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Evil Constitution: Study on the Interpretation of the Indonesian Constitution

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ABSTRACT--The constitution can be interpreted with various perspectives with each individual which is motivated by various factors. Nevertheless, in general, the constitution can be interpreted as a set of principles and rules that govern various principles, norms, and institutions which are all fundamental. A good constitution can be seen from the abstract formulation of the material/subject matter. This happened so that the constitution could be interpreted by various parties. Interpretation of the constitution is not new, but, in practice that has occurred in Indonesia to date, various kinds of legal products made by both the House of Representatives (Dewan Perwakilan Rakyat) and the Government (Presiden) which derived from the Indonesian Constitution and with a cancellation in the Constitutional Court due to violations – auction of the constitutional rights of Indonesian citizens. This happens because there are "unscrupulous" persons who try various formulations on a legal product in Indonesia for their interest or also the order of these elements by interpreting the constitution as if the crime was legitimized by the constitution itself.

Keywords: evil constitution, constitution, interpretation

I. INTRODUCTION

So many meaningsof the constitution. Much of this is influenced by various factors, one of which is from the background of each individual and can usually be seen in terms of education. Nevertheless, in general the constitution can be interpreted as a set of legal rules that contain various norms, principles, institutions in a country that has it. Related to the existence of the constitution itself, in various parts of the world in the world, the tendency is present in written and or documented form, regardless of the various purposes and objectives of the constitution of the constitution drafter in the country concerned.

Discoursesaboutconstitution becomes very arbitrary to be studied in more depth, one of which related to the substance of the constitution itself. KC Wheare expressed his opinion, if a good constitution has a material character that is abstract. The more abstract the better. The author agrees with that opinion because the existence of the constitution can be interpreted/interpreted by anyone with various backgrounds that affect someone who wants to do it.

Related to the above arguments, it is not surprising that interpreting the constitution results in a nation or state falling into a constitutional tragedy which ultimately leads to constitutional crime. This was stated by JM Balkin which raises questions that we need to ponder together, namely' how should we understand the nation of constitut onal tragedies?'.[11] In connection with this question, Balkin raised two answers, are:

One approach views it is asa matter interpretive theory: C onstitutional tragedies occur when a favored method of co nstitutional interpretation produces regrettable results. A s econd approach focuses on constitutional evil: the possibil ity that the constitution permits or requires serious and pro found injustice, like slevery. Constitutional tragedy occurs when we cannot escape the possibility of constitutional e vil. [11] Of the opinions mentioned above, it can be a problem if a nation/state constitutional tragedies as a result of various field methods on its interpretation of the constitution which does not produce anything (laws) that are real and satisfying. Apart from that also, there are times when an evil constitution causes injustice to occur because of the permission of the constitution itself.

Then a question arises, what about the Indonesian constitution? whether in its interpretation will lead to constitutional crime? and how the interpretation made by the bearers of the law, both theoretical and practical, given the constitutional interpretation is an activity in creating legal products derived from the constitution itself. The idea of constitutional crime was raised not without reason, because in the current state administration practices often the occurrence of various legal products that are derived from the Indonesian Constitution ends the cancellation in the Constitutional Court (Mahkamah Konstitusi/MK) and also there is an increasingly strong push to change the country's constitution with various reasons which according to the author are not reasonable enough.

II. RESEARCH METHOD

This study uses a normative juridical approach and doctrinal juridical. The normative juridical approach is used to study secondary material/data in the form of positive law, principles and legal theory, as well as legal principles that are directly related to Constitutional Law, specifically Theory and Constitutional Law related to this approach. Indonesian Constitution as primary legal material.[27]

III. FINDINGS AND DISCUSSION

If traced etymologically, the term constitution comes from English namely 'constitution', Dutch 'constitue', Latin 'constitutio/constituere', French 'constitutre' and German 'verfassung'.[12] While in the Indonesian

constitution, the constitution is usually referred to as the Basic Law (UUD), where the constitution is a document in a country because it contains various written legal norms, then it is codified in a written document.

In general, the constitution is an entire regulation, both written and unwritten, functioning as a guiding principle, which is not only for the government, it also includes citizens. According to Wheare, the word of'constitution' is used in two meanings,[16] in a narrow sense, and wider sense. A wider sense 'constitution' describes the whole system of thegovernment of a country, a collection of rules that shape and regulate government. These rules are legal in the sense that the court recognizes and applies those rules, and some are not legal or extra-legal in the form of usages, understandings, customs, and conventions because the court does not recognize them as law. But being open means that usages, understandings, customs or conventions are not effective in administering the country compared to the rule of law.[1] And the narrow sense, 'constitution' is a collection of state governance rules contained in a document.[1] In connection with these two matters, Susi Dwi Harijanti cites the opinion of Michael J. Perry specifically referring to the United States Constitution.[1] Perry explains, the phrase 'the Constitution of the United States' sometimes refers to a document known as the American Constitution, but in another sense are norms that are the highest ('the norms that constitute the supreme Law of the Land').

A more interesting opinion was expressed by Joseph Raz who interpreted the constitution in the sense of 'thin' and 'thick'.[1] In a thin sense, theconstitution is a rule or law that forms and regulates the main organs of government along with the authorities they have, as well as the basic principles of the state.[1] Whereas the constitution in the thick sense has several characteristics , including :

1. Establish the main organs of the state, including its authorities (constitution in the sense of'thin').
2. Functioning to maintain stability and sustainability of political and legal structures and basic principles that guide state institutions (the constitution in this case is stable or 'permanent', at least in the aspirations contained therein).
3. Formulated in written form.
4. As aruleor higher law. That is, regulations lower than the constitution must not conflict with the constitution.
5. There is a legal process for make the constitution as the highest law('the constitution is justiciable').
6. Legally changing the constitution is more difficult than changing the other legislation ('the constitution is entrenched').
7. The provisions of the Constitution, including the principles of governance (democracy, federalism, basic rights of civil and political, etc.) that are generally held firm as an expression of common beliefs about the way the people of the people or the people governed.

In legal science, interpretation is one of the methods in legal discovery. this departs from the thought, that the work of judges has a logical character.[30] Sudikno Mertokusumo argues, the interpretation or interpretation by the judge is an explanation that must lead to the implementation that can be accepted by the public regarding the rule of law for concrete events.[29] This interpretation method is a means or tool to find out the meaning of a law.

Interpretation as a method of legal discovery are histories can see its relevance to the tradition of hermeneutics which is very old age. Originally hermeneutics was a theory that preoccupied itself with ways of interpreting manuscripts, because it was initially used primarily by theologians, whose task was to deal with religious texts. Furthermore, this branch of teaching also attracted the attention of historians, literary experts from legal experts.[30]

Related to the argument building above, it is interesting if it is related to the existence of the constitution, considering that in the study of constitutions- also known as the interpretation of the constitution. Susi Dwi Harijanti stated that if the interpretation of the constitution is a way of reviving the constitution, in the sense of carrying out constitutional norms in accordance with circumstances, values and needs (actualizing the constitution).[30] The need to revive the constitution is a boost desire that the constitution last a long time and adjust to developments.[30]

In interpreting the constitution, there are two very large schools, namely originalism and non-originalism. Corresponding to the interpretation of orginalism can be understood in the concept of theory, namely strict originalism and moderate originalism.Strict orginalism can be understood if the court must follow the literal text and specific intent of the legislators. Whereas moderate orginalism emphasizesmor e on the intent or general purpose (general purpose) of forming a constitution rather than forming intention in a very specific sense (precise sense). While most recently , Justice Antonin Scalia introduces another type of orginalism called 'original meaning' which according to him can be found in historical practices and understandings that exist at any given moment, and not the views of the constitutional drafter.[30]

Unlike the orginalist interpretation, the interpretation adopted by non- originalism suggests three arguments as identified by Erwin Chemerinsky.[30] First, the development of the constitution can be done through interpretation and not merely through amendments. Second, the purpose of constitution-making is very diverse because the formers comprise drafter of constitutional articles (House of Representatives and Senates) which approve these articles as well as members of state conventions and legislative bodies which ratify constitutional provisions. In fact, if there is one particular group is selected as the party authoritative in determining the intention of the establishment of the provisions of the

Constitution, but that does not mean there is only one purpose, but many and perhaps with conflicting reasons (conflict reason) when approving aprovision certain. Third, originalist supporters argue that this method of interpretation is more acceptable because the legislators prefer the non- original method of interpretation.[30] Interpretation of non- originalism has several variations, including non- originalist does not explain in detail what is needed in deciding the meaning in the basic rules . The Supreme Court often even argues that tradition can be used as a guide when interpreting. Another variation of non- originalism emphasizes the role of the court in the administration of government. The court may decide believed to judge actions b a Refresh contemporary values only on the issues regarding the governance process. The final variation can be found in the philosophical schools that underlie the interpretation of the constitution. Supporters of this variation state that the court should use the natural lawin interpreting. Others stated that the court must identify and follow the moral consensus that is deeply contained in the constitution.[30]

Widiada Gunakaya SA expressed her opinion regarding the activities of legal political studies as follows:

"The study of legal politics is very important to complement positive law. Positive law is more about "applying positive law"; whereas the politics of law is more of the science of making, formulating and updating positive law.[30]

Based on the postulations above, can be understood if in understanding the positive law is not enough, but must be with the political science of law as a means to determine "whether a law has been made or formulated with the best possible, in the sense that has been qualified juridical , sociological (socio-political, socio-cultural) and philosophical, anticipatory and predictable, so that a legislation as a positive law produced is truly empowered and effective, and is expected to achieve the goal".[30] Thus, the actual existence of legal politics is to make and formulate laws that are claimed (ius constituendum).[30]

In terms of and understanding, legal politics is a translation of rechtpolitiek, which etymologically each comes from the word 'rechts' which means law, and 'politiek' means policy. The term policy is taken from the word 'policy' (English) or 'politiek' (Dutch), thus the term political law derived from the word politics (policy) and law can also be referred to as 'legal policy'.[30]

Many legal experts in Indonesia define or give an understanding of the politics of law, including Padmo Wahjono argues"basic policies that determine the direction, form and content of the law to be formed".[22] Sudarto argued that the politics of law as "the policy of the state through authorized bodies to establish the desired and expected regulations can be used to express what is contained in society and to achieve what is aspired".[28] While Satjipto Rahardjo argued that legal politics is"the activity of choosing and the means to be used to achieve certain social and legal goals in society".[25]

Related to the above understanding, the scope of politics is interesting to know. Bagir Manan stated that the main scope of politics is:[2]

1. Political formation of law, is the policy concerned with the creation, renewal and development of law, whichincludes: policy forming legislation; jurisprudential law (establishment) law or judge's decision; policy on other unwritten regulations;
2. The politics of law enforcement is the policy concerned with: policies in the field of justice; and policies in the field of legal services. reminded also, that

   "Legal politics is inseparable from policies in other fields. The formulation of legal politics must always be endeavored along with aspects of policy in the economic, political, social and so on".

From the scope of the above it can be understood if the political activities of law are divided into two, not only become part of the legislative (in terms of legal formation), but also the judiciary (in terms of law enforcement).

In this article, the author only adopts if constitutional crimes are a concept, even though these crimes have occurred in the United States, which is known as the Dred Scott v. Sandford [20] regarding slavery in the United States. The very famous verdict was decided by Chief Justice Roger Taney who stated that Negroes were not part of genuine citizens. The decision was made referringto the Declaration of Independence. Constitutional crimes are drawn from the boundaries of interpretation that cannot be limited, and also these crimes were born as a result of poor reading of the constitution.[23]

The interpretation of the constitution is a legal political activity, which is where not only owned by the judge in interpreting the constitution, but legislative officials in me m for legal products (legislation). Indonesia, which recognize the concept of 'hierarki' legislation puts the Constitution as the highest legal product. Therefore, all kinds of legal products under the existence of a constitution must not conflict with higher sources of law. Related to this, we need to see the existence of shapers of legal products in Indonesia.

In accommodating various changes in modern society that are so fast often the existence of law is always lagging or hobbling even though in the making it is always prospective or progressive. So that the existence of legal discovery through interpretation holds very important in order to meet the development of the community. Gustav Radbruch argued "the law is the desire or desire to serve justice...".[30] The purpose of Radbruch's opinion is that if the law (in this case the law) consciously or deliberately denies or marginalizes justice , then such law will lose its "spirit" of law, so that it has no force in force, and the people are not obliged to obey it . Thus, in order to prevent unexpected things from happening, interpretation becomes very important.

Interpretation asa method whose activity explains about the contents of any text of legislation or in other words is a means or a tool to determine the meaning of enactment laws.[29] Furthermore Bagir Manan expressed his opinion related to the interpretation of one method for:

1. Understand the meaning of hope and the rule of law;
2. Linking a legal fact with the rule of law;
3. Ensure the application or enforcement of the law can be done appropriately, correctly and fairly; and
4. Actualization of law, which brings the rule of law with social changes so that the rule of law is actually able to meet the needs in accordance with changes in society.

Nevertheless, in the interpretation of activities can be found the facts if the activity is more synonymous with the judge or the court, and that is true, because the judge is authorized to perform legal discovery (interpretation). However, the author disagrees with this fact even though it is true, because, in the activities of interpreting the law also includes the makers of the law (the law) as an interpreter for the first time. As for the reasons, because those who actualize the content of the constitution become the statutory authority of the legislators. In Indonesia, the legislative authority is the House of Representatives (DPR). Even so, in a study stated that if the President of Indonesia also participated in legislative power, because in terms of his authority has the same powerful authority after the Amendment to the Indonesian Constitution. More details Marojahan JS Panjaitanargues:

"After the amendment to the 1945 Constitution, based on these changes a shift in the power of the formation of laws, namely the President to the Parliament and the President. In Article 20 Paragraph (1) First Amandmentis stated that the Parliament holds the power to make laws, but this article can notbe separated from Article 20 (2) first change the 1945 Constitution which states that every bill discussed by DPR and the President to get joint agreement, so if one party does not give consent, then the draft law cannot be made into law ".[21]

In practice attractive to be used as attention, wheresIndonesia which is always buzzing spirit of supremacy of the constitution and put forward the constitutional culture of post changes to the Constitution , a right but it is inversely proportional, not in line as expected. Pointed out that either consciously or not practice evilconstitution already occurs in the formation of legislation produced by the bearers of the law practical. Facts showed a lot of legislation that by the Parliament ended up in the Court's canceled the existence of laws that actually violates the constitutional rights of Indonesian citizens, even interestingly there is an impression if the laws generated by the agency "accidentally" to be included to the Court to find out whether the law is bad or not bad.

The evilconstitutional discourse has occurred in Indonesia after independence. As was the case in the New Order era, theexecutiveheavy prominent that time-silencing all layers of other state institutions. This is due to the involvement of the military in his administration. Furthermore, the norms contained in the constitution are anomalated with the interpretation of the new order itself , so it is not surprising that in the New Order government is really a dictator, examples of basic rights of citizens are silenced (the right to express opinions), then the term "petrus"mysterious shooter if there are citizens who fight against his government.

So from that point, Bagir Manan states in his writing as follows:

> There was general agreement, during the Old and NewOrder periods, both the fundamental foundations (Pancasila, the foundations of the rule of law, people's sovereignty, constitutional understanding, etc.) and the substance of the 1945 Constitution were not carried out properly. During the Old Order, the 1945 Constitution was not implemented at all. During the New Order era, various procedural formalities of the 1945 Constitution seemed to be implemented, but substantively the 1945 Constitution was not implemented. In a different style, the Old Order and the New Order are authoritarian or dictatorship.[2]

Then what about the current condition of Indonesia after the amendment of the 1945 Constitution of 1999-2002? there are some people who argue that the current changes to the 1945 Constitution are further from what the Pancasila mentions. There are four possibilities, *first*, deviations occur because changes in the 1945 Constitution are solely oriented to efforts to eliminate the lack of substance of the 1945 Constitution, such as an imbalance of power between the President and the Parliament (*executive heavy*) or the fact that the 1945 Constitution is powerless in dealing with dictatorship or power. So that change is only normative (dogmative) without being associated with the fundamental foundations of state ideals. In addition to the real substance becomes noise source implementation of the 1945 Constitution, as well as about the problems concerning the basic state is considered complete (*given*). *Second*, there is a conceptual awareness, Pancasila and various fundamental fundamental of the state which are laid by the *Founding Father's* according to objective developments and various new realities, it is no longer appropriate. *Third*, the success of the process of de - ideologi be the approach as a matter of mere interpretation "led by the wisdom" which became legitimatedictatorship. The ideological approach turned out to be unsuccessful, even causing conflict, both nationally and internationally. And *Fourth*, global change.[2]

It must be admitted that related to point number four, globalization has brought a very significant impact. This is due to a meeting between national law and international law. The purpose of the Indonesian state which is the fundamental norm of the state (*Staatfundamentalnorm*) is contained in the Fourth

paragraph of the Preamble of the 1945 Constitution which reads:

> Then that to form an Indonesian Government that protects all Indonesian people and all Indonesian blood and to promote public welfare, educate the nation's life, and participate in carrying out world order based on independence, eternal peace and social justice, then Indonesian National Independence was drafted .....

Then from that state's goal is continued with the establishment of Article 33 concerning the National Economy which reads as follows:

1. The economy shallbestructured as a joint enterprisebyvirtueoftheprinciplesofkindship.
2. Production sectorsimportantforthestateand vital folivehoodofthepeopleatlargeshallbecontrolledbythes tate.
3. The landandwatersandthe natural wealthcontained in itshallbecontrolledbythestateandutilizedforthe optimal welfareofthepeople.
4. The national economy shall be conductedbyvirtueofeconomicdemocracyunderthepri nciplesoftogetherness, efficiencywithjustice, sustainability, environmentrightinsight, autonomy, as well as bysafeguardingthabalanceofprogressandnationalecon omicunity.

Reflection tension this article that the writer raises constitutional evil practices. H al is evidenced by dirumuska n its legislation in the field of economy-related derivative of Article 33 of this. Indeed the author agrees with what was stated by Bagir Manan related to the meaning contained in Article 33:

Article 33 of the 1945 Constitution constitutes a moral and cultural message in the constitution of the Republic of Indonesia in the field of economic life, this article does not merely provide guidance on the composition of the economy and the authority of the state to regulate the economy, but rather reflects ideals, a belief held firmly and championed consistently by government leaders.[6]

The practice that occurs is far from what was expressed by the Professor's opinion. that the political climate or *conflict of interst of* the authorities is competing to seek profit from Article 33. maybe there are times when we look at history in 1997/1998. The IMF advised developing countries (including Indonesia) at the time to implement the *Washington Consensus* which was experiencing economic crisis. The contents of the *Washington Consesnsus* consist of ten items including :

1. *Fiscal auterity* (the presence of fiscal discipline);
2. Government expenditure(APBN) should be prioritized to improve income distribution;
3. The fiscal (tax) sector needs to be reformed;
4. The financial sector needs to be liberalized;
5. Regarding the determination of currency rates;
6. The government must remove qualitative obstacles so that the flow of trade in goods and services can be more smooth andefficient;
7. Foreign investments are not discriminated against;
8. State-owned enterprises (BUMN) should be privatized;
9. A climate of competition in the market should be created;
10. The government needs to respect and protect copyright (*property rights*) in order to foster a healthy competition climate in the market.

Of the ten items, they can be grouped into three main pillars, namely:

1. Disciplined and conservative fiscal policy;
2. BUMN privatization, and
3. Market liberalization or *market fundamentalism*.

If observed in terms of the economic system, in his lecture Man Sastarawidjaja stated that the Indonesian economic system was a populist economic system based on Pancasila and the 1945 Constitution. He further stated that if the democratic system in the economy (Article 33 Paragraph (4)) is very difficult to implement in Indonesia, because will clash directly with Article 33 Paragraph (1). So with the multiple interpretations of Article 33 Paragraph (4) it is not surprising that whatever policies made by the Executive and the Legislature will state readily that **what they have done is based on the constitution** , so that the truth (*fidelity*).[14] Themeaning of the constitution is sidelined by the *conflict of interst* few officials who do not understand in interpreting Pancasila and the 1945 Constitution. It is from this struggle that the living constitution did not emerge or was "deliberately" buried by interpreters. Due to the interest of the play, the interpreters will be difficult to make the position bergaining with parties that offer "something" to be passed into law by the interests of the owners of capital. More than that, the bureaucratic culture in this country is still tempted by bribery ("bribery"). Not surprisingly, the mentality of the public servants is still below the standard line determined by the code of ethics of their respective professions / occupations.

The formation of a law must at least pay attention to the three points raised by A. Hamid S. Attamimi, including:

1. Indonesian Legal Aspects;
2. State Principles Based on Law and Principles of Government Based on the Constitutional System;
3. Other principles.

Constitutional crimes as a result of the misinterpretation of the President and the Parliament ended in the MK (as a *new comer* institution) authorized to test the law against the 1945 Constitution with its decision in 2003 with register number 001-021-022 / PUU-I / 2003 testing Law No. 20 of 2002 concerning Electricity. However, the MK could not escape from so many criticisms. As has already happened, this institution also made mistakes in interpreting the constitution itself. as seen in the decision regarding the teachings against the material nature which is considered contrary to the principle of legality (Article 1 Paragraph (1) of the Criminal Code). In the ruling the Constitutional Court stated that the teachings against the nature of material law are contrary to the principle of legality because there is no

certainty. The Constitutional Court should see justice not in terms of justice according to the Criminal Code, justice should be based on Article 28 D paragraph (1) which reads:

> Every person has the right to recognition, guarantees, protection and **certainty of law that is fair** and the same treatment before the law.

Barda Nawawi Arief said the mistake of the MK did not interpret the meaning of the article. In Article 28D behind the word "fair legal certainty" was born a principle of balance to find the purpose of the article. Because if you look from the history of the existence of the Criminal Code itself is a product of colonial law that is thick with liberal-individualist. While the principle of balance was born in order to balance the foreign legal products with Pancasila. Because the existence of Pancasila is the "spirit" of the 1945 Constitution.

Thus,doing *moral reading* (Ronald Dworkin's conce pt) of the 1945 Constitution means reading, interpreting and understanding the articles of the 1945 Constitution based on and in the spirit of the spirit of the Pancasila.

The same, the authors also concerned that there are many norms in the constitution that could trigger a constitutional crime. especially in Human Rights (Hak Asasi Manusia/HAM) itself. In actualizing the constitution through interpretation, despite the use of an internal approach (originalism) and external (non-originalism), truth (*fidelity*) must be put forward and moral in understanding the constitution itself; in the sense that the stakeholders must continue to refer to Pancasila as the guiding star and the 1945 Constitution.

IV. CONCLUSION

This article concludes that the practice of evil constitution is not only done by judges as happened in the United States but has already begun at the stage of forming legal products, especially in legislative institutions. In Indonesia, the House of Representatives and the President, both realized and not causing violations of various human rights, especially in the economic, social and cultural fields, in the formation of legal products, which in the end often caused the cancellation of legal products, especially laws in the economic field at the Constitutional Court. This is as a result of the interpretation of the constitution both in originalism and non-originalism that is not good, even seen the existence of the conflict of interest or in more general language as "undang-undangpesanan" formed by the legislative body. Even before the Reformation Era, evil constitution had occurred in the Orde Lama and OrdeBaru, where the leaders of each of these orders using the interpretation of originalism legitimized various decisions in exercising their power. Therefore, a constitutional crime must be eliminated from various legal products in Indonesia, even though it requires a short process and time. It is expected that the legal bearers in interpreting the constitution must be able to read the constitution with a moral approach, which in reading the constitution must be equated like reading a Holly Bible.

REFERENCES

[1] Bagir M., Susi D.H., Understanding the Constitution: Meaning and Actualization, Jakarta, Rajawali Press, 2014.
[2] Bagir M., Political Legislation, Jakarta, 1993.
[3] Bagir M., *Research in the Field of Law* in Journal of Research and Technology No. 1-1999.
[4] David A. S., *The Living Constitution*, New York, Oxford University Press, 2010.
[5] Dennis J. G., The American Constitution and the Debate Over Original ims, New York, Cambridge University Press, 2005.
[6] Elli R. *The Meaning of Article 33 of the 1945 Constitution in the Development of Indonesian Economic Laws* . Constitutional Journal Vol. 9 No. 1, March 2012. Jakarta, Constitutional Court.
[7] Herlien B., *Balance Principle for Indonesian Agreement Law: Agreement Law Based on Indonesian Wigati Principles*, Bandung, Citra Aditya Bakti, 2015.
[8] Indra P., Susi D. H., Bilal D., *Constitutional Culture in the 1945 Constitution Amendement to the Fifth Amendment to the 1945 Constitution*', Bandung, Facultyof Law PadjajdjaranUniversity, ResearchReport, 2009.
[9] J.Robert O.,*The Thirteenth , Fourteenth and Fifteent h Amendment and The Dred Scott Decision :An Unli kely Stop on the Way to Citizenship*, Yale-New Haven Teachers Institute , 2014, downloaded 12-2- 2016 on page www.yale.edu/ynhti/curriculum/units/2014/3/14.03.07.x.html .
[10] *The Dred Scott Decision: Opinion Chief Justice Rog er B. Taney In The Dred Scott Case With An Introduction By Dr. JH Van Evrie , Also An Appendix On The Natural History Of The Prognathous Race Of Minki nd , By. Dr. SA Cartwright, Of New Orleans*. New York: Van Evrie , Horton & Co., 1863.
[11] J.M. Balkin, The Meaning of Constitutional, in William N. Eskridge & Sandford Levinson, Constitutional Stupidities/Constitutional Tragedies, New York, NYU Press, 1998.
[12] Jimly A., Economic Constitution, Jakarta, Kompas, 2010.
[13] JJH Bruggink, Rechtsreflecties Grondbegrippen uit d e Rechts Theories, The Hague, Kluwer-Deventer, 1993.
[14] JM Balkin ," Agreements with Hell and Other Objec ts of Our Faith "(1997) Vol. 65 Fordham Law Review 1703.
[15] Jonker Sihombing, the *Role and Legal Aspects in Economic Development*. Bandung, Alumni, 2010.
[16] K.C. Wheare, Modern Constitution, London, Oxford UniversityPress, 1966.

[17] Larry A.(ed), Constitutionalism: Philosophical Foundation s, Cambridge University Press, Cambridge, 1998.
[18] Lili R. & Ira T. R., Monograph: Philosophy of Science, Legal Research Methods and Using Theories/Concepts in the Field of Legal Sciences, Bandung, Teaching Materials Postgraduate Program in Law Master of Law Padjadjaran University.
[19] Maria F. I. S., *Science Legislation I (type, function, and Material Content)*. Yogyakarta: Kansius, 2011.
[20] Mark A. G, Dred S. and the Problem of Constitutional Evil, New York: Cambridge University Press, 2006.
[21] Marojahan J.S Panjaitan, "Shifting the Power of Formation and Amendment of Laws Based on the 1945 Constitution ", Bandung, Dissertation, Padjadjaran University, 2003.
[22] Padmo W., the State of Indonesia is The Ruleof Law, Ghalia Indonesia, 198.
[23] Ronald D., Freedom's Law:The Moral Reading of the American Constitution, New York: Oxford University Press, 1996.
[24] Salim H. S., Application of Legal Theory to Thesis and Dissertation Research, Jakarta,Rajawali Press, 2013.
[25] Satjipto R., Legal Studies, Ed. 7th, Bandung, Citra Aditya Bakti, 2012,.
[26] Soerjono S., Introduction to Legal Research, Jakarta, UI Press , 1986.
[27] Soerjono S. & Sri M., Normative Legal Research: A Brief Review, Jakarta,Rajawali Press, 2012.
[28] Sudarto, Law andCommunity Development: A REviewoftheCriminal Law Reform, Bandung, Sinar Baru, 1983.
[29] Sudikno M., the Chaptersof Legal Invention, Bandung, Citra Aditya Bakti, 1993.
[30] Widiada G., Introduction to Legal Science, Bandung, Pustaka Harapan Baru, 2014.