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# PROTECTION OF CITIZENS' CONSTITUTIONAL RIGHTS THROUGH ADVISORY OPINION AUTHORITY TO THE CONSTITUTIONAL COURT

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***Abstract***

*This article aims to provide new tools to protect the constitutional rights of citizens and strengthen the constitutional democratic guard mechanisms. To strengthen argumentation, it will be parsed systematically based on constitutional authority, advisory opinions to the Court, and limitations on the Court's authority, as mentioned. The method employed by the author is a legal normative approach, utilizing a conceptual, statutory, and comparative framework. Through this approach, the conceptual writer elaborates on the concept of a state of law as a doctrine that encompasses understanding, enforcement, and protection of law in Indonesia. The Constitution of Indonesia and the approach the writer uses to portray the implementation of ex ante abstract review in France and Finland. Research results indicate that it is crucial to safeguard the rights of constitutional citizens and strengthen the mechanisms of a more democratic statecraft. However, this has not yet occurred with existing state authority institutions at present. This involves (1) protecting the rights of constitutional citizens and safeguarding the mechanisms of statehood through preventive efforts. (2) Efforts to prevent can be implemented by giving new authority to the Court Constitution in the form of an advisory opinion. (3). In matters, the connection gives authority. There are apparent limitations in the form of the guard doctrine of the rule of law.*

## INTRODUCTION

Constitutional reform in Indonesia, through the amendment of the 1945 Constitution of the Republic of Indonesia (UUD NRI), has legitimized Indonesia as a country based on law.[1] The consequence that arises from the provision is the supremacy of the law that must be enforced without exception. Through spirit constitutionalism, the 1945 Constitution of the Republic of Indonesia was transformed into the supreme *law of the land,* which must be made into the highest commander in life, nation, and state.[2]

Oemar The Senoji, through his paper entitled "*Indonesia as a State of Law*," requires ambitious law Pancasila as a primary characteristic. Pancasila is regarded as the foundation

1. In European Continental countries, the idea of a state of law began with Immanuel Kant and Friedrich Julius Stahl with the term "Rechtsstaat," and then appeared in England with A. V Dicey with the term "rule *of law.*"
[2] Jimly Asshiddiqie, Introduction to *Constitutional Law, 5th Edition,* PT RajaGrafindo Persada, Jakarta, 2013, p 11

of Indonesian law; hence, it is referred to as the Pancasila Legal State. Some of the characteristics of the Pancasila legal state, according to Oemar Senoaji[3]:

a. Human rights as an essential element of a state based on law in accordance with respect for human dignity emphasize the balance between protecting the interests of individuals and society.
b. Religious needs in accordance with the principle of belief in the one almighty God are guaranteed by the Constitution.
c. By not ignoring social, economic, and cultural rights, which must be recognized and developed in a legal state.
d. In a state of emergency (staatsnoodrechts), even though human rights are temporarily set aside, the measures taken must not exceed what is necessary to address this extraordinary situation.

Apart from the concept of the rule of law, rechtstaat, rule of law, or even a state based on Pancasila law, when the Indonesian state has declared itself a state based on law, then the logical consequence that must be implemented is that the state is obliged to provide protection, guarantees, fulfillment, and implementation of the amendment, thirdly, toe based on law.

An amendment, thirdly, to the 1945 Constitution of the Republic of Indonesia brings significant changes in development law in Indonesia. Post-birth, Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the Republic of Indonesia is seen to confirm consistency in building a country based on law (*rechstaaat*) not based on power (*machstaat*). This is seen with the more its established separation of power between state institutions into different domains of authority. The theory of separation of power initiated by Montesquieu, which is legislative, executive, and judiciary, in its implementation, every country has different characteristics. In Indonesia, the separation of powers is not done in an absolute way, but it still sticks to the principles of *checks and balances*.

One of the branches of power that has obtained attention post-amendment The third UUD NRI 1945 is branch power judiciary. Originally, the power judiciary was led by the

[3] I Dewa Gede Atmadja et al., *Constitutional Theory and the Concept of the Legal State,* Setara Press, Malang, 2015, pp. *154-155.*

Supreme Court as a single ruler with four institutions, the courts under it. Amendment Thirdly, the 1945 Constitution of the Republic of Indonesia requires system bifurcation in the power judiciary. Where is the power of the judiciary shared between two branches, namely, the branch of justice, the ordinary court culminating in the Supreme Court, and its branches of justice? The Court enforces the Constitution.

There are at least three factors behind the improvement of law enforcement in Indonesia. First, there is significant *judicial* mafia corruption involving law enforcement components. *Second, many laws and regulations substantively conflict with higher regulations, including the 1945 Constitution, but there are no institutional instruments or mechanisms for testing these conflicts* through the judicial institution (review). *Third,* law enforcers, especially judges, always receive intervention from the government because they are placed under the guidance of the government (personnel and financial administration) and the Supreme Court (judicial techniques).

As is known, the Constitutional Court is one of the institutions established after the third amendment to the 1945 Constitution of the Republic of Indonesia. The presence of the Constitutional Court is expected to be able to provide *checks and balances and balance* between state institutions and protect human rights through its authority to test laws against the Constitution.[4]

It must be acknowledged that the establishment of the Constitutional Court has brought about a significant change to the cycle of state administration in Indonesia. Before the birth of the Constitutional Court, there were quite a few laws and regulations made unilaterally by the executive and legislative branches that were only used as *rubber. stamp* cannot be cancelled even though it is substantively indicated to be in conflict with the 1945 Constitution. Changes to problematic laws at that time can only be made through *the legislature review,* which in practice is heavily influenced by the government.

As a concrete example, the changes to the 1997 broadcasting bill became a black mark that was difficult to erase from the history of legislative history in Indonesia. At that time, the broadcasting bill had been discussed and debated for a long time in the DPR, until the government and DPR finally agreed to enact it. However, when the bill was submitted to

[4] Munir Fuady, Teori Negara Hukum Modern (Rechtstaat), Refika Aditama, Bandung, 2009, hlm 1.

the President for signature and enactment, the President refused and requested that the bill be discussed again and partially amended in accordance with the President's wishes. This background was what then prompted the emergence of Article 20, paragraph (5), in the 1945 NRI Constitution, which in essence states that "In the event that the draft law that has been jointly approved is not ratified by the President within thirty days since the draft law was approved, the draft law is valid as a law and must be enacted.[5]

With the current existence of the Constitutional Court, all laws that are deemed to be in conflict with the Constitution can be requested for judicial review. Review to be assessed whether it is contrary to the Constitution or unconstitutional so that it does not have binding legal force. So at this level, the existence of the Constitutional Court has broken the system of power that is only focused on the executive and legislative. However, the spirit of reform that wants our constitutional system to be more democratic in the end cannot last long. Although the presence of the Constitutional Court, which is equipped with the authority to test laws against the Constitution, is a breath of fresh air behind the arbitrariness of the executive and legislative institutions, it still causes many problems.

It is known that the Constitutional Court can only annul laws when the law clearly violates the constitutional rights of citizens. However, when the law has amputated or closed the tap of democracy, the Constitutional Court cannot immediately cancel the validity of the law. The problem is increasingly complex and has caused a motion of public distrust towards the government. This is because the agreement taken by the government and the DPR is no more than forty-eight hours out of the sixty days given by law. Based on this background, the author wishes to give new authority to the Constitutional Court in terms of *advisory opinions* to the DPR and the government before passing the draft law when it is indicated that it will harm the constitutional rights of citizens and democracy in Indonesia. So in this case the author is interested in reviewing and providing legal instruments in relation to protecting the constitutional rights of citizens and democracy in Indonesia.

[5] Moh. Mahfud MD, *Membangun Politik Hukum Menegakkan Konstitusi*, Pustaka LP3ES, Jakarta, 2006, hlm. 25-26.

## METHOD

The method is written descriptively and should provide a clear statement regarding the research methodology. This method aims to provide the reader with as much information as possible through the methods used. Both the research and review articles should explain the method. For the research article, it is clear that the technique should describe the location of the study, the data collection method, and how the data were analyzed. Meanwhile, in the review article, the method is described in detail regarding the topic being explored, including the theories and laws used to analyze it, as well as the study's limitations.

Writing this proposal involves a type study of law, specifically normative legal research, which examines the norms that exist in positive law. This approach views law as rules, whether written or unwritten, or as decisions made by authorized institutions. In this normative study, the author employs two approaches: the conceptual approach and the comparative approach.[6]

## RESULT AND DISCUSSION

### CONSTITUTIONAL BASIS FOR GRANTING ADVISORY OPINION AUTHORITY TO THE CONSTITUTIONAL COURT

After the 1998 reforms, the Indonesian state has continued to repair from all types of aspects: good aspects, socio-cultural, political, and legal. With its proposed amendment to the 1945 Constitution of the Republic of Indonesia, the Republic of Indonesia has a comprehensive technical and strategic component within the state. Start from restrictions on firm authority between state institutions and protection right basic human, until you form new state institutions to create order and a better life Good by trust the opening of the 1945 Constitution.

Connecting state institutions with citizens is a prominent aspect in discussions about amendments to the 1945 Constitution. Notably, the Indonesian constitution guarantees the rights to fundamental human and constitutional rights for citizens, which are clearly

[6] Johny Ibrahim, *Theory and Methodology of Normative Legal Research* , Bayu Media Malang, 2005, pp. 444-445

outlined in the document. Guarantee the state's responsibility, especially the government, to give protection, recognition, enforcement, and fulfillment.[7]

Due to this reason, following the Reformation, amendments to the 1945 Constitution must be accompanied by legal reform. Moreover, again, at least change the constitution at the time of the first amendment until the fourth; there is at least a 300% change of the script before the changes. [8] Consequence, logically said, is a repair order law—a good connection between state institutions and with citizens, so that the creation of harmonious relationships.

Mature, this conversation is not. Once finished, it's related to protection, right, a basic human need? The emergence of the Court Constitution on the Third Amendment as one of the institution's powers enables the judiciary to become a breath of fresh air for citizens seeking justice. Task: Main Court The constitution is basically protects the rights of constitutional citizens through safeguarding the 1945 Constitution.

Right constitutional citizens are right on the basis guaranteed by the constitution. Therefore, in this matter, rights-based is a very important aspect because it becomes an integral part that determines material from the constitution itself. Sri Soemantri states that, in a way, a general constitution must lay out three matters—the main thing. First, there is a guarantee of basic human rights for citizens in his country. *Second*, the determination of the state administration's arrangement in a country is fundamental. Third, the existence of restrictions on task state administration is a basic state. Because of that, urgency gives authority to the Court Constitution in matters of advisory opinion, so that the institution, at the height of other countries, can request constitutional consideration in making regulatory legislation. In addition, it will also provide equality and freedom to citizens to participate in their country and uphold the principles of democracy, including the responsibility for protecting and strengthening the and freedom to citizens to participate in their country and uphold the principles of democracy, including the responsibility for safeguarding and maintaining the constitutional rights owned by the community.

[7] I Dewa Gede Atmadja, Hukum Konstitusi, Setara Press, Malang, 2012, hlm 159
[8] Krisna Harahap, *The Constitution of the Republic of Indonesia (Since the Proclamation Until Now)* , (Bandung: PT. Grafiti Budi Utami, 2004), p . 61.

Speak about *advisory opinion,* of course—none found in literature, treasury science law in Indonesia. Concept advisory opinion moment. This has been newly implemented in several states in the United States. Such as the constitutions of Colorado, Florida, Maine, Massachusetts, Michigan, New Hampshire, Rhode Island, and South Dakota. [9] "Advisory opinion" consists of two words, Advisory or meaningful advice, and opinions. In literature, the United States Science Advisory Opinion is defined as an opinion provided by the institution, the judiciary, or the court. For questions raised by the legislature and /or executive (advisory opinions are answers provided by the members of a high court to questions posed by the executive or a legislative body on a legal question pending before that authority).[10]

Regarding the object, the advisory opinion pertains to Design Law (RUU). This is, in a way, implicit. We read in an article with the title "*State Court Advisory Opinions: Implications for Legislative Powers and Prerogative," which* says that "*This is unfortunate, as one of the purported benefits of advisory opinions is that they allegedly foster a more efficient lawmaking process." This efficiency is apparently achieved by facilitating greater interbranch collaboration to determine the constitutionality of a disputed statute ex ante, rather than wasting resources on its enactment, only to have it invalidated in court ex post*".

Some states that have applied *advisory opinions,* among are:[11]

Table 01: *State High Courts that Currently Grant Advisory Opinions*

| **Country** | **The Rightful Request** | **Authorization *advisory opinion*** | **Amount (1975-2001)** |
|---|---|---|---|
| Alabama | L, G | Statute | 133 |
| Colorado | L, G | Constitution | 10 |
| Delaware | L, G | Statute | 11 |
| Florida | G, AG | Constitution | 43 |
| Maine | L, G | Constitution | 24 |

[9]Oliver P Field, *The Advisory Opinion-in Analysis,* Indiana Journal Law, Volume 24, Issue 2, Article 3, p 204
[10]James R. Rogers and George Vanberg, *Judicial Advisory Opinions and Legislative Outcomes in Comparative Perspective,* American Journal of Political Science, Vol 46, No. 2, April 2002, p 380
[11]James R. Rogers and George Vanberg, *Judicial Advisory Opinions and Legislative Outcomes in Comparative Perspective,* American Journal of Political Science, Vol 46, No. 2, April 2002, p 380

| | | | |
|---|---|---|---|
| Messages | L, G, E | Constitution | 60 |
| Michigan | L, G | Constitution | 12 |
| New Hampshire | L, G, E | Constitution | 87 |
| North Carolina | L, G | Judicial Initiative | 1 |
| Rhode Island | L, G | Constitution | 40 |
| South Dakota | G | Constitution | 8 |

Information:

L: The legislative can request an advisory *opinion.*

G : The governor can request an advisory *opinion.*

E : The executive board can request an advisory *opinion.*

AG : The Attorney General can request an advisory *opinion.*

Before this country applies advisory opinion in system development, the law, America has to *realize* that at least giving authority to the institution of power, the judiciary, will influence the legislative and executive authorities. [12] The same is true for the implementation of a priori abstract review in France. The difference is that the system in the United States still adopts the judicial mechanism of review so that when there is a legal product in the form of a law that has clearly harmed the constitutional rights of citizens, a material test can be carried out at the Supreme Court.

One of the benefits of advisory opinion is to encourage a more efficient law-making process. This efficiency can be achieved by facilitating collaboration between branches of state power to determine the constitutionality of a bill, rather than wasting time when the law is enacted. The many ideas for adding authority to the Constitutional Court are a necessity in order to create ideal laws and protect the constitutional rights of citizens. So that research in the form of granting new authority to the Constitutional Court is continuously carried out, as in this study. However, in this case, there is a clear difference between advisory opinion, constitutional question, and judicial review. We can see the differences in the table below:

[12] *At a descriptive level, we can characterize? What is the size of the impact of the availability of the advisory mechanism? Nism has on legislative behavior and outcomes*.

Table 02: Similarities and Differences *of Advisory Opinion* with *Constitutional Question*

| **Equality** | |
|---|---|
| ***Advisory Opinion*** | ***Constitutional Question*** |
| Request opinion constitutional to Court Constitution | |
| **Difference** | |
| ***Advisory Opinion*** | ***Constitutional Question*** |
| Request opinion constitutional carried out by the Legislature and /or Executive | Request question constitutional carried out by the handling Judge case in justice |
| Requested object opinion is a bill | Requested object question is the law that is currently used for to judge in a court |

Table 03 : Similarities and Differences *of Advisory Opinion* with *Judicial Preview*

| **Equality** | |
|---|---|
| ***Advisory Opinion*** | ***Judicial Preview*** |
| Submission constitutionality of the bill to Court Constitution | |
| **Difference** | |
| ***Advisory Opinion*** | ***Judicial Preview*** |
| Request opinion constitutional carried out by the Legislature and /or Executive | Submission constitutional a bill is made by citizens |
| Opinion results from Court Constitution No tie to legislative or executive | The result of the decision from Court The constitution is final and binding |

If the day comes when thinking of giving authority anew in the form of an advisory opinion is adopted and implemented in the constitutional system in Indonesia, will this thus

change the authority of the Constitutional Court as has been listed in Article 24C paragraphs (1) and (2) of the 1945 Republic of Indonesia Constitution?

Before moving on from the question, we must understand that the principles of constitutionalism, respect, protection, and fulfillment of fundamental human rights are essential in a country governed by the rule of law. Therefore, the constitution as law must truly be embodied in every practice of state administration and the practice of statehood. No conflicting legislation is allowed with the 1945 Constitution of the Republic of Indonesia. Furthermore, when fundamental human rights are outlined in a country's constitution, all branches of state power are bound to uphold them. [13]

Based on the principles of the rule of law and democracy, the formation of the court constitution aims to protect the rights of citizens and ensure constitutional legality. In this matter, this authority is already as it should be, as stipulated through the fifth amendment to the 1945 Constitution of the Republic of Indonesia, with the authority of the Court Constitution specified in Article 24C, or as amended through changes to the law on the Court Constitution.

## LIMITATIONS OF THE AUTHORITY OF THE CONSTITUTIONAL COURT'S ADVISORY OPINION AND THE POSSIBILITY OF ITS IMPLEMENTATION IN INDONESIA

Speak of related doctrine authority. Of course, let go with term restrictions power (*limitation of power*), as well as restrictions on power. No, it cannot be released, so it is just with the theory of *separation* of powers and division of power (distribution *of power*). Theoretical can We find lots of literature that clearly discusses the importance of limiting power, although from different perspectives and with a variety of other uses of terms. We usually hear the use of very diverse terminology with various terms, starting from "*separation of power," "distribution of power," "division of power," etc.,* but in essence, they have the same meaning. [14]

[13] Moh. Mahfud MD, et al., *Constitutional Question "Alternative New Search Justice Constitutional"*, Malang: Brawijaya University Press, 2010, p.45
[14] Jimly Asshiddiqie , Op. Cit, pp. 284-285

The limitations of the power of state institutions in Indonesia have been clearly outlined in the 1945 Constitution of the Republic of Indonesia. Both the legislative, executive, and judicial institutions have been given a balanced portion. So in a straightforward interpretation, the legislature is given the authority to create legal products, the executive is given the authority to implement laws, and the judiciary is given the authority to supervise the implementation of rules by the executive. However, as explained in the previous chapter, the development of law and state administration in Indonesia is very rapid, so it requires a cooperative relationship between state institutions to continue creating harmony and legal justice. So in this case, giving an advisory authority *opinion* to the Constitutional Court is a must to be implemented. At least, there are several arguments why the court must enforce the constitution and how restrictions on authority still safeguard the atmosphere, ensuring *checks and balances* between state institutions.

Sri Soemantri once said that the constitution must contain at least three things, one of which is the limitation of the state duties of a state institution which is fundamental. So that in context, the addition of authority in the form of an advisory opinion to the Court Constitution does not exceed the limits and enters the realm of authority of other institutions, so in this case, there needs to be clear boundaries in providing an *advisory opinion* against the Draft Law. There are at least several points that must be used as boundary markers by the Constitutional Court, namely: *First,* the state must restrict, either by law or constitution , an entity that can request an *advisory opinion* . This is very important so that the request *advisory opinion is not submitted by everyone with a reasonable constitutional right, while a bill is* approved. *Second,* the state, through the Constitution or the constitution, must also limit the circumstances in which an advisory opinion is available. For example, existence design regulation controversial legislation so that cause chaos to public. Third, the Court Constitution No allowed give advisory opinion in the form of formulation chapter in the bill. This is very important so that the doctrine checks and balances between permanent state institution awake. Court Constitution in give a advisory opinion must be based on interpretation constitutional which is logical, so that Legislative in matter This can make formulation the new norm. Although The Dutch adage

says “The law always limping in follow development the era” (het recht hink achten de feiten an) not means Court Constitution allowed make formulation norm.

This is use guard the system that already exists established as well as confess that sovereignty the highest in hand people through institution representative. Besides the limitations that must be used as signs by the Court Constitution mentioned, it is also necessary to limit state institutions in the connection will request advisory opinion to Court Constitution. First, Legislative can request good advisory opinion when arise doubt about constitutionality legislation that is still delayed, or when No Certain with formulation the right article from provision regulation legislation That myself. This is means the bill is still be at the stage discussion in parliament. Ideas the in fact allow legislative for make Constitution more effective and efficient with provide mechanism to obtain advisory opinion about constitutionality Bill. Second, the executive (president) can request advisory opinion to the Constitutional Court since a bill has been agreed upon by the legislature and submitted from the legislature to the president. In requesting an advisory opinion even the president must also look at the political situation of the country. If the bill does not have the potential to violate the constitutional rights of citizens, there is no rejection by a majority of citizens, then the president has no right to ask for an advisory opinion to the Constitutional Court.

Restrictions on access due to a design constitution, of course, have not yet given rise to a consequence law in a way that directly affects society. Therefore, that’s right, for no legal standing is given to individuals or groups, when the public Alone is Good in a way, group, or individual. I have not yet felt the implications of the law on the implementation design of the Constitution. It is also necessary to note that requesting advice or consideration on a legal issue from a state institution is recognized in Indonesia through the authority of the Supreme Court. As the highest judicial body, the Supreme Court performs a vital judicial function, or a non-technical judicial role. In the non-technical field of judicial, the Supreme Court has the authority to give considerations or advice in the field of law to other State Higher Institutions. 14 In its history, at least, the Supreme Court has carried out its function of giving advisory opinions to other high state institutions. There is several advices among them.

Table 04: Considerations or Advice: The law given by the Supreme Court is the appropriate authority in regulatory legislation.

| No. | Fatwa | About |
|---|---|---|
| 1. | Fatwa 25/KMA/III/2009 | Application opinion law about Bank Indonesia's authority to arrange deletion right bill ases Bank Indonesia financial. |
| 2. | Fatwa 28/KMA/III/2009 | Provisions for dismissal of regional heads and/or deputy regional heads who commit criminal acts. |
| 3. | Fatwa 29/KMA/III/2009 | Application for a fatwa from the Supreme Court of the Republic of Indonesia for death row convicts who have not yet decided their position. |
| 4. | Fatwa 30/KMA/III/2009 | Request for a fatwa on the provisions of Law No. 10 of 2008 concerning the general election of members of the DPR, DPD, and DPRD |
| 5. | Fatwa 35/KMA/III/2009 | A final decision from the High Court can be appealed, so if an appeal is filed by one of the parties, it must be sent to the Supreme Court. |
| 6. | Fatwa 59/KMA/V/2009 | The Supreme Court is not in a position to interpret the law except in concrete cases submitted to the judiciary. |
| 7. | Fatwa 118/KMA/IX/2009 | The Supreme Court has the authority to provide legal advice in the legal field, whether requested or not, to other State Institutions. |
| 8. | Fatwa 130/KMA/IX/2009 | The Supreme Court may not provide an opinion or a decision of another judicial |

| | | |
|---|---|---|
| | | institution (the Constitutional Court). |

There are still many other legal issues that other state institutions have requested advisory opinions from the Supreme Court on. This shows that many legal issues in their implementation still require interpretation by the judicial authority through the court system. The Supreme Court, as one of the judicial authority institutions is authorized by law to provide advisory opinions (advisory opinion) to other state institutions in the case of concrete cases , meaning that there is a case that is still and/or ongoing.

In contrast to the idea granting advisory authority opinion to the Constitutional Court. Advisory authority The opinion of the Constitutional Court can only be requested by the legislature and/or executive in relation to the law-making process. This means that the object of the advisory authority opinion The Constitutional Court, is a draft law (RUU).

As a comparison, felt need for give comparison some countries that have given authority advisory opinion Constitutional Court in each country. There are several countries that have implemented the ex-ante in the process of testing a law. But not an advisory request opinion towards its judicial institutions . For example in this case is Finland and France. In Finland the ex before abstract The review is not carried out by a Constitutional Court, but rather by a special institution called the Constitutional Committee (the constitutional law committee). The Constitutional Committee is part of the parliament or legislature that is full of political interests, but the composition of the Constitutional Committee is constitutional experts from various higher education institutions in their country.[15]

Although the constitutional committee is part of parliament, the discussion of this committee is not the same as the discussion of legislation in parliament. This committee will carry out the discussion of a legislative product when there is doubt about the constitutionality of a bill. In fact, in certain cases the government advises the legislature to ask for consideration from this constitutional committee. Ex mechanism before abstract review, which is in Finland, also has advantages and disadvantages. The advantage is, there

[15] Karlo Touri , *Legislation Between Politics and Law,* Hart Publishing , 2010, p. 4

is direct involvement from academics to review the quality of legislation during the discussion of the bill. The position of academics when conducting the review is certainly very different from the Public Hearing (RPDU) activities, which are usually carried out in Indonesia. However, in this position, it will actually negate the authority of the legislature itself. Placing the role of academics that is balanced with the legislature will indirectly change the paradigm of legislative activity. So that in the end, legislative activity is not interpreted as a political activity but also a legal activity. Another weakness of the ex before abstract review in Finland, there is an opportunity to pass a bill that has been declared unconstitutional by the constitutional committee. So this will be a real confusion for law enforcers themselves.

In contrast to the concept of Conseil Constitutional in France. As is known, since 1958 France has formed the Conseil Constitutional to complete its administrative justice. The existence of the Conseil Constitutional in France is often associated with the Constitutional Court in general. In fact, between the Conseil Constitutional and the Constitutional Court have different characteristics . The most fundamental difference is the design of the Conseil Constitutional is not a judicial institution but a quasi-judicial institution like the constitutional committee in Finland . Therefore, the model used is not a judicial institution like the Constitutional Court but a council.

According to the constitution in France, between the Conseil Constitutional with Court de ' Cassation have clear characteristic differences. Court de ' Cassation is a judicial institution like the Supreme Court, while the Conseil Constitutional is a political institution. This difference can also be seen through the composition of its membership . If the Court de ' Cassation composed of legal experts, while the Conseil Constitutional consisting of politicians and legal experts.

Ex practice before abstract review in France is not to test bills that have not been passed by the legislature, but bills that have been passed by the legislature but have not been ratified and enacted by the President. So, for example, the legislature has decided to ratify a bill into law, but certain parties feel that the bill will harm the constitutional rights of

citizens, they can file a constitutionality test at the Conseil Constitutional . Then Conseil Constitutional will decide whether the bill is contrary to the Constitution or not.[16]

If the bill is declared unconstitutional by the Conseil Constitutional then the consequence is that the bill cannot be ratified and does not have binding legal force. However, on the other hand, when the bill is declared valid and does not conflict with the constitution, the bill must be ratified and enacted by the President.[17]

In contrast to the authority of the Finnish Constitutional Council , the main responsibility of the French constitutional council is to conduct constitutional review of draft legislation to be enacted by parliament. [18]This authority can be seen explicitly in Articles 61 and 62 of the Constitution of the Fifth Republic of France (1958). It further states that:

" *Article 61: ... ordinary laws May be referred to the Constitutional Council , before their promulgation , by the President of the Republic, the Prime Minister , the President of the National Assembly , the President of teh Senate , or 60 deputies or 60 senators".*

*In these case , the Constitutional Council must decide within 1 month . At the demand of the Gevernment , after a declaration of urgency , this time limit is reduced to 8 days A referral of any law to the Constitutional Council suspend its promulgation .*

*Article 62: A provision declared unconstitutional may not be promulgation nor May it enter into force . The decision of the Constitutional Council may not be appealed*

Article 61 of the Constitution of the French Fifth Republic (1958) provides that the organic law (ordinary laws), before being enacted, must first be submitted to the Constitutional Council to be tested whether it is in accordance with the constitution or not. Applications to the council can be made by the President, the Speaker of the National Assembly, the Speaker of the Senate, and 60 members of the National Assembly or Senate. The organic law in question can be in the form of legal products (laws) that regulate judicial power, parliamentary composition, state finances or the procedures of the constitutional council itself. In this regard, the constitutional council must be able to complete an advisory

[16] Jimly Asshiddiqie, *Introduction Constitutional Law, 5th Edition,* PT RajaGrafindo Persada, Jakarta, 2013, p. 6
[17] Ibid, p. 5
[18] Jimly Asshiddiqie and Ahmad Syahrizal , *Justice Constitution in 10 Countries, (Jakarta*: PT Sinar Grafika, 2012), page 157

opinion no later than 60 days from the time it is requested by another state institution. However, at the request of the government or urgent reasons, it can be shortened to eight days.

In France testing constitutional is problem important things that appear daily life in stage formation product legislation. This is use to form architecture and design the law that is aspired to. In the end Constitution Fifth Republic French develop tradition state for honor meaning important constitutionality and principles constitutional through testing of the bil but the practice of *ex before abstract review* both in Finland and in France s received sharp criticism. According to Dominique Ressou , the existence of the institution has harmed the democracy that is already running. In a democratic country, decisions are taken by a group of the majority of the people or the council that represents them. While the decisions taken by the Conseil Constitutional composed of judges who are not directly elected can overturn decisions taken by a directly elected council.[19]

If we compare the two, namely between the constitutional committee in Finland and the Conseil Constitutional in France, we will find similarities and differences. The similarities are that both institutions are institutions that were formed with the aim of improving the quality of legal products through preventive efforts. While the difference is that Conseil Constitutional is not an institution that is part of parliament and what is being tested is not a bill that has not been passed by the legislature, but rather a bill that has been passed by the legislature but has not yet received approval from the president.

This is certainly different from advisory opinion which is the author's idea in this research. Advisory opinion is an ex- effort before abstract review conducted by the Constitutional Court on submissions from the legislature or executive. The submission process can be requested by the legislature, meaning that when the bill is still being discussed by parliament. While the submission requested by the executive means that the bill has been passed by the legislature and is still being requested for ratification by the President and has not been enacted.

[19] Victor Imanuel, *Judicial Preview as an Instrument for Improving the Quality of Legislation: A Legisprudential Approach* , Proceedings of the Conference and Dialogue on the Rule of Law, p. 501

Giving this opportunity to the two state institutions that create laws is a double effort. check and balance between state institutions. So that both can request Advisory opinion to the Constitutional Court when each institution is given authority in terms of legislation. The author chose the Constitutional Court as the institution that is given the authority to carry out Advisory opinion There are at least several reasons.

*First,* the Constitutional Court is a state institution formed to safeguard the constitution. With the attachment of several nicknames given to the Constitutional Court, such as, the guardian of constitution (constitutional guard), the sole interpreter of constitution (constitutional interpreter), the guardian of the democracy (guardian of democracy), and the protector of the citizen's constitutional rights (protector of citizens constitutional rights ) then it is the Constitutional Court's obligation to uphold and protect all laws so that they do not conflict with the constitution.

*Second,* since its formation, the Constitutional Court has recorded extraordinary achievements. As the data has been accumulated above, at least Court Constitution has received 2033 judicial review lawsuits law. This is Of course No Can considered trivial, with the amount judicial review lawsuit the prove that product legislation still very bad. Besides that, during This Court The constitution also has many do breakthroughs law through the decision. For example, filing a judicial review Government Regulation in Lieu of Law to Court Constitution. Although the Court's Constitution No. entitled for does not do testing, it does so with Spirit protection and respect for the rights of constitutional citizens. The Court makes a breakthrough, still receiving material tests from the Government Regulation in Lieu of Law.

## CONCLUSSION

The conclusion should contain a description that addresses the research objectives. Provide a clear and concise conclusion. Do not repeat the Abstract or describe the results of the research. Give a clear explanation regarding the possible application and/or suggestions related to the research findings.

Related authority advisory opinion is a mechanism that has been implemented in several states in the United States. The existence of an institution aimed at preventing the infringement of citizens' constitutional rights and ensuring a democratic state administration. In the existing state system in Indonesia, the Constitutional Court is the only institution with the most appropriate authority to provide justice, in the form of advisory opinions. This is normal because the Constitution serves as a framework for protecting the rights of citizens established in the country's constitution. Granting authority new in the form of an advisory opinion needed strict restrictions. This is very important because restrictions on the power of fundamental state institutions are a mandatory aspect reflected in the doctrine of the rule of law. As for the limits, first, the state must be restrictive, either by statute or constitution, on who can request an advisory opinion. Second, the state, through the Constitution or the constitution, must also limit the circumstances in which an advisory opinion is available. Third, the Court Constitution does not allow an advisory opinion in the form of a formulation chapter in the bill.

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