the constitution. The approach used is a statute approach and a conceptual approach. The findings of this study formulate two schemes, the first interpretation function remains attached to the Constitutional Court which is attached to the authority to test the constitutionality of legislation, but opens the room for the People's Consultative Assembly as a party that can be presented at the conference to be asked the explanatory or description related to the textual meaning formulation of constitutions that are used as test stones. Secondly, the interpretation function is in the Constitutional Court and the People's Consultative Assembly, with the mechanisms of the Constitutional Court and the People's Consultative Assembly to conduct an interpretation of the examination of the constitutionality of legislation, and each interpretation results will contribute to the final outcome of the Constitutional Court decision.

Keywords: Indonesian; Constitutional Interpretation; Constitutional court; the People's Consultative Assembly

INTRODUCTION

Conceptually, the Constitution as a *resultante* in the field of politics, economics, social, and culture is interpreted as the Basic Law that contains at least 3 (three) aspects, namely the assurance of human rights and its citizens, the administration of the state of a fundamental nature, as well as the division and limitation of constitutional duties that are also fundamental.[1]

The amendment of the Constitution of Indonesia in the period 1999-2002 is a reaction to the demands of reforms that result in the institutional arrangement of the state that is fundamental. The amendment of the Constitution brought a major change in the constitutional system, in addition to the repositioning institutional position of the Tribunal

The People's Consultative Assembly at the time before the Constitution was changed is the highest state institution, post-change to be aligned with the higher institutions of other countries such as the President, and the House of Representatives, as well as the constitutional change gave birth to a new institution that is the Constitutional Court. The birth of the institution of the Constitutional Court which is reflected in article 24 paragraph (2) of the

[1] Sri Soemantri, quoted in Novendri M. Nggilu. (2014). "*Hukum dan Teori Konsitusi" (Perubahan Konstitusi yang Partisipatif dan Populis),* UII Press: Jogjakarta, p. 28

Constitution of the Republic of Indonesia year 1945[2] placing this institution as the holder of judicial power in addition to the Supreme Court.[3]

Constitutionally, the authority and obligations of the Constitutional Court as institutions of judicial authority include[4]:

a. To test the law on the Constitution of 1945;
b. Disconnecting the authority of the institution of the authorities whose authority is granted by the Constitution of 1945;
c. Dissolving political parties;
d. Severs disputes on the results of elections; and
e. The Constitutional Court shall award the opinion of the House of Representatives that the President and/or vice president alleged to have committed a legal offense in the form of betrayal of the state, corruption, bribery, other serious criminal acts, or misconduct, and/or no longer qualify as President and/or vice President as intended in the Constitution of 1945.

The constitutional authority and obligations according to Jimly reflect the existence of 5 (five) functions of the Constitutional Court, namely[5]:

a. as the guardian of constitution;
b. as a decision controller based on the democracy system (control of democracy);
c. as the supreme commentators of the constitution (the soul and the highest interpreter constitution);
d. as a of the citizens constitutional rights;
e. as the protector of human rights.

In the case of the Constitutional Court's authority to test the law against the Constitution of 1945, the Constitutional Court does not merely conduct an assessment of the word or sentence in the article, paragraph, the letter of a law, but also interpret and refer to the test stone either the word or sentence of the article or the text in the Constitution of 1945.

It is undeniable that the placement of the legal testing of law against a country's constitution requires an interpretation activity that is related to the history of testing occurring in the case of Marbury vs. Madioson[6] and the history of Constitutional Court formation in Austria pioneered by Hans Kelsen as one of the designers of the Austrian Constitution[7] change

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[2] Hereinafter abbreviated as Constitution of 1945

[3] The provisions of article 24 paragraph (2) state that judicial power is conducted by a Supreme Court and its judicial body under it in the environment of the general judicial, religious judicial environment, military judicial environment, the judicial environment of the State administration, and by a constitutional court. See also Muhammad Ishar Helmi. (2019). *Penyelesaian Satu Atap Perkara Judicial Review di Mahkamah Konstitusi, Jurnal Sosial dan Budaya Syar'I* Vol. 6 No. 1, hal. 100. doi;10.15408/sjsbs.v6i1.10551

[4] Article 24C paragraph (1) and paragraph (2) of the Constitution of the Republic of Indonesia year 1945, as well as article 10 of law number 24 of 2003 concerning the Constitutional Court as amended by Law No. 8 of 2011.

[5] Jimly Asshiddiqie, quoted in Novendri M. Nggilu. (2019). "*Menggagas Sanksi atas Tindakan Constitution disobedience Terhadap Putusan Mahkamah Konstitusi", Jurnal Konstitusi* Vol 16 No. 1 Maret 2019, p. 45. doi;10.31078/jk1613

[6] Nur Hidayat Sardini, Gunawan Suswantoro. (2016). "*60 Tahun Jimly Asshiddiqie; Menurut Para Sahabat",* Yayasan Pustaka Obor Indonesia; Jakarta, p. 466., See also Jimly Asshiddiqie, (2010). "*Model-Model Pengujian Konstitusional di Berbagai Negara",* Sinar Grafika; Jakarta, p. 16

[7] Jimly Asshiddiqie. (2010). "*Model-Model…." Op.cit.* hal. 28

which in principle required an autonomous judicial institution that is able to regulate the implementation of basic legal provisions and ensure that the implementation of the Constitution shall be held responsibly.

The position of the Constitutional Court as the highest and final commentators on the constitution of 1945 elicits the antitheistic view and thinking of the main function of the Constitutional Court as outlined above, because if the notice of the provisions of article 3 paragraph (1) of 1945 Constitution, expressive Verbis stated that the people's Consultative Assembly shall change and establish the Constitution. These provisions reflect the people's Consultative Assembly is an institution that has the adequacy of materials, information, and even the members who are the live witnesses of the discussion and debate that is coloring the constitution change process, especially those occurring in the period 1999-2002. If the Constitutional Court is interpreted as the soul and the highest interpreter of constitution, it means that the Constitutional Court judged the most "soul" of the constitution so that he was given the noble function as the supreme and final commentators on Constitution of 1945, so what about the People's Consultative Assembly that "gave birth" the Indonesian Constitution which is already assured most know the situation of the In addition, if observing the judicial process in the Constitutional Court in the event of the implementation of the legal testing task against the Constitution of 1945, where the absence of involvement of the People's Consultative Assembly in the implementation of interpretation function in the Constitutional Court caused the idea to give other functions to the people's Consultative Assembly as an interpreter of the Constitution of 1945 as reflected in the wishes of the People's Consultative Assembly to have the authority of the official commentators on the Indonesian Constitution.[8]

PROBLEM STATEMENT

Interpretation of the functionally undertaken constitution by the Constitutional Court makes the people's Consultative Assembly that does not have any role and space in the process of interpretation of the Constitution conducted by the Constitutional Court through its authority to examine legislation against the underlying laws and bring about the idea of so that the formal interpretation of the Constitution of Indonesia is the Basic Law year 1945 should be done by People's Consultative Assembly with the evidence that the authority of the People's Consultative assembly form and change the Constitution of 1945 as the mandate of Article 3 paragraph 1 Constitution of 1945 also implicitly mount the People’s Consultative Assembly as the official agency for the active interpreter of the Indonesian constitution, the phenomenon of the state will need to be examined comprehensively and academically, so the research problem in this article is how the Indonesian Constitution interpretation model forward.

METHOD

The writing of this article is based on the type of normative research using approaches, conceptual approaches, and historical approaches. The legal material used in this writing is a legal material that has a good authoritative it comprehension manuscript which contains the treatise trial changes of the Constitution conducted in 1999-2002, the constitution year 1945,

[8] Interview with Yana Indrawan Head of the assessment Bureau of the People's Consultative Assembly of the Republic of Indonesia, Jakarta, November 21, 2019.

the Constitution of the Constitutional Court, as well as secondary legal material both international and national books and journals related to the object of this writing. The collected legal materials will then be analyzed prescriptively.

Two Emerging Ways of the Constitutional Interpretation

The birth of the Constitutional Court through the "uterus" reform of the Constitution[9] in 1998 internationally records the country Indonesia as the country to the 78 that formed the Constitutional Court (Constitutional), while providing a very significant influence in the development of Indonesian state law. This is because Indonesia, which is a state of law,[10] further strengthens the position with the Constitutional Court which functionally is the guardian of the Constitution which ensures judicial implementation of the Constitution of the Republic of Indonesia in full and responsible.[11]

In its journey to perform functions as a final interpreter on the constitution, emerging ideas, and thoughts that colorize the constitutional debate, that the people's Consultative Assembly as the owner of constitutionally authorized authority to change and establish the Constitution[12], which understands the situation of the infirmity that coloring the journey process of constitutional change does not have space at all in the final interpretation of the Constitution that has been fully implemented by the Constitutional Court as a single player.

The debate has indeed emerged as to whether constitutional testing and the interpretation of the Constitution is unity or two different things. To mount this, it is worth noting the meaning of testing and interpretation. Bisariyadi and his companions tried to elaborate on the term of the constitutional interpretation, which is said to be a term used by constitutional law experts to give an understanding on how to interpret the Constitution, according to them the term can be traced to the work of Craig R. Ducat[13], Charles Sampford[14], Jack N. Rakove[15]. According to the three scholars, it is said that the interpretation of the Constitution is closely related to the adjudication, standards, and methods by the judiciary to exercise judicial review authority.[16]

The true testing is an act that is in the judges, even Aaron Alrasheed[17] mentions as a right that the judges have as well as an obligation. In accordance with the opinion of Harun

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[9] The term constitutional reform was used by Deny Indrayana and Novendri M Nggilu. See Novendri M. Nggilu, (2014), *Teori dan Hukum Konstitusi, (Perubahan Konstitusi yang Partisipatif dan Populis),* UII Press: Jogjakarta, p. 4.

[10] Article 1 of the Constitution of 1945

[11] Novendri M. Nggilu, "*Menggagas Sanksi atas Tindakan Constitution Disobedience terhadap Putusan Mahkamah Konstitusi",* Jurnal Konstitusi 16 No. 1 March 2019, p. 43

[12] Article 3 paragraph (1) of the Constitution of 1945

[13] Craig R. Ducat, (2004), *Constitutional Interpretation,* Wordsworth Classic: California.

[14] Charles Shampford, (1996), *Interpreting Constitutions Theories, Principles and Institution,* The Federation Press: Sydney.

[15] Jack N. Rakove,(1990), *Interpreting Constitution : The Debate Over Original Intent,* Northeastern University: Michigan

[16] Bisariyadi, et.,al. (2016). "*Penafsiran Konstitusi Dalam Pengujian Undang-Undang Terhadap Undang-Undang Dasar".* Report on Research Center Results, Assessment, and Management of Information and Communication Technology. p. 9

[17] Harun Alrasyid, "*Hak Menguji Dalam Teori dan Praktek", Jurnal Konstitusi* Volume 1 Nomor 1 Juli 2004, p. 95.

Alrasheed, Bahtiar[18] mentions the action of regulatory testing is inherently inherent with judicial power and is the nature of the innate of the judges ' duties in carrying out the adjudication function. Furthermore, Bahtiar mounts the use of the Constitutional Testing Ordinance of a regulation to submit a mechanism undertaken to ensure product legislation does not contradict the basic legal norms and does not harm the rights of citizens that are secured by the underlying law. [19]

If returning to the dim science of interpretation, the true interpretation is a method of discovery of law that gives a clear explanation of a rule, because the interpretation is necessary because not all laws and regulations can be arranged in an obvious form and do not open the interpretation again, especially if referring to the post caterpillar that the true change in the environment of a very dynamic community that must be able to.

The use of the packaging between interpretation and testing is something that is not easy, especially in the civil law countries, it can be traced from very minimal studies related to it, in different countries with the common law system. The constitutional testing authority of the civil law states always obscures the boundary of constitutional interpretation with constitutional testing (statutory interpretation).[20] A study conducted by Neil Mac Cormick and Robert P. Sommers elaborated that judicial review on state civil law gave the judicial institution space to undertake a constitutional interpretation to measure the constitutionality of the legislation norms tested.[21]

It must be acknowledged that in the implementation of the Constitutional Court's authority for constitutional testing, the Constitutional Court is confronted on one condition that must undertake an interpretation of the Constitution, but it is necessary to understand is the authority of the Constitutional Court is a testing of the constitutionality, while interpretation constitutes the role or function of the Constitutional Court.

Constitutional testing is the power of the Constitutional Court, while interpretation cannot be said as an authority, because it is a function or role. The logic, is the testing of the constitutionality of the law is the absolute right of the Constitutional Court, he is the sole authority to test the constitutionality of legislation on the Constitution, while the true interpretation can be done by all parties, be it community, state institutions, and any party.[22]

According to Susi Dwi Harjanti, the interpretation carried out by the judges is no exception of th g vcbbe constitutional judge is the authority whose nature is inherent to the task of the judge in completing a cause, including also in the process of implementing a provision in the regulation to the concrete case filed into court.[23]

In addition to the way of the mind that assesses that interpretation is an integral part of judicial activism, there are other avenues of mind that have also been tangent above. The basis

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[18] Bahtiar, (2015), "*Problematika Implementasi Putusan Mahkamah Konstitusi Pada Pengujian Undang-Undang terhadap UUD",* Penebar Swadaya Grup: Jakarta, p. 120

[19] *Ibid.,* p. 121

[20] Bisariyadi, *op,cit.,* p. 2.

[21] D. Neil Mac Cormick dan Robert P. Sommers. (1991). *Interpreting Statutes: A Comparative Study,* (Aldreshot: Dartmouth Publishing Co.

[22] Bisariyadi, *op,cit,* p. 19

[23] Results of interviews with Susi Dwi Harijanti, at the Secretary of the Center for State Policy Studies Faculty of Law, Universitas Padjajaran Bandung, November 19, 2019. See also Susi Dwi Harijanti, "*Perkembangan Materi Muatan Konstitusi : Memperkuat Konstitusionalisme Bernegara, Dalam Bunga Rampai, Interaksi Konstitusi"*, op, cit., p. 177

of the argument of the second way of mind rests on a constitutional authority in constitutional change, where the People's Consultative Assembly is constitutionally the only institution in the constitution of 1945 which is incorporated the authority to change and establish the Constitution of 1945, so that based on the authority of the Assembly, the People's Consultative Assembly should have the authority to interpret the Constitution and be used as a reference for the society and institutions of the state including the Constitutional Court in disconnecting a cause that makes the Constitution as a stone.

Before the change to the Constitution 1945, the function of interpreting the constitutions did feel very thick in the People's Consultative Assembly agency, because the People's Consultative Assembly has the authority in establishing the outline of the country that in the political process also conducts the interpretation of the basic laws that the results of the interpretation are formulated in the outline of the country. Further than that, as part of the implied power, the People's Consultative Assembly can also assess the president's performance by using the outline gauge of the state that can lead to impeachment political sanctions. "Fajrul Falaakh even declared, the People's Consultative Assembly at the time of enactment of the Constitution before the amendment for example in the new Order period of conducting an interpretation of the constitutions to fill the vacant space in the Constitution then, by issuing TAP MPR No. 1/MPR/1983 on the code of conduct which changes the meaning of article 2 paragraph (3) of the Constitution of 1945 to" *any ruling of the People's Consultative Assembly is determined by deliberation for consensus or voting by prioritizing the first way* ".[24]

Ius Constituendum of the People's Consultative Assembly Position and the Interpretation of the Constitution in the Future

If the current constitutional and juridical design is concerned about the interpretation of the Constitution, *expressive verbis* is indeed no affirmation on the authority of the final commentators on the Constitution is in the institution, whether to observe article 3 governing the authority of the People's Consultative Assembly or section 24C governing the Constitutional Court's authority does not assert the authority of the interpreting. However theoretic and literary, the interpretation function is inherent in the Constitutional Court.[25]

As outlined in the previous section, that in the execution of the duties of the Constitutional Court is not uncommon in a condition whereby the Constitutional Court uses a path of interpretation as a method of testing the constitutionality of a law. In the course of the implementation of the testing authority by the Constitutional Court, Bisariyadi mentioned there are several test patterns run by the Constitutional Court, namely:

a. Simply use (citing) the articles in the Constitution as a basis for testing (without further elaborating the meaning behind the text of the constitution);

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[24] Saldi Isra, Feri Amsari, "*Perubahan Konstitusi Melalui Tafsir Hakim",* Retrieved from *https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUKEwiExM6_trTmAhUWT30KHUp-C58QFjAAegQIAxAC&url=http%3A%2F%2Fbphn.go.id%2Fdata%2Fdocuments%2Fmakalah_fgd.rtf&usg=AOvVaw0XQExKlGo2_GGEasUfbytT,* accessed 10 November 2019, 01.00pm

[25] Jimly Asshiddiqie sees the Constitutional Court function as the final interpreter of the Constitution, which is reflected by the authority to examine the constitutionality of a law that is its verdict final and binding. See Novendri M. Nggilu, *Menggagas sanksi*... Loc, cit.

b. Mention the principles or values of the Constitution as the basis of testing (without specifically mentioning the clauses in the basic legislation used as a tested stone);
c. Not mentioning the basis of testing norms (consideration of the Tribunal judges directly concluded that the norm is tested (not contrary to the Constitution).[26]

In the test pattern where the Constitutional Court first conducted an interpretation, at least reflected in the decision of the Constitutional Court No. 001-021-022/PUU-I/2003 on the examination of Law No. 20 of 2002 on electricity of the Constitution of 1945. In the ruling, the Constitutional Court conducts a constitutional *Ijtihad* in interpreting article 33 paragraph (2) of the 1945 Constitution in particular the phrase "ruled by the state". The phrase is interpreted by the Constitutional Court with the same content as the next:

> "The people collectively were constructed by the Constitution 1945 providing a mandate to the State to hold policies (Beleid) and management actions (*bestuursdaad*), arrangements (*regelendaad)*, Management (*beheersdaad*) and supervision (*toezichthoudensdaad*) for the maximum purpose of people's prosperity"

The *tafseer* given by the Constitutional Court restricts "ruled by the state" in terms of understanding, regulating, managing, and supervising, not on the use of control in the state-owned by the country. In certain contexts, the Constitutional Court is not merely conducting an interpretation, but also implicitly make material changes to the provisions of the article in the Constitution, as reflected in the case No. 005/PUU-IV/2006 on the constitutionality test Law No. 22 of 2004 concerning the Judicial Commission on the Constitution 1945, the constitutional judge provides an interpretation of the meaning of the judges listed in article 24 B paragraph (1) Constitution 1945. The court has not incorporated the constitutional judge as part of the word ' judge ' in the provisions of article 24 B Constitution of 1945. In contrast, according to the Court of Justice, the supreme Judge is part of article 24 B Constitution of 1945.

The court ruling has indirectly changed the sound of article 24 B paragraph (1) 1945 from the original meaning: "*The judicial commission is self-reliant authorized to propose the appointment of the supreme judge and have other authority in maintaining and enforcing the honor, the nobility of dignity, as well as the behavior of the judges", to be meaningful (textual meaning): "The Judicial commission of independent Self-regulatory authorities proposes the appointment of a supreme judge and has other authority in maintaining and enforcing the honor, dignity, and behavior of judges, except the constitutional Judge".*

It must be understood that there is a principle stating that the judge should not judge a matter in which there is the direct or indirect interest of the judge concerned, not valid in the judiciary in the Constitutional Court, because a case in the Constitutional Court remains at the end will be resolved in a meeting of judges where the nine judges have the same position in giving the ruling on a quo. It is not impossible in the matter which will be examined and tried in the Constitutional Court is a test of the laws that are closely related to the Constitutional Court of the institutional side as well as the judges. In that situation, the discourse flows to try to find the ideal path in the completion of the matter, whether it will still be implemented by the Constitutional Court or even any other mechanism possible.

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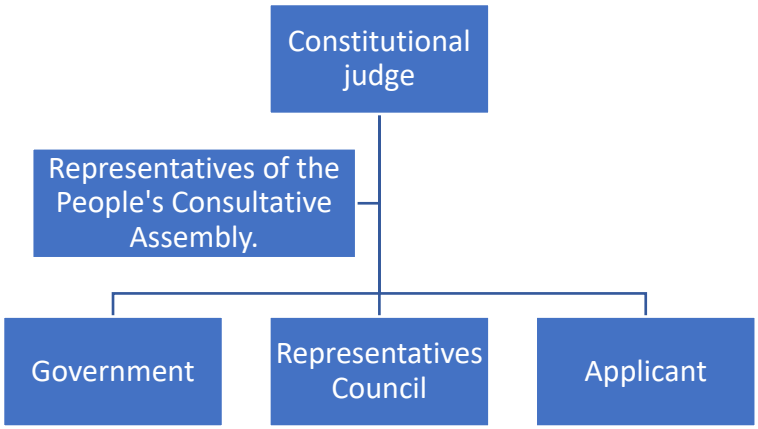
[26] *Ibid*

Noting the above, potential problems may indeed arise due to the function as a final interpreter on the pure Constitution only in the Constitutional Court, potential misuse of authority and reflect as if the Constitutional Court is like a superpower institution because the oversight is only relying on internal supervision through the Honorary assembly of judges Constitution, while reliable supervision on the direct supervision of the community, in relation to the institution of the Supreme Court, where additionally has an internal supervisory body, there is also external supervision that has been systemically supervising the supreme judge

In the case of the final interpretation of the Assembly of the People's Consultative Assembly as an institution that has the authority to amend and set the Constitution to be given space in the implementation of the final commentator function with the Constitutional Court, may consider the following two schemes:

A. Scheme 1

In this one scheme, the Constitutional Court remains as a single-player institution in the final interpretation process against the Constitution in the matters of testing the constitutionality of legislation, but in the process of examination in court, in addition to the applicant and also the respondent consisting of the Government and also the People's Representative Council as a legislator, must also present the people's Consultative Assembly, but the position of the People's Consultative Assembly in the hearing is not in the equivalent position with the government and the DPR who are the respondent in the matter Referred to, but as the party presented in relation to implied power, because the people's Consultative Assembly as an institution constitutionally attached the authority to change and establish the Constitution, then the logic of the People's Consultative Assembly also has the responsibility to control the authenticity of the principle of the establishment of the basic legislation to be used and applied by the Constitutional Court in resolving the case of testing the constitutionality to a law that is tested to the Constitutional Court. These schemes can be described below:



The chart above shows that the People's Consultative Assembly position is not the same as the Representatives Council and the government which is the respondent in the case of the examination of the Constitution, while the People's Consultative Assembly is presented in the preparation is invited as an institution that has the interest to explain the originality of the formulation of the article, and the paragraph in the basic legislation, especially the article or paragraph that is used as a tested stone, including

its interpretation of the originality of the formulation of the constitutional norm with the laws tested. The People's Consultative Assembly position in interpreting the Constitution was important while the legislation used as a tested stone was related to the interests of the Constitutional Court.

The involvement of other institutions to provide an interpretation of the Constitution in front of the Constitutional Court, for later consideration in issuing the right verdict is not something new. In comparison with the judicial institutions in other countries, call it the United States and Australia, the concept of deference is an approach used by the judiciary to open space from other institutions deemed to have a broad capacity and understanding in the testing of the courts. Deference is conceptually interpreted as an approach to the judicial review process conducted by the Court as a form of reconciliation between the rule of law and the parliamentary supremacy, more fully, Alan Freckelton provides the following explanation:

> *"Deference is an approach to judicial review taken by the court and effectively acts as a form of reconciliation between the rule of law and parliamentary supremacy. That is, deference to administrative decision-makers balances the court' constitutional requirement to review the decisions of administrative decision-makers to ensure that they are both constitutionaly valid and within the decision-makers power to make, and the power of the Parliament to allocate certain decision-making power to person authorized by or bodies created by statue".*[27]

In general, deference has du Aarti alternative, first, deference can mean a tribute to the judgment or opinions of other institutions. Secondly, deference can mean a form of recognition of the authority of other institutions.[28]

A reflection of the implementation of deference on the American Supreme Court can be traced to the resolution of the case of Skidmore v Swift & Con1944, as well as the case of Chevron USA Inc & Natural Resources Defense Council Inc 1984, while in Australia can be traced in cases of R v Hickman; Ex parte Fox 1945 the case is similar to the Chevron cases in the United States.[29]

In Indonesian context, the concept of deference is very possible to be applied in Indonesia in terms of the interpretation of the Constitution in Menyelesaiakan matters of testing the constitutionality of legislation in the Constitutional Court. With the opening of the chamber for the People's Consultative Assembly in conveying its interpretation of the Constitution, especially the chapters and verses that became the test stone in the case of testing, the People's Consultative Assembly can carry out the escort function of the originality of the Constitution itself, and the Constitutional Court must consider the interpretation presented by the People's Consultative Assembly in the formulation of the verdict. It will reflect that the Constitutional Court is honored institutionally to the People's Consultative Assembly in the context of the

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[27] Alan Freckelton, Quoted in Bisariyadi, *Op..Cit..*, p. 52.

[28] Universitas Pelita Harapan and the Assesment Agency of the Peoples Consultative Assembly, (2018), "*Naskah Akademik Rancangan Undang-Undang tentang Majelis Permusyawaratan Rakyat",* the Assesment Agency of People's Consultative Assembly: Jakarta, p. 235

[29]

implementation of the interpretation function in carrying out constitutional testing tasks of legislation against the constitution.

B. Scheme II

If in the scheme one, where the people's consultative assembly has space only in the context of the submission of interpretation of the constitution at the Constitutional Court of Justice and to be a matter of consideration for the Constitutional Court in breaking the law testing against the Constitution, then in this second scheme, the freshwater position of the People's Consultative Assembly is much stronger than the scheme one, at least comparable to the Constitutional Court. During the trial examination of the application for legal testing of the Constitution, the People's Consultative Assembly was present in the trial to observe and hearken to the proceedings and be attached to the parties ' information on the proceeding. The result of the examination then the People's Consultative Assembly formulated the interpretation of its constitution and handed it to the People's Consultative Assembly prior to the meeting of constitutional judges in order to discuss and award the decision on the subject of temporary assessment in the court. The results of the constitutional interpretation by the People's Consultative Assembly were then codified into 4 votes and from the Constitutional court, 9 votes with each judge having one vote.

In this second scheme, it will reflect two concepts incorporated for the formulation of counterbalancing interpretation designs. The two concepts are:

a) The concept of deference that has also been outlined in the scheme one, where the assembly of the People's Consultative Assembly to interpret the Constitution in the implementation of the task of the constitutionality testing by the court as a form of institutional reverence to the People's Consultative Assembly as an institution that is constitutionally authorized to change and establish the Constitution, as well as historically not be able to recite interpretation functions against the onstitution has also been in the People's Consultative Assembly, and
b) The concept of constitutional dialogue. In describing this concept, it became relevant to describe the opinions of Anne Meuwese and Marnix Snel who formulated as follows:

> *"a sequel of implicitly or explicitly shaped communications back and forth between two or more actors characterized by the absence of a dominant actor-or at least by a bracketing of dominance-, with the shared intention of improving the practice of interpreting, reviewing, writing or amending constitutions."*[30]

In view of the views of Anne Meuwese and Marnix Snel, the Constitution dialogue is a good stage in both expressed and implied ways that form two-way communication between two or more, actors to balance from the dominance of certain actors, with the intention of developing the practice of interpreting, testing, forming, or altering the constitution.

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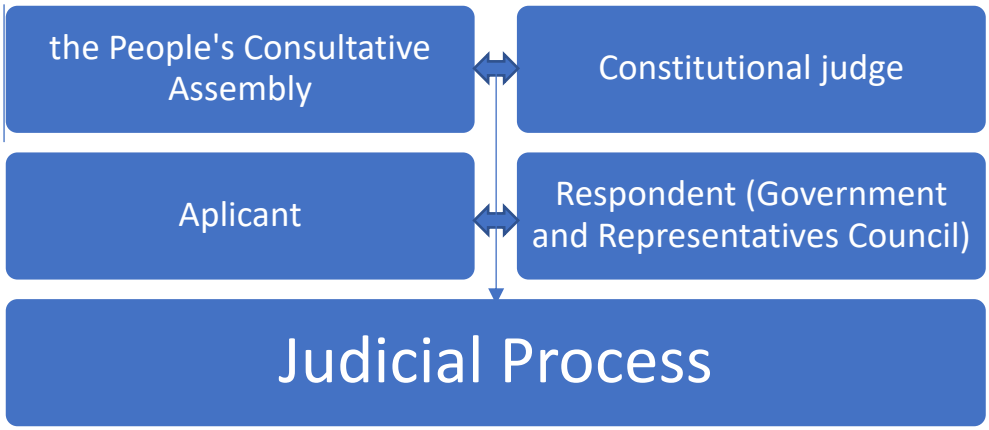
[30] Anne Meuwese, Marnix Snel, *Constitutional Dialogue : An Overview,* Utrecht Law review Volume 9, Issue 2 (March) 2013, p. 126

In the context of the final interpretation of the Constitution which currently impresses the dominance of the Constitutional Court as a single player through the implementation of the authority to test the constitutionality of a law, hence the concept of dialogue of this Constitution, break down the sole dominance of the court as the final interpreter of the, can be illustrated in the scheme below:



Thus, in this second scheme, the people's consultative assembly for the interpretation of the Constitution in the execution of the task of the constitutionality of legislation by the constitutional court, in addition, reflects the existence of institutional reverence for the MPR that has the authority to change and establish the Constitution, also to offset the considerable power that is at the constitutional court which is currently a single player in interpreting the

From the two schemes above, the proper scheme is done in Scheme 1, because the people's consultative assembly is involved in the test of legislation on the basic legislation in the capacity as a forming of the Constitution, and the second people's consultative assembly is also responsible for controlling and maintaining the originality of the the people's consultative assembly's thought as the foundation legislator, where the results of their interpretation of the Constitution were submitted to the Constitutional Court and the final result remains on the Constitutional Court verdict will be issued with the nature of the final and binding.

Conclusion

In the future, a revision to the Indonesian Constitutional Court law is required, and it is necessary to reconstruct the aspect of the interpretation functions inherent in the Constitutional Court's authority in the testing of the law of constitutionality. In a trial examination by the Constitutional Court, next to the applicant and the respondent, in this case, the Representatives Council and the Government (the institution that formed the law is tested), can also present the other party, in this case, the people's Consultative Assembly to be asked for information and explanation of the original intent formulation of the article is made a tested stone to test the constitutionality of a law that is requested to the Constitutional Court.

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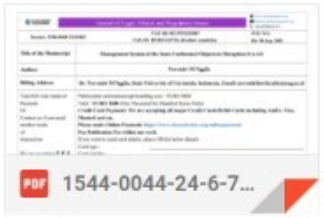

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INDONESIAN CONSTITUTIONAL INTERPRETATION: CONSTITUTIONAL COURT VERSUS THE PEOPLE'S CONSULTATIVE ASSEMBLY

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ABSTRACT

The discourse on the interpretation function of the constitution raises two ways of the mind, the first to assess the Constitutional Court is the right institution to perform the function of the final commentators, both of which are strengthened in the institution of the People's Consultative Assembly that is the most appropriate because of the people's Consultative Assembly which has the authority to change and establish the Constitution as this article is intended to formulate a future scenario that can be considered in the implementation of the interpretation function of the constitution. The approach used is a statute approach and a conceptual approach. The findings of this study formulate two schemes, the first interpretation function remains attached to the Constitutional Court which is attached to the authority to test the constitutionality of legislation, but opens the room for the People's Consultative Assembly as a party that can be presented at the conference to be asked the explanatory or description related to the textual meaning formulation of constitutions that are used as test stones. Secondly, the interpretation function is in the Constitutional Court and the People's Consultative Assembly, with the mechanisms of the Constitutional Court and the People's Consultative Assembly to conduct an interpretation of the examination of the constitutionality of legislation, and each interpretation results will contribute to the outcome of the Constitutional Court decision.

Keywords: Indonesian, Constitutional Interpretation, Constitutional Court, The People's Consultative Assembly.

INTRODUCTION

Conceptually, the Constitution as a resultant in the field of politics, economics, social, and culture is interpreted as the Basic Law that contains at least 3 (three) aspects, namely the assurance of human rights and its citizens, the administration of the state of a fundamental nature, as well as the division and limitation of constitutional duties that are also fundamental (Nggilu, 2014).

The amendment of the Constitution of Indonesia in the period 1999-2002 is a reaction to the demands of reforms that result in the institutional arrangement of the state that is fundamental. The amendment of the Constitution brought a major change of Indonesia year 1945

placing this institution as the holder of judicial power in addition to the Supreme Court (Helmi, 2019).

Constitutionally, the authority and obligations of the Constitutional Court as institutions of judicial authority include:

1. To test the law on the Constitution of 1945;
2. Disconnecting the authority of the institution of the authorities whose authority is granted by the Constitution of 1945;
3. Dissolving political parties;
4. Severs disputes on the results of elections; and
5. The Constitutional Court shall award the opinion of the House of Representatives that the President and/or vice president alleged to have committed a legal offence in the form of betrayal of the state, corruption, bribery, other serious criminal acts, or misconduct, and/or no longer qualify as President and/or vice President as intended in the Constitution of 1945.

The constitutional authority and obligations according to Jimly reflect the existence of 5 (five) functions of the Constitutional Court, namely in the constitutional system, in addition to the repositioning institutional position of the Tribunal

The People's Consultative Assembly at the time before the Constitution was changed is the highest state institution, post-change to be aligned with the higher institutions of other countries such as the President, and the House of Representatives, as well as the constitutional change, gave birth to a new institution that is the Constitutional Court. The birth of the institution of the Constitutional Court which is reflected in article 24 paragraph (2) of the Constitution of the Republic (Asshiddiqie, 2010):

1. As the guardian of the constitution;
2. As a decision controller based on the democracy system (control of democracy);
3. As the supreme commentators of the constitution (the soul and the highest interpreter constitution);
4. As an of the citizen's constitutional rights;
5. As the protector of human rights.

In the case of the Constitutional Court's authority to test the law against the Constitution of 1945, the Constitutional Court does not merely conduct an assessment of the word or sentence in the article, paragraph, the letter of a law, but also interpret and refer to the test stone either the word or sentence of the article or the text in the Constitution of 1945.

It is undeniable that the placement of the legal testing of law against a country's constitution requires an interpretation activity that is related to the history of testing occurring in the case of Marbury vs. Madioson (Sardini & Suswantoro, 2016) and the history of Constitutional Court formation in Austria pioneered by Hans Kelsen as one of the designers of the Austrian Constitution (Asshiddiqie, 2010). change which in principle required an autonomous judicial institution that can regulate the implementation of basic legal provisions and ensure that the implementation of the Constitution shall be held responsibly.

The position of the Constitutional Court as the highest and final commentators on the constitution of 1945 elicits the antitheistic view and thinking of the main function of the Constitutional Court as outlined above, because if the notice of the provisions of article 3 paragraph (1) of 1945 Constitution, expressive Verbis stated that the people's Consultative Assembly shall change and establish the Constitution. These provisions reflect the people's

Consultative Assembly is an institution that has the adequacy of materials, information, and even the members who are the witnesses of the discussion and debate that is colouring the constitution change process, especially those occurring in the period 1999-2002. If the Constitutional Court is interpreted as the soul and the highest interpreter of constitution, it means that the Constitutional Court judged the most "*soul*" of the constitution so that he was given the noble function as the supreme and final commentators on Constitution of 1945, so what about the People's Consultative Assembly that "*gave birth*" the Indonesian Constitution which is already assured most know the situation of the In addition, if observing the judicial process in the Constitutional Court in the event of the implementation of the legal testing task against the Constitution of 1945, where the absence of involvement of the People's Consultative Assembly in the implementation of interpretation function in the Constitutional Court caused the idea to give other functions to the people's Consultative Assembly as an interpreter of the Constitution of 1945 as reflected in the wishes of the People's Consultative Assembly to have the authority of the official commentators on the Indonesian Constitution.

PROBLEM STATEMENT

Interpretation of the functionally undertaken constitution by the Constitutional Court makes the people's Consultative Assembly that does not have any role and space in the process of interpretation of the Constitution conducted by the Constitutional Court through its authority to examine legislation against the underlying laws and bring about the idea of so that the formal interpretation of the Constitution of Indonesia is the Basic Law year 1945 should be done by People's Consultative Assembly with the evidence that the authority of the People's Consultative assembly form and change the Constitution of 1945 as the mandate of Article 3 paragraph 1 Constitution of 1945 also implicitly mount the People's Consultative Assembly as the official agency for the active interpreter of the Indonesian constitution, the phenomenon of the state will need to be examined comprehensively and academically, so the research problem in this article is how the Indonesian Constitution interpretation model forward.

METHOD

The writing of this article is based on the type of normative research using approaches, conceptual approaches, and historical approaches. The legal material used in this writing is a legal material that has a good authoritative it comprehension manuscript which contains the treatise trial changes of the Constitution conducted in 1999-2002, the constitution year 1945, the Constitution of the Constitutional Court, as well as secondary legal material both international and national books and journals related to the object of this writing. The collected legal materials will then be analyzed prescriptively.

DISCUSSION

Two Emerging Ways of the Constitutional Interpretation

The birth of the Constitutional Court through the "*uterus*" reform of the Constitution (Nggilu, 2014). in 1998 internationally records the country Indonesia as the country to the 78 that formed the Constitutional Court (Constitutional), while providing a very significant

influence in the development of Indonesian state law. This is because Indonesia, which is a state of law, further strengthens the position with the Constitutional Court which functionally is the guardian of the Constitution which ensures judicial implementation of the Constitution of the Republic of Indonesia in full and responsible (Nggilu, 2019).

In its journey to perform functions as a final interpreter on the constitution, emerging ideas, and thoughts that colorize the constitutional debate, that the people's Consultative Assembly as the owner of constitutionally authorized authority to change and establish the Constitution, which understands the situation of the infirmity that coloring the journey process of constitutional change does not have space at all in the final interpretation of the Constitution that has been fully implemented by the Constitutional Court as a single player.

The debate has indeed emerged as to whether constitutional testing and the interpretation of the Constitution are unity or two different things. To mount this, it is worth noting the meaning of testing and interpretation. Bisariyadi and his companions tried to elaborate on the term of the constitutional interpretation, which is said to be a term used by constitutional law experts to give an understanding on how to interpret the Constitution, according to them the term can be traced to the work of Craig R. Ducat (2004), Charles Sampford (1996), and Jack N. Rakove (1990). According to the three scholars, it is said that the interpretation of the Constitution is closely related to the adjudication, standards, and methods by the judiciary to exercise judicial review authority (Bisariyadi, 2016).

The true testing is an act that is in the judges, even Haron Alrasyid (2004). mentions as a right that the judges have as well as an obligation. In accordance with the opinion of Harun Alrasheed, Bahtiar (2015) mentions the action of regulatory testing is inherently inherent with judicial power and is the nature of the innate of the judges ' duties in carrying out the adjudication function. Furthermore, mounts the use of the Constitutional Testing Ordinance of a regulation to submit a mechanism undertaken to ensure product legislation does not contradict the basic legal norms and does not harm the rights of citizens that are secured by the underlying law (Bahtiar, 2015).

If returning to the dim science of interpretation, the true interpretation is a method of discovery of law that gives a clear explanation of a rule, because the interpretation is necessary because not all laws and regulations can be arranged in an obvious form and do not open the interpretation again, especially if referring to the post caterpillar that the true change in the environment of a very dynamic community that must be able to.

The use of the packaging between interpretations and testing is something that is not easy, especially in the civil law countries; it can be traced from very minimal studies related to it, in different countries with the common law system. The constitutional testing authority of the civil law states always obscures the boundary of constitutional interpretation with constitutional testing (statutory interpretation) (Bisariyadi, 2016). A study conducted by Neil Mac Cormick and Robert P. Sommers elaborated that judicial review on state civil law gave the judicial institution space to undertake a constitutional interpretation to measure the constitutionality of the legislation norms tested (Neil et al., 1991).

It must be acknowledged that in the implementation of the Constitutional Court's authority for constitutional testing, the Constitutional Court is confronted on one condition that must undertake an interpretation of the Constitution, but it is necessary to understand is the authority of the Constitution al Court is a testing of the constitutionality, while interpretation constitutes the role or function of the Constitutional Court.

Constitutional testing is the power of the Constitutional Court, while interpretation cannot be said as an authority, because it is a function or role. The logic is the testing of the constitutionality of the law is the absolute right of the Constitutional Court; he is the sole authority to test the constitutionality of legislation on the Constitution, while the true interpretation can be done by all parties, be it community, state institutions, and any party (Bisariyadi, 2016).

According to Susi Dwi Harjanti, the interpretation carried out by the judges is no exception of th g vcbbe constitutional judge is the authority whose nature is inherent to the task of the judge in completing a cause, including also in the process of implementing a provision in the regulation to the concrete case filed into court (Harijanti, 2019).

In addition to the way of the mind that assesses that interpretation is an integral part of judicial activism, other avenues of mind have also been tangent above. The basis of the argument of the second way of mind rests on a constitutional authority in constitutional change, where the People's Consultative Assembly is constitutionally the only institution in the constitution of 1945 which is incorporated the authority to change and establish the Constitution of 1945, so that based on the authority of the Assembly, the People's Consultative Assembly should have the authority to interpret the Constitution and be used as a reference for the society and institutions of the state including the Constitutional Court in disconnecting a cause that makes the Constitution as a stone.

Before the change to the Constitution 1945, the function of interpreting the constitutions did feel very thick in the People's Consultative Assembly agency, because the People's Consultative Assembly has the authority in establishing the outline of the country that in the political process also conducts the interpretation of the basic laws that the results of the interpretation are formulated in the outline of the country. Further than that, as part of the implied power, the People's Consultative Assembly can also assess the president's performance by using the outline gauge of the state that can lead to impeachment political sanctions. "Fajrul Falaakh even declared, the People's Consultative Assembly at the time of enactment of the Constitution before the amendment for example in the new Order period of conducting an interpretation of the constitutions to fill the vacant space in the Constitution then, by issuing TAP MPR No. 1/MPR/1983 on the code of conduct which changes the meaning of article 2 paragraph (3) of the Constitution of 1945 to

> *"Any ruling of the People's Consultative Assembly is determined by deliberation for consensus or voting by prioritizing the first way" (Isra & Amsari, 2019).*

Establishing the Right of the People's Consultative Assembly Position and the Interpretation of the Constitution in the Future

If the current constitutional and juridical design is concerned about the interpretation of the Constitution, expressive verbis is indeed no affirmation on the authority of the final commentators on the Constitution is in the institution, whether to observe article 3 governing the authority of the People's Consultative Assembly or section 24C governing the Constitutional Court's authority does not assert the authority of the interpreting. However theoretic and literary, the interpretation function is inherent in the Constitutional Court (Asshiddiqie, 2010).

As outlined in the previous section, that in the execution of the duties of the Constitutional Court is not uncommon in a condition whereby the Constitutional Court uses a path of interpretation as a method of testing the constitutionality of a law. In the course of the implementation of the testing authority by the Constitutional Court, Bisariyadi mentioned there are several test patterns run by the Constitutional Court, namely:

1. Simply use (citing) the articles in the Constitution as a basis for testing (without further elaborating the meaning behind the text of the constitution);
2. Mention the principles or values of the Constitution as the basis of testing (without specifically mentioning the clauses in the basic legislation used as a tested stone);
3. Not mentioning the basis of testing norms (consideration of the Tribunal judges directly concluded that the norm is tested (not contrary to the Constitution).

In the test pattern where the Constitutional Court first conducted an interpretation, at least reflected in the decision of the Constitutional Court No. 001-021-022/PUU-I/2003 on the examination of Law No. 20 of 2002 on electricity of the Constitution of 1945. In the ruling, the Constitutional Court conducts a constitutional Ijtihad in interpreting article 33 paragraph (2) of the 1945 Constitution in particular the phrase "*ruled by the state*". The phrase is interpreted by the Constitutional Court with the same content as the next:

> *"The people collectively were constructed by the Constitution 1945 providing a mandate to the State to hold policies (Beleid) and management actions (bestuursdaad), arrangements (regelendaad), Management (beheersdaad) and supervision (toezichthoudensdaad) for the maximum purpose of people's prosperity"*

The Tafseer given by the Constitutional Court restricts "*ruled by the state*" in terms of understanding, regulating, managing, and supervising, not on the use of control in the state-owned by the country. In certain contexts, the Constitutional Court is not merely conducting an interpretation, but also implicitly make material changes to the provisions of the article in the Constitution, as reflected in the case No. 005/PUU-IV/2006 on the constitutionality test Law No. 22 of 2004 concerning the Judicial Commission on the Constitution 1945, the constitutional judge provides an interpretation of the meaning of the judges listed in article 24 B paragraph (1) Constitution 1945. The court has not incorporated the constitutional judge as part of the word ' judge ' in the provisions of article 24 B Constitution of 1945. In contrast, according to the Court of Justice, the supreme Judge is part of article 24 B Constitution of 1945.

The court ruling has indirectly changed the sound of article 24 B paragraph (1) 1945 from the original meaning:

> "*The judicial commission is self-reliant authorized to propose the appointment of the supreme judge and have other authority in maintaining and enforcing the honour, the nobility of dignity, as well as the behaviour of the judges", to be meaningful (textual meaning): "The Judicial commission of independent Self-regulatory authorities proposes the appointment of a supreme judge and has other authority in maintaining and enforcing the honour, dignity, and behaviour of judges, except the constitutional Judge".*

It must be understood that there is a principle stating that the judge should not judge a matter in which there is the direct or indirect interest of the judge concerned, not valid in the judiciary in the Constitutional Court, because a case in the Constitutional Court remains at the end will be resolved in a meeting of judges where the nine judges have the same position in

giving the ruling on a quo. It is not impossible in the matter which will be examined and tried in the Constitutional Court is a test of the laws that are closely related to the Constitutional Court of the institutional side as well as the judges. In that situation, the discourse flows to try to find the ideal path in the completion of the matter, whether it will still be implemented by the Constitutional Court or even any other mechanism possible.

Noting the above, potential problems may indeed arise due to the function as a final interpreter on the pure Constitution only in the Constitutional Court, potential misuse of authority and reflect as if the Constitutional Court is like a superpower institution because the oversight is only relying on internal supervision through the Honorary assembly of judges Constitution, while reliable supervision on the direct supervision of the community, about the institution of the Supreme Court, where additionally has an internal supervisory body, there is also external supervision that has been systemically supervising the supreme judge

In the case of the final interpretation of the Assembly of the People's Consultative Assembly as an institution that has the authority to amend and set the Constitution to be given space in the implementation of the final commentator function with the Constitutional Court, may consider the following two schemes:

Scheme 1

In this one scheme, the Constitutional Court remains as a single-player institution in the final interpretation process against the Constitution in the matters of testing the constitutionality of legislation, but in the process of examination in court, in addition to the applicant and also the respondent consisting of the Government and also the People's Representative Council as a legislator, must also present the people's Consultative Assembly, but the position of the People's Consultative Assembly in the hearing is not in the equivalent position with the government and the DPR who are the respondent in the matter Referred to, but as the party presented in relation to implied power, because the people's Consultative Assembly as an institution constitutionally attached the authority to change and establish the Constitution, then the logic of the People's Consultative Assembly also has the responsibility to control the authenticity of the principle of the establishment of the basic legislation to be used and applied by the Constitutional Court in resolving the case of testing the constitutionality to a law that is tested to the Constitutional Court. These schemes can be described below in Figure 1:

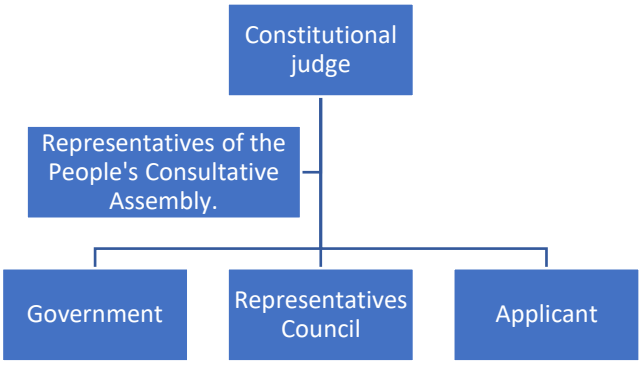

Figure 1
PEOPLE'S CONSULTATIVE ASSEMBLY POSITION

The chart above shows that the People's Consultative Assembly position is not the same as the Representatives Council and the government which is the respondent in the case of the examination of the Constitution, while the People's Consultative Assembly is presented in the preparation is invited as an institution that has the interest to explain the originality of the formulation of the article, and the paragraph in the basic legislation, especially the article or paragraph that is used as a tested stone, including its interpretation of the originality of the formulation of the constitutional norm with the laws tested. The People's Consultative Assembly position in interpreting the Constitution was important while the legislation used as a tested stone was related to the interests of the Constitutional Court.

The involvement of other institutions to provide an interpretation of the Constitution in front of the Constitutional Court, for later consideration in issuing the right verdict is not something new. In comparison with the judicial institutions in other countries, call it the United States and Australia, the concept of deference is an approach used by the judiciary to open space from other institutions deemed to have a broad capacity and understanding in the testing of the courts. Deference is conceptually interpreted as an approach to the judicial review process conducted by the Court as a form of reconciliation between the rule of law and the parliamentary supremacy, more fully; Alan Freckelton provides the following explanation:

> *"Deference is an approach to judicial review taken by the court and effectively acts as a form of reconciliation between the rule of law and parliamentary supremacy. That is, deference to administrative decision-makers balances the court' constitutional requirement to review the decisions of administrative decision-makers to ensure that they are both constitutionally valid and within the power of the decision-makers to make, and the power of the Parliament to allocate certain decision-making power to a person authorized by or bodies created by statute"*

In general, deference has du Aarti alternative, first, deference can mean a tribute to the judgment or opinions of other institutions. Secondly, deference can mean a form of recognition of the authority of other institutions.

A reflection of the implementation of deference on the American Supreme Court can be traced to the resolution of the case of Skidmore v Swift & Con1944, as well as the case of Chevron USA Inc & Natural Resources Defense Council Inc 1984, while in Australia can be traced in cases of R v Hickman; Ex parte Fox 1945 the case is similar to the Chevron cases in the United States.

In the Indonesian context, the concept of deference is very possible to be applied in Indonesia in terms of the interpretation of the Constitution in Menyelesaiakan matters of testing the constitutionality of legislation in the Constitutional Court. With the opening of the chamber for the People's Consultative Assembly in conveying its interpretation of the Constitution, especially the chapters and verses that became the test stone in the case of testing, the People's Consultative Assembly can carry out the escort function of the originality of the Constitution itself, and the Constitutional Court must consider the interpretation presented by the People's Consultative Assembly in the formulation of the verdict. It will reflect that the Constitutional Court is honoured institutionally to the People's Consultative Assembly in the context of the implementation of the interpretation function in carrying out constitutional testing tasks of legislation against the constitution.

Scheme II

If in the scheme one, where the people's consultative assembly has space only in the context of the submission of interpretation of the constitution at the Constitutional Court of Justice and to be a matter of consideration for the Constitutional Court in breaking the law testing against the Constitution, then in this second scheme, the freshwater position of the People's Consultative Assembly is much stronger than the scheme one, at least comparable to the Constitutional Court. During the trial examination of the application for legal testing of the Constitution, the People's Consultative Assembly was present in the trial to observe and hearken to the proceedings and be attached to the parties ' information on the proceeding. The result of the examination then the People's Consultative Assembly formulated the interpretation of its constitution and handed it to the People's Consultative Assembly before the meeting of constitutional judges to discuss and award the decision on the subject of temporary assessment in the court. The results of the constitutional interpretation by the People's Consultative Assembly were then codified into 4 votes and from the Constitutional court, 9 votes with each judge having one vote.

In this second scheme, it will reflect two concepts incorporated for the formulation of counterbalancing interpretation designs. The two concepts are:

1. The concept of deference that has also been outlined in the scheme one, where the assembly of the People's Consultative Assembly to interpret the Constitution in the implementation of the task of the constitutionality testing by the court as a form of institutional reverence to the People's Consultative Assembly as an institution that is constitutionally authorized to change and establish the Constitution, as well as historically not be able to recite interpretation functions against the constitution has also been in the People's Consultative Assembly, and
2. The concept of constitutional dialogue. In describing this concept, it became relevant to describe the opinions of Anne Meuwese and Marnix Snel who formulated as follows:

> *"A sequel of implicitly or explicitly shaped communications back and forth between two or more actors characterized by the absence of a dominant actor-or at least by bracketing of dominance-, with the shared intention of improving the practice of interpreting, reviewing, writing or amending constitutions." (Meuwese & Snel, 2013).*

Given the views of Meuwese and Snel (2013), the Constitution dialogue is a good stage in both expressed and implied ways that form two-way communication between two or more, actors to balance from the dominance of certain actors, intending to develop the practice of interpreting, testing, forming, or altering the constitution.

In the context of the final interpretation of the Constitution which currently impresses the dominance of the Constitutional Court as a single player through the implementation of the authority to test the constitutionality of a law, hence the concept of dialogue of this Constitution, break down the sole dominance of the court as the final interpreter of the, can be illustrated in the scheme below Figure 2:

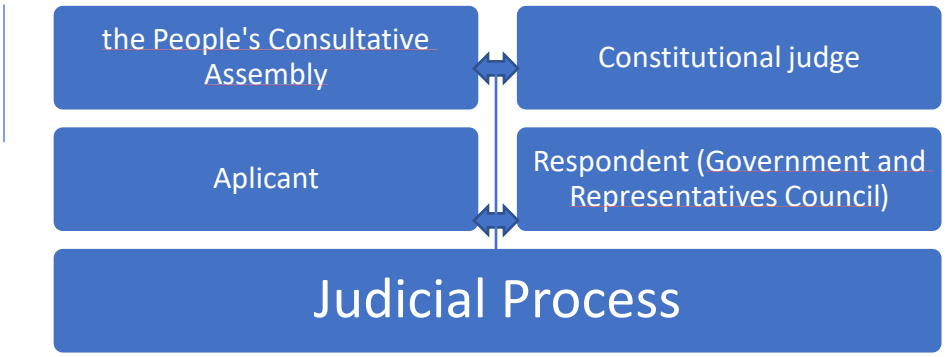

FIGURE 2
PEOPLE'S CONSULTATIVE ASSEMBLY FOR THE INTERPRETATION OF THE CONSTITUTION

Thus, in this second scheme, the people's consultative assembly for the interpretation of the Constitution in the execution of the task of the constitutionality of legislation by the constitutional court, also, reflects the existence of institutional reverence for the MPR that has the authority to change and establish the Constitution, also to offset the considerable power that is at the constitutional court which is currently a single player in interpreting.

From the two schemes above, the proper scheme is done in Scheme 1, because the people's consultative assembly is involved in the test of legislation on the basic legislation in the capacity as a forming of the Constitution, and the second people's consultative assembly is also responsible for controlling and maintaining the originality of the people's consultative assembly's thought as the foundation legislator, where the results of their interpretation of the Constitution were submitted to the Constitutional Court and the final result remains on the Constitutional Court verdict will be issued with the nature of the final and binding.

CONCLUSION

In the future, a revision to the Indonesian Constitutional Court law is required, and it is necessary to reconstruct the aspect of the interpretation functions inherent in the Constitutional Court's authority in the testing of the law of constitutionality. In a trial examination by the Constitutional Court, next to the applicant and the respondent, the Representatives Council and the Government (the institution that formed the law is tested), can also present the other party, in this case, the people's Consultative Assembly to be asked for information and explanation of the original intent formulation of the article is made a tested stone to test the constitutionality of a law that is requested to the Constitutional Court.

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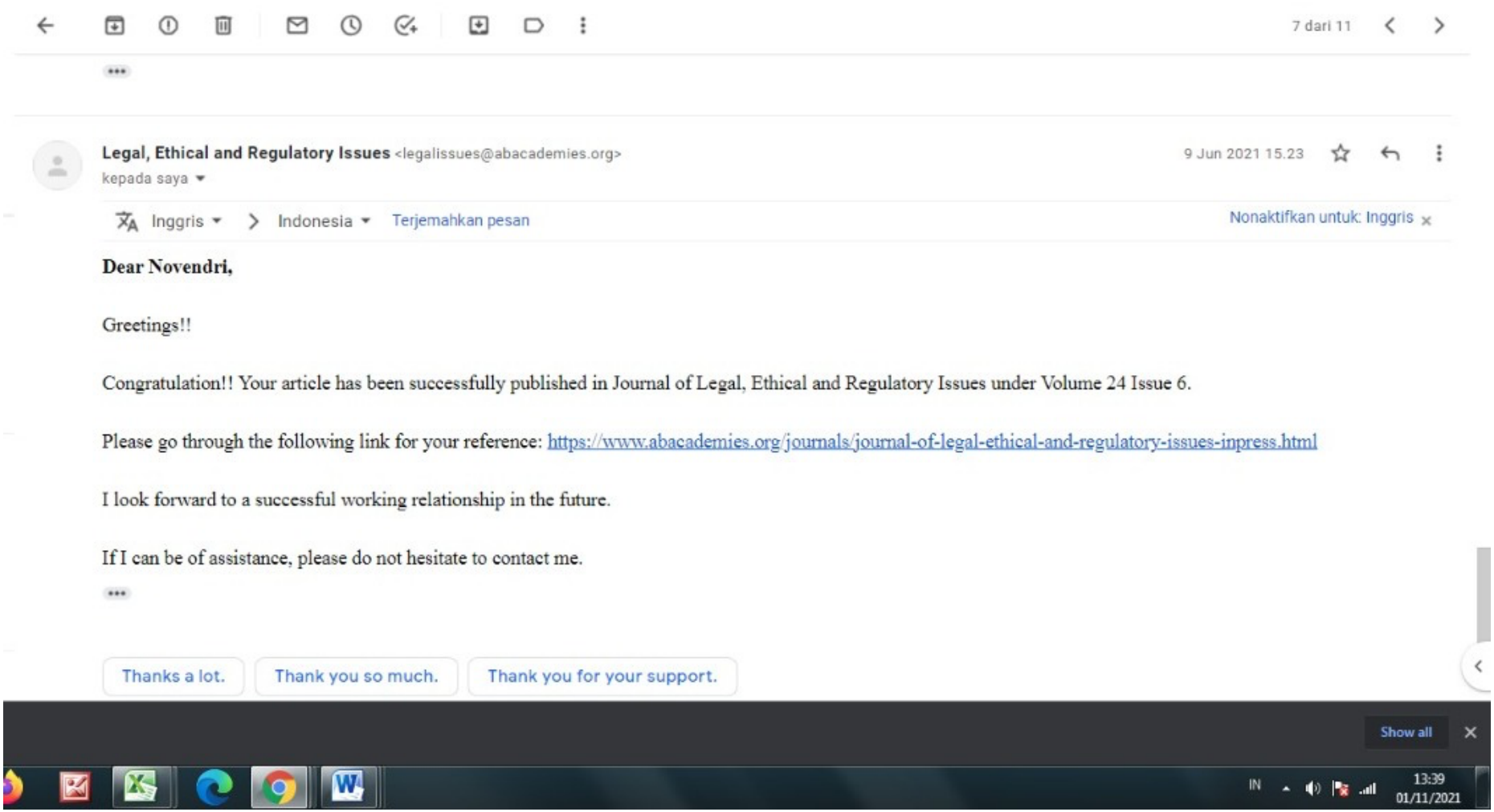
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