

Interpretation of the Constitution on the Arrangement of State-Owned Enterprises in the National Economic System Based on the Decision of the Constitutional Court

Agnes Harvelian,¹ Muchamad Ali Safa'at,² Aan Eko Widiarto,³
Indah Dwi Qurbani⁴

Faculty of Law Universitas Brawijaya, Indonesia
Email: agnesharvelian@student.ub.ac.id

Keywords: Interpretation of the Constitution; BUMN; Constitutional Court.

DOI:
10.19109/nurani.v%vi
%i.17109

Abstrack: *The constitutional interpretation of the regulation of State-Owned Enterprises (BUMN) is still looking for the right method, BUMN as the embodiment of the constitution for the state's responsibility in managing strategic resources that are used as wide as possible for the prosperity of the people. Submission of a judicial review to the Constitutional Court regarding BUMN can show the direction of constitutional interpretation given by the judges of the Constitutional Court. This article examines whether the constitutional interpretation of SOE arrangements is in accordance with Indonesia's national economic system. The method of approach in this writing is descriptive analysis which explains and analyzes the constitutional interpretation of SOE regulations. the results of the study reveal that the constitutional court has carried out its duties in accordance with the basic principles and principles of the constitution. The Constitutional Court in every decision in the field of BUMN dominates its interpretation by using an originalist interpretation.*

Introduction

The economic constitution in the 1945 Constitution of the Republic of Indonesia is divided into two variants, the principles of the economic system are contained in articles 33 and 34, then the infrastructure to realize these articles is contained in articles 23 and 27 paragraph (1). In particular, the 1945 Constitution of the Republic of Indonesia has a chapter related to "National Economy" to emphasize that the economy is one of the focuses in the constitution as part of the country's development.

One embodiment of the implementation of this Article, specifically based on Article 33 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the state establishes a State-Owned Enterprise (hereinafter referred to as BUMN). SOEs have a strategic position to improve the welfare

of the Indonesian people. The state controls natural resources (Mahkamah Konstitusi Republik Indonesia, 2010, 2012a, 2012b), however the state cannot carry out business (economic) activities directly, therefore the state forms a business entity with the intention of managing natural resources for the prosperity of the people (Nurdin, 2012).

The history of the presence of SOEs has existed since the colonial era in Indonesia, known as State Enterprises (not business entities). In the 1950s there were various forms of state companies that had different characteristics, this situation made the Government take a policy by issuing Perpu Number 19 of 1960 which was subsequently stipulated to become Law Number 19/Prp/1960 concerning State Companies, with the aim of standardize state forms of business. The implication of the issuance of the law is any form whose capital is wholly state property, unless otherwise stipulated by law (Rastuti, 2015).

After the reform, Law Number 19/Prp/1960 was amended and declared invalid with the promulgation of Law Number 19 of 2003 concerning BUMN (hereinafter referred to as the BUMN Law) which placed BUMN in the national economic system as an extension of the state (representational state). Based on Article 1 paragraph (1) of the BUMN Law, among others:

State-Owned Enterprises, hereinafter referred to as BUMN, are business entities whose capital is wholly or mostly owned by the state through direct participation originating from separated state assets.

The meaning of the sentence "State separated wealth" can be seen in Law Number 17 of 2003 concerning State Finance (hereinafter referred to as UUKN) Article 2 letter g, including:

State Finances as referred to in Article 1 number 1, include: [...] (g) state assets/regional assets that are managed by themselves or by other parties in the form of money, securities, receivables, goods, and other rights that can be valued with money, including separated assets in state/regional companies.

Based on the elucidation of the UUKN, state finances that are separated within the scope of state finances have implications for BUMN finance as a legal entity formed with separate state finances, in managing its finances, it must go through an audit mechanism by the Supreme Audit Agency (BPK). Based on the general explanation of the BUMN Law, BUMN has a dual role, namely as a business entity which principally runs a business for profit and at the same time is social in nature to promote general welfare.

From principle to technical issues in the regulation of SOEs at the statutory level, it becomes one of the tasks of the Constitutional Court (hereinafter referred to as the MK) as *the guardian of the constitutional*. Legislation is essentially formed to regulate behavior in society. However, human activities and interests in social life are very broad, so it is impossible to be covered only in a single law. Incomplete content in regulations, legal vacuum, conflicts between statutory regulations that occur and ambiguity in legal norms are legal problems that occur in the Indonesian legal system. This article answers the question how is the Interpretation of the Constitution on the Arrangement of State-Owned Enterprises in the National

Economic System Based on the Decision of the Constitutional Court? The purpose of this writing is to find the format of interpretation in the Constitutional Court's decision.

Research Method

This study uses a statute approach or also referred to as the normative legal approach (Wignjosoebroto, 2002). Existing data are linked to each other through library research, reviewed and interpreted also analysed to draw conclusions. Normative research methods are research that refers to legal norms contained in legislation and court decisions. Resources are obtained from literature or secondary data (Amiruddin & Asikin, 2012), which consists of primary legal and secondary legal materials. Primary legal materials include basic norms or rules, namely the 1945 Constitution, laws and regulations also decisions of the Constitutional Court in the case of testing legal norms. Secondary legal materials are documents other than legal products that provide additional information on primary legal materials. Those legal materials may include constitutional interpretation literature, research results, legal expert opinions and scientific articles related to interpretation in the Constitutional Court's decision. The data obtained will be analysed by qualitative descriptive methods.

Discussion and Results

Research related to the interpretation of the constitution must begin with a study of the power of the judiciary, because considerations and choices of interpretation of decisions issued flow from the power of judges in deciding a case. In the course of the history of the judiciary in Indonesia, the reform era is a new condition related to the changing status of judges as state officials from civil servants, the purpose of which is part of efforts to maintain the independence of judges (Komisi Yudisial Republik Indonesia, 2018). However, the dual status of judges in Indonesia, who are seen as civil servants and state officials, continues to roll with a legal vacuum.

Arrangements regarding judicial power are contained in CHAPTER IX concerning Judicial Power, Article 24, Article 24A, Article 24B, Article 24C and Article 25 of the 1945 Constitution of the Republic of Indonesia. Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia has mandated that,

"Judicial power is exercised by a Supreme Court and judicial bodies under it in the general court environment, the religious court environment, the military court environment, the state administrative court environment, and by a Constitutional Court".

The Supreme Court and the Constitutional Court are the two institutions in Indonesia which have the authority to adjudicate. The power of the judiciary after the amendment to the constitution was poured into Law Number 4 of 2004 concerning Judicial Power, which regulates the bodies administering judicial power, the principles of administering judicial power, guaranteeing the position and equal treatment of people before the law. Then, it was changed by Law Number 48 of 2009 concerning Judicial Power.

The important principle contained in the constitution related to judicial power is an independent, independent and independent power. Bagir Manan (1995) gives views on several goals to be achieved with an independent judiciary, including:

1. As part of a system of separation or sharing of powers between state administrative bodies, judicial power is necessary to guarantee and protect individual freedoms.
2. An independent judicial power is needed to prevent administrators from acting arbitrarily and oppressing.
3. An independent judicial power is needed to assess the legitimacy of a statutory regulation so that the legal system can be properly implemented and enforced.

Judicial independence is a freedom that is protected, freedom as an individual and freedom in carrying out duties as an organizer of judicial power. Such freedom is already contained in the 1945 Constitution of the Republic of Indonesia concerning Human Rights.

Judicial power is the power of an independent state to administer justice in order to uphold law and justice based on Pancasila and the 1945 Constitution for the sake of the implementation of the Republic of Indonesia (Subiyanto, 2012). Judicial power is closely related to the independence of judicial authorities in carrying out their duties, there is no intervention and consideration of other interests other than leading to justice, certainty and expediency.

One of the methods used by the Constitutional Court in making decisions is by means of interpretation. Interpretation (Mertokusumo, 2020) is one of the methods in legal discovery (*rechtvinding*), according to Sudikno Mertokusumo this method is a means or tool to find out the meaning contained in the law. The interpretation process is adjusted to the values contained in society, so that this method is free from conflicts of interest and political considerations that benefit a group of parties.

Some legal experts distinguish between the term legal interpretation (*interpretation*) and the term legal construction (*contraction*). Interpretation focuses more on giving meaning to the language used, while the word construction in this case is defined as determining the legal consequences of a rule that has been interpreted (Fuady, 2007).

Based on Article 5 paragraph (1) of Law Number 49 of 2009 concerning Judicial Powers,

Constitutional judges and judges are required to explore, follow, and understand legal values and a sense of justice that lives in society.

Based on Article 3 paragraph (1) of Law Number 49 of 2009 concerning Judicial Powers,

In carrying out their duties and functions, judges and constitutional justices are required to maintain the independence of the judiciary.

The freedom and independence of judges and constitutional judges in understanding legal values and a sense of justice that lives in society is carried out using various methods, one of which is legal interpretation.

Logeman argues that in understanding the freedom and independence of judges and constitutional judges there are restrictions, judges must submit to the will of legislators (Ardhiwisastra, 2012). In addition, within the framework of the Unitary State of the Republic of Indonesia, Pancasila and the 1945 Constitution serve as a barrier for judges not to interpret arbitrary norms.

According to Polak (Ardhiwisastra, 2012), the method of interpretation is determined by 3 (three) things, including:

1. The material of the relevant laws and regulations;
2. The place where the case was filed; And
3. According to the era.

The Constitutional Court or MK as *the guardian of the constitution* based on Article 24C of the 1945 Constitution has 4 powers, including:

1. Examination of laws against the 1945 Constitution
2. Disputes over authority between state institutions
3. Dissolution of political parties
4. Disputes over election results and decide on the opinion of the DPR in the process of impeaching the President and Vice President.

Acting as a court institution that examines, decides and adjudicates cases, it is certain to carry out interpretation or interpretation as a method of finding law. One of the characteristics of the Constitutional Court's decision is that it is *final and binding*, meaning that the Constitutional Court's decision is a decision at the first and last level. In essence, the interpretation of the constitution can be carried out by anyone, but the institution that can decide on the interpretation of the constitution is the Constitutional Court, so that the Constitutional Court functions as *the final interpreter of the constitution*.

In deciding a case, the Constitutional Court uses the interpretation of the constitution as a method of finding law. Based on Article 5 paragraph (1) of the Judicial Powers Law, the interpretation of the constitution carried out by the Constitutional Court must essentially contain justice in accordance with the Pancasila mandate in the 5th precept of Social Justice for All Indonesian People. Justice according to the constitution is no longer justice according to various parties, the Constitutional Court as the last institution that can interpret the constitution must be free from political elements and interests.

The court institution is one of the institutions that has a major role in the process of legal interpretation. Based on Article 24 of the 1945 Constitution of the Republic of Indonesia concerning judicial power, there are two institutions that have the authority to adjudicate. The Constitutional Court has the authority to interpret the constitution and the Supreme Court has the authority to interpret the laws under it.

Examination of laws carried out by court institutions gives rise to the authority of judges to investigate and assess the contents of statutory regulations which are the testing stones. When a law whose content is in accordance with or is declared contrary to a higher degree by an institution authorized to carry out interpretation, then the process has gone through interpretation or according to Rosjidi Rangawidjaja (Lailam, 2014), it is

included in *the process of discovering and expounding the meaning of the articles of law and the constitution* (the process of discovering and parsing constitutional norms).

The Constitutional Court or hereinafter referred to as the MK is one of the subjects of judicial power in Indonesia besides the Supreme Court. The Constitutional Court is also bound by the principles and general principles of administering judicial powers that are independent, free and from the influence of other institutional powers in enforcing law and justice. Based on Article 24C paragraph (1) and paragraph (2) of the 1945 Constitution, the Constitutional Court has the authority to:

- a. Examine the law against the 1945 Constitution of the Republic of Indonesia;
- b. Deciding disputes over the authority of state institutions whose powers are granted by the 1945 Constitution of the Republic of Indonesia;
- c. Deciding the dissolution of political parties;
- d. Deciding disputes over general election results; And
- e. Delivering a decision on the opinion of the DPR that the President and/or Vice President is suspected of having violated the law in the form of treason against the state, corruption, bribery, other serious crimes, or disgraceful acts, and/or no longer fulfills the requirements as President and/or Vice President as referred to in the 1945 Constitution.

Examination of laws and regulations through a court or *Judicial Review* (JR) is a mechanism that can ensure that a statutory regulation does not conflict with a higher level of statutory regulations. The Constitutional Court has a mechanism for formal review (*formele toetsing*) and material review (*materiele toetsing*). Formal examination is a test of whether or not the procedure for forming statutory regulations is valid or not, the official form of statutory regulations. While the material test is a test of the suitability of the material and content of laws and regulations with the material content of laws and regulations that are higher in hierarchy (Widayati, 2017).

Decisions of the Constitutional Court which are final and binding often encounter a lot of opposition and are difficult to implement. There are several models of MK decisions, including: (Asy'ari et al., 2013)

- a) The decision model is legally null and void;

Based on Article 56 paragraph (3) and Article 57 paragraph (1) of the Constitutional Court Law, the model for the Constitutional Court's decision states that a law being reviewed is contrary to the 1945 Constitution either in whole or in part.
- b) Model conditional constitutional decisions (*Conditionally Constitutional*). Based on the decision of the Constitutional Court which decided on conditional constitutional matters, it has characteristics, among others:
 1. Conditional constitutional decisions aim to defend the constitutionality of a provision with the conditions determined by the Constitutional Court;

2. The conditions determined by the Constitutional Court in constitutional decisions with binding conditions in the process of forming laws;
 3. Opening up opportunities for re-examination of norms that have been tested, in the event that the formation of a law is not in accordance with the requirements determined by the Constitutional Court in its decision;
 4. Opening up opportunities for re-testing the norms that have been tested.
 5. Conditional Constitutional Decisions serve as a reference or guideline for the Constitutional Court in assessing the constitutionality of the same norms.
- c) Model conditionally unconstitutional decisions (*Conditionally Unconstitutional*);
- In its development, the Constitutional Court also introduced a model of conditional unconstitutional decisions, the reverse of which was previously stated to be conditionally contradictory, which means the article being petitioned for review.
- d) The model of a decision whose enforcement is postponed (*Limited Constitutional*); And This concept means tolerating the enactment of rules that are actually contrary to the constitution until a certain time limit.
- e) Model decisions that formulate new norms.
- The Constitutional Court can change or make new certain parts of the content of a law being reviewed, so that the law changes from the previous one.

Jurisprudence Constitutional Court Decisions

The definition of jurisprudence, one of the definitions commonly understood from the notion of jurisprudence is the notion used by Soebekti who mentions the notion of jurisprudence as decisions of judges or courts that are permanent and justified by the Supreme Court (MA) as a court of cassation, or the decisions of the Supreme Court itself which are still.

In the field of constitutional law, in general, Jimly Asshiddiqie formulated that there are seven types of sources of constitutional law, namely:

- a. Unwritten constitutional values;
- b. The constitution, both the preamble and the articles;
- c. Written laws and regulations;
- d. Judicial jurisprudence;
- e. Constitutional conventions;
- f. The doctrine of law science which has become *ius commissionis opinio doctorum*;
- g. International law that has been ratified or has been enacted as customary international law.

Bismar Siregar (1986) stated that although historically Indonesia had family ties with the *civil law* legal system through the Dutch colonial era,

there is no standard understanding of what is meant by jurisprudence. Even though jurisprudence has an important function, it does not have a clear legal standing in Indonesia, both at the theoretical and practical levels.

The Constitutional Court, whose decisions are *final and binding* in nature, and there is no further level of legal remedies, makes decisions of constitutional judges receive deep attention. The touchstone, which only contains 37 articles in the 1945 Constitution, is vulnerable to similarities in the *judicial review* process. The decision of the previous constitutional judges regarding the interpretation of a text is actually one of the manifestations of the freedom and independence of judges. However, the different meanings between decisions will have long-term legal implications, because of the nature of the decision as the first and last level.

The interpretation of "Right to Control the State" in Article 33 Paragraph (3) of the 1945 Constitution, was previously decided in 2003. Then the application with the same touchstone was tested again, the decision on the application for judicial review of Law Number 20 of 2003 concerning Electricity Number 001- 021-022/PUU-I/2003, Law Number 22 of 2001 concerning Oil and Natural Gas Number 002/PUU-I/2003, and Decision on Judicial Review of Law Number 7 of 2004 concerning Water Resources Number 058-059 -060-063/PUU-II/2004.

In that decision, the Constitutional Court determined that what is meant by the right to control the state includes five meanings. The state formulates policies (*beleid*), including making arrangements (*regelen daad*), administering (*bestuurdaad*), conducting management (*beheer daad*) and exercising supervision (*toezicht houden daad*) for the greatest possible goal of people's prosperity.

According to Ismail Sunny, these three decisions constitute *faste jurisprudence*. *Faste Jurisprudence* or standing decisions from the book *Een leiden to the Studie van Leelen recht* by Professor van Ovel Douren. Jurisprudence is a source of law in reviewing laws at the Constitutional Court. Jurisprudence applies when the panel of judges believes that the previous decision is still relevant to the current constitutional issue. This can be seen in the decisions regarding constitutional impairment requirements and the interpretation of the state's right to control in several decisions of the Constitutional Court (Agustine, 2018).

The rule of law or *supremacy of law* is an absolute prerequisite for the implementation of state life based on people's sovereignty. Bernard Lonergan in the book *Dialectic of Authority* states that the rule of law means there is a constitutional guarantee that the implementation and enforcement of law in the political process which is carried out by the executive, legislative and judicial powers, will always rely on the authority determined by law (Sugiono & MD, 2000).

Realizing constitutional supremacy in every constitutional interpretation process to find justice according to the constitution must be translated in detail. The supremacy of the constitution can be seen from the goals of the state as stated in the Preamble of the 1945 Constitution 4th paragraph (Suhardjana, 2010), (i) Protecting the entire Indonesian nation and all of Indonesia's bloodshed, promoting public welfare, (ii) Educating the

nation's life, (iii) Carrying out world order based on independence, eternal peace, and (iv) social justice. The goals of the Republic of Indonesia are protection, prosperity, intelligence and peace.

Theory of Interpretation and Methods of Interpretation of the Constitution

The interpretation of the constitution or *constitutional interpretation*, interpreted differently by Albert H. Y. Chen (2000) who stated that the term *constitutional interpretation* is different from the *interpretation of statutes*. Constitutional interpretation is an interpretation of the provisions contained in the constitution or basic laws, or can be referred to as the *interpretation of the Basic Law*. Constitutional interpretation is essentially the core of the process of assessing the constitutionality of a law because constitutional judges when examining and deciding on cases reviewing laws must also interpret constitutional provisions which are used as touchstones. This has happened since the first time in 1803 in America the case of *judicial review* in the case of *Marbury v Madison*.

Examination of laws carried out by court institutions gives rise to the authority of judges to investigate and assess the contents of statutory regulations which are the testing stones. When a law whose content is in accordance with or is declared contrary to a higher degree by an institution authorized to carry out interpretation, then the process has gone through interpretation or according to Rosjidi Ranggawidjaja (Lailam, 2014), it is included in the *process of discovering and expounding the meaning of the articles of law and the constitution* (the process of discovering and parsing constitutional norms).

The Constitutional Court or MK as the guardian of the constitution based on Article 24 C of the 1945 Constitution has 5 powers, including:

1. Examination of laws against the 1945 Constitution
2. Disputes over authority between state institutions
3. Dissolution of political parties
4. Disputes over election results and
5. Decides the opinion of the DPR in the process of impeachment of the President and Vice President.

Acting as a court institution that examines, decides and adjudicates cases, it is certain to carry out interpretation or interpretation as a method of finding law. One of the characteristics of the Constitutional Court's decision is that it is *final and binding*, meaning that the Constitutional Court's decision is a decision at the first and last level. In essence, interpretation of the constitution can be carried out by anyone, but the institution that can decide on the interpretation of the constitution is the Constitutional Court, so that the Constitutional Court functions as *the final interpreter of the constitution*.

Interpretation or interpretation is one of the methods in legal discovery (*rechtvinding*), according to Sudikno Mertokusumo (Lailam, 2014) this method is a means or tool to find out the meaning contained in the law. In deciding a case, the Constitutional Court uses constitutional interpretation as a method of finding law. Based on Article 5 paragraph (1) of the Law on Judicial Powers,

"Judges and judges of the constitution are obliged to explore, follow, and understand the legal values and sense of justice that live in society."

In essence, the interpretation of the constitution carried out by the Constitutional Court must contain justice in accordance with the Pancasila mandate in the 5th precept of Social Justice for All Indonesian People. Justice according to the constitution is no longer justice according to various parties, the Constitutional Court as the last institution that can interpret the constitution must be free from political elements and interests.

Based on the theory of *the living constitution*, the 1945 Constitution of the Republic of Indonesia must be understood as a constitution that has textual and contextual dynamics. The interpretation of the constitution carried out by the Constitutional Court as the final interpreter of the constitution is vulnerable to abuse of authority. Thus, the freedom of judges in interpreting the constitution must be carried out by public and academic accountability for the method of interpretation used (Satriawan, 2008). There is an adage that *reading the law is interpreting the law* (Amsari, 2011), that legal texts are clear as a way for lawmakers to act pragmatically while secretly admitting when experiencing difficulties to provide an explanation. The Constitutional Court's authority in interpreting the constitution is enormous, and it is vulnerable to subjective thinking.

Keith E. Whittington (Harjono, 2008) divides two ways to understand the constitution, namely with the interpretation of the constitution that aims to find the meaning of the constitution's texts and the construction of the constitution which aims at political interpretation when the interpretation of the constitution's texts cannot determine an activity or action guide. The goal in interpreting the constitution literally is to find meaning and elaborate upon current developments.

State Owned Enterprises (BUMN)

State-Owned Enterprises, hereinafter referred to as BUMN, are business entities in which all or most of the capital is owned by the state through direct participation originating from separated state assets. Based on Article 1 number 2 of the BUMN Law states that: "A limited liability company, later referred to as a Persero, is a SOE that is formed as a limited liability company whose capital is divided into shares which are wholly or at least 51% (fifty one percent) of whose shares are owned by the Republic of Indonesia whose main objective is to pursue profit". The article implicitly emphasizes that the legal form of BUMN is a limited liability company, which means that in the implementation of BUMN, it is subject to and conforms to the law governing limited liability companies.

BUMN is one form of implementation of article 33 of the 1945 Constitution which states that:

1. The economy is structured as a joint venture based on the name of kinship;

2. Production branches which are important for the state and affect the livelihood of the people at large are controlled by the state;
3. Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people;
4. The national economy is organized based on economic democracy with the principles of togetherness, efficiency, justice, sustainability, environmental awareness, independence and by maintaining a balance of progress and national economic unity.

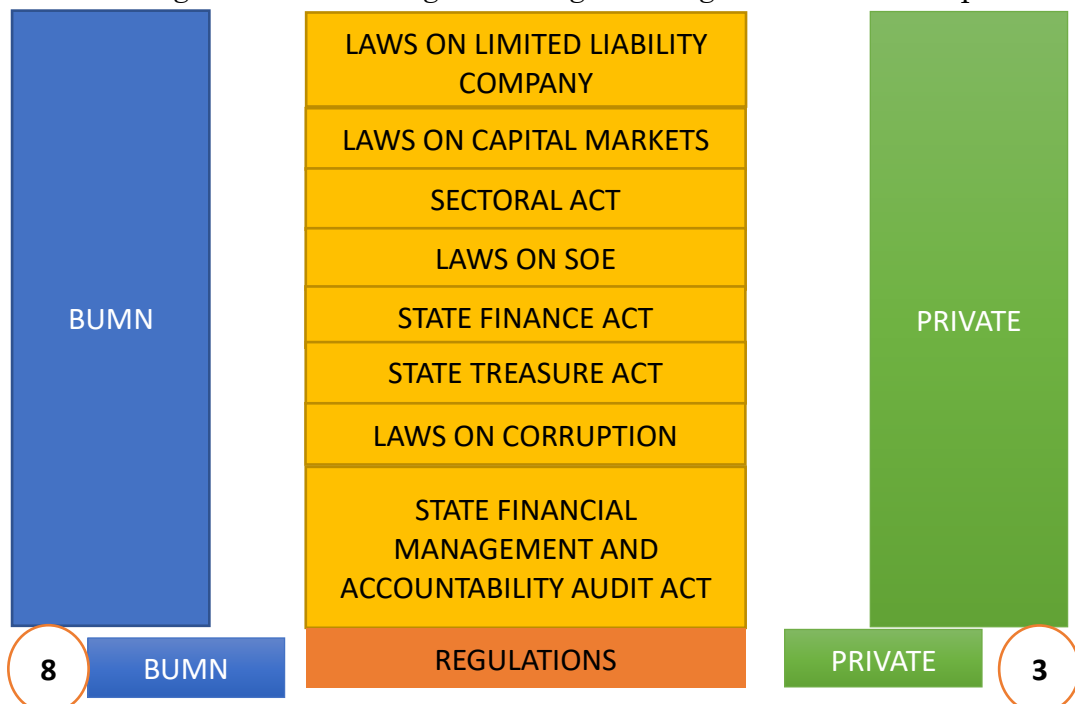
Article 33 of the 1945 Constitution is one of the mandates of the state in running a business to achieve people's welfare. State businesses are implemented in the form of SOEs that manage strategic and non-strategic businesses to accelerate people's welfare.

Based on the provisions of Law Number 19 of 2003 concerning BUMN, the government differentiates BUMN into 2 (two) types, namely:

1. Limited Liability Company (Persero) is a SOE in the form of a Limited Liability Company whose capital is divided into shares which are wholly or at least 51% owned by the Republic of Indonesia with the main objective of pursuing profit.
2. Public Company (Perum) is a SOE whose capital is wholly owned by the state and not divided into shares, which aims to benefit the public in the form of providing high quality goods and/or services and at the same time pursuing profits based on the principles of company management.

SOEs in the form of Limited Liability Company have a different legal status from Limited Liability Companies in general, this can be seen from the provisions of the laws and regulations that govern them, including:

Image 1. laws and regulations governing BUMN and the private



Based on the image 1, SOEs are required to comply with provisions that are larger in number and scope than the private sector, thus making SOEs not have the same position at the business unit level as the private sector.

National Economic System And Economic Constitution

The constitution has an important role in the implementation of state life, the constitution influences economic development in each country. Jean Jacques Rousseau, in 1755 in the book - *A Discourse on Political Economy*, has linked law and economics. The term economy is derived from two words, *oikos*, a house, and *nomos*, as law (government), and means "the wise and lawful government of the house for the common good of the whole family". The meaning of the term was then extended to the government of the extended family, as the State. Furthermore, Per Krusell and José-Víctor Ríos-Rull stated that there is a link between economic development and democratic processes and the constitution. James M. Buchanan, laureate of the 1986 Commemorative Nobel Prize in Economic Science - *The Constitution of Economic Policy*, has shown how normative concerns can once again revive economic value, albeit in an unromantic way based on a realistic understanding of human nature (Buchanan, 1990).

The aim of the constitution was to limit the powers of government as a form of check on the arbitrary actions of hereditary monarchs who abused their powers, imposed undesired taxes, or waged unpopular wars. Constitutionally limited government is a system of government that is bound by certain principles of action by the state constitution. The supremacy of constitutional law is very important for the existence of the state.

The term economic constitution is used on the basis of the economic system adopted by a country. Constitution Economic (CE) is a field of study related to the influence of constitutional provisions, institutional procedures & government decision-making in the economic field. The most important pioneering work in this field includes developments such as "public choice theory" (developed by the American economists James M. Buchanan and Gordon Tullock around 1962). James M Buchanan, a Nobel Prize winner for his contributions to economics in this field, continues to develop the theory of Economic Constitutions.

The term economic constitution was coined in the 1980s as a term in economics. The first experts to be informed about economic constitutions were Rüdiger Zuck (1975), Gernot Gutmann and Werner Klein (1976), Wolfgang Bohlin (1981) and Werner Mussler (1998). However, in its development, Rittner (1987) gave four economic notions about the constitution, among others: (i) the actual state of the national economy, (ii) the economic model, such as a market economy or a planned economy, (iii) the respective legal norms governing a planned economy, and (iv) Legal statements as described in the formulation of laws.

Jimly Asshidiqie, the constitution divides into three branches, political constitution, economic constitution and social constitution. The economic constitution is the basic law or constitution, which contains the basic norms of economic policy. Based on the policy formulation that has been included in

the articles of the constitution, everyone can see the direction and economic basis of each country.

The Republic of Indonesia is a state based on the rule of law. Indonesia has a constitution, known as the 1945 Constitution of the Republic of Indonesia. The existence of the 1945 Constitution as a constitution in Indonesia has a long history until it was finally accepted as the legal basis for the administration of state administration in Indonesia. Indonesia's constitution now has economic constitutional value; divided into two variants, the principles of the economic system in articles 33 and 34, then the infrastructure to realize these articles in articles 23 and 27 (1), there is even a nomenclature called "National Economy" to emphasize that the economy must be included in the constitution as part of country development.

Every country has economic means, the constitution of any state contains economic policies in the constitution. More than that, or the direction of formulating economic policies in the constitution will be explained in more detail and operatively to derive constitutional rules. Based on the development of economic and legal issues, which are very dynamic at this time, this study does not only explore basic principles or theories of economic constitution. Predicting possible futures is the hallmark of this study, because the economic constitution can also be thought of as a market economy constitution.

The 1945 Constitution contains the concept of political democracy as well as economic democracy. This means that the highest authority in Indonesia is the people, both in the political and economic sectors. All political and economic resources are controlled by the sovereign people. In a democratic system that is built, not everything is controlled directly by the people. The management of several main parts is represented by the state. Indonesia's economic democracy system is Pancasila democracy. This means that it reflects the bottom-up development of Indonesia.

Conclusion

The Constitutional Court in carrying out its duties and authorities has adhered to the basic principles and principles of the constitution. The Constitutional Court in every decision in the field of BUMN dominates its interpretation by using an originalist interpretation. The originalist interpretation focuses on assessing conflicts of legal norms based on the original meaning or original intent, namely trying to present the initial spirit of the formation of a written constitution through debates at the time of drafting the Constitution, which is based on the understanding and purpose of the constitution from the opinions of the drafters of the constitution. This is what makes the decisions of the Court have the strength of the initial spirit of the formation of the constitution of the Republic of Indonesia

References

- Agustine, O. V. (2018). Keberlakuan Yurisprudensi pada Kewenangan Pengujian Undang-Undang dalam Putusan Mahkamah Konstitusi. *Jurnal Konstitusi*, 15(3), 642–665. <https://doi.org/10.31078/jk1539>
- Amiruddin, & Asikin, Z. (2012). *Pengantar Metode Penelitian Hukum*. Rajawali Press.
- Amsari, F. (2011). *Perubahan UUD 1945: Perubahan Konstitusi NKRI Melalui Putusan Mahkamah*. Jakarta: Konstitusi, Rajawali Pers.
- Ardhiwisastra, Y. B. (2012). *Penafsiran dan Konstruksi Hukum*. Alumni.
- Asy'ari, S., Hilipito, M. R., & Ali, M. M. (2013). Model dan Implementasi Putusan Mahkamah Konstitusi dalam Pengujian Undang-Undang (Studi Putusan Tahun 2003-2012). *Jurnal Konstitusi*, 10(4), 675–708. <https://doi.org/10.31078/jk1046>
- Buchanan, J. M. (1990). The Domain of Constitutional Economics. *Journal of Constitutional Political Economic*, 1(1).
- Chen, A. H. Y. (2000). The interpretation of the Basic law-common law and Mainland Chinese perspectives. *Hong Kong LJ*, 30, 380.
- Fuady, M. (2007). *Hukum Kontrak (Dari Sudut Pandan Hukum Bisnis)*. Citra Aditya Bakti.
- Harjono. (2008). *Konstitusi Sebagai Rumah Bangsa*. Sekjen Mahkamah Konstitusi.
- Komisi Yudisial Republik Indonesia. (2018). Meluruskan Arah Manajemen Kekuasaan Kehakiman. In *Sekretarian Jenderal Komisi Yudisial Republik Indonesia*. Jakarta.
- Lailam, T. (2014). Penafsiran Konstitusi Dalam Pengujian Konstitusionalitas Undang- Undang Terhadap Undang- Undang Dasar 1945. *Jurnal Media Hukum*, 21(1), 88–106. <https://doi.org/https://doi.org/10.18196/jmh.v21i1.1159>
- Mahkamah Konstitusi Republik Indonesia. (2010). *Putusan MK No. 3/PUU-VIII/2010 tentang penafsiran makna "Hak Menguasai Negara."* Mahkamah Konstitusi Republik Indonesia.
- Mahkamah Konstitusi Republik Indonesia. (2012a). *Putusan MK No. 35/PUU-X/2012 tentang penafsiran makna "Hak Menguasai Negara."* Mahkamah Konstitusi Republik Indonesia.
- Mahkamah Konstitusi Republik Indonesia. (2012b). *Putusan MK Nomor 50/PUU-X/2012 tentang penafsiran makna "Hak Menguasai Negara."* Mahkamah Konstitusi Republik Indonesia.
- Manan, B. (1995). *Kekuasaan Kehakiman Republik Indonesia*. Pusat Penerbitan Universitas, LPPM, Universitas Islam Bandung.
- Mertokusumo, S. (2020). *Penemuan Hukum Sebuah Pengantar*. Maha Karya Pustaka.
- Nurdin, A. (2012). *Kepalitan BUMN Persero Berdasarkan Asas Kepastian Hukum, Bandung, PT. Alumni*.
- Rastuti, T. (2015). Seluk beluk perusahaan dan hukum perusahaan. *Bandung: Refika Aditama*.
- Satriawan, I. (2008). Kewenangan Pengujian Konstitusi Mahkamah

- Konstitusi dan Prinsip Sistem Checks and Balances (Analisis Putusan Mahkamah Konstitusi Nomor 005/PUU-IV/2006). *Urnal Konstitusi PK2P FH UMY*, 1(1).
- Siregar, B. (1986). *Keadilan hukum: dalam berbagai aspek hukum nasional*. Rajawali.
- Subiyanto, A. E. (2012). Mendesain Kewenangan Kekuasaan Kehakiman Setelah Perubahan UUD 1945. *Jurnal Konstitusi*, 9(4), 661–680. <https://doi.org/10.31078/jk944>
- Sugiono, B., & MD, A. H. (2000). Supremasi Hukum dan Demokrasi. *Jurnal Hukum IUS QUIA IUSTUM*, 7(14), 71–82. <https://doi.org/10.20885/iustum.vol7.iss14.art5>
- Suhardjana, J. (2010). SUPREMASI KONSTITUSI ADALAH TUJUAN NEGARA. *Jurnal Dinamika Hukum*, 10(3), 253–264. <https://doi.org/10.20884/1.jdh.2010.10.3.96>
- Widayati, W. (2017). Problem Ketidakpatuhan Terhadap Putusan Mahkamah Konstitusi Tentang Pengujian Undang-Undang. *Jurnal Pembaharuan Hukum*, 4(1), 1–14. <https://doi.org/10.26532/jph.v4i1.1634>
- Wignjosoebroto, S. (2002). Hukum: Paradigma, metode dan dinamika masalahnya. (*No Title*).

Attachment:

Table 1.
List of Constitutional Court Decisions in the Sector of BUMN Regulation

No	Decision Number	Applicant	Law/Article Tested	The 1945 Constitution	Judge's Consideration	Verdict Rule
1	Number 58/PUU-VI/2008	2 (two) Individuals (employees of BUMN)	<p>Law Number 19 of 2003 concerning BUMN</p> <ol style="list-style-type: none"> 1. Article 1 point 11 & 12 2. Article 72 paragraph (1) (2) (3) 3. Article 73 4. Article 74 paragraph (1) (2) 5. Article 75 6. Article 76 paragraph (1) (2) 7. Article 77 8. Article 78 9. Article 81 10. Article 82 11. Article 83 12. Article 84 13. Article 85 paragraph (1) (2) 14. 14. Article 86 paragraph (1) (2) 	<ol style="list-style-type: none"> 1. Article 27 Paragraph (1) 2. Article 27 Paragraph (2) 3. Article 28A 4. Article 28C Paragraph (1) 5. Article 28I Paragraph (2) 6. Article 33 Paragraph (2) 7. Article 33 Paragraph (3) 	<ol style="list-style-type: none"> 1. No constitutional loss was found 2. Does not meet the legal standing requirements 	The applicant's application cannot be accepted
2	77/PUU-IX/2011	7 (seven) limited liability company legal entities	<p>Law Number 49 Prp of 1960 concerning Committee for State Receivable Affairs (PUPN)</p> <ol style="list-style-type: none"> 1. Article 4 2. Article 8 3. Article 10 4. Article 12 Paragraph (1) 	<ol style="list-style-type: none"> 1. Article 24D Paragraph (1) 2. Article 33 Paragraph (4) 	<p>The judge used several arrangements in other laws to then serve as a juridical basis which was used as a reference for testing the PUPN Law against the 1945 Constitution, these articles include:</p> <ol style="list-style-type: none"> 1. Article 28D Paragraph (1); and 2. Article 33 paragraph (4) of 	<ol style="list-style-type: none"> 1. Grant the applicant's request in part 2. Rejecting the applicant's request for other than and the rest 3. Order the publication of this decision in the Republic of Indonesia state news as appropriate

					<p>the 1945 Constitution</p> <p>3. Article 2 letter g of the State Finance Law</p> <p>4. Article 1 number 1, number 10</p> <p>5. Article 4 of the BUMN Law</p> <p>6. Article 1 point 6 of the State Treasury Law</p> <p>7. Supreme Court Fatwa Number WKMA/Yud/20/VI II/2006</p>	
3	Number 48/PUU-XI/2013	<i>Center for Strategic Studies University of Indonesia</i>	<p>Law No. 17 of 2003 concerning State Finance</p> <p>1. Article 2 letters G and I</p>	<p>1. Article 23 paragraph (1)</p> <p>2. Article 28C Paragraph (2)</p> <p>3. Article 28D paragraph (1)</p> <p>4. Article 31 paragraph (4)</p>	<p>1. The principal of the petition is groundless according to law</p>	<p>Declare to reject the Petitioner's application in its entirety</p>
4	62/PUU-IX/2013	BUMN Legal Forum and 2 (two) individuals	<p>UU no. 17 of 2003 concerning State Finance</p> <p>1. Article 2 letter G and I</p> <p>Law Number 15 of 2006 concerning BPK</p> <p>1. Article 6 paragraph (1)</p> <p>2. Article 9 paragraph (1) letter b</p> <p>3. Article 10 paragraph (1) and paragraph (3) letter b</p> <p>4. Article 11 letter a</p>	<p>1. Article 23 paragraph (1)</p> <p>2. Article 23E paragraph 1</p>	<p>The judge used several arrangements in other laws to then serve as a juridical basis which was used as a reference for testing the State Finance Law and the BPK Law against the 1945 Constitution, these articles include:</p> <p>1. Article 23 paragraph (1); Article 23E paragraph (1); Article 23G paragraph (2); Article 28C paragraph (2); Article 28D paragraph (2); Article 28G paragraph (1); Article 33 paragraph (1), (2), (3), and (4) of the 1945</p>	<p>Declare to reject the petition of the applicants in its entirety.</p>

					Constitution 2. Article 1 point 1; Article 4 of the BUMN Law and Explanation of Article 4 of the BUMN Law 3. Article 1 point 6 of the State Treasury Law 4. Decision of the Constitutional Court Number 006/PUU-III/2005 5. Decision of the Constitutional Court Number 77/PUU-IX/2011 6. Supreme Court Fatwa Number WKMA/Yud/20/VI II/2006	
5	Number 12/PUU-XVI/2018	Serikat Pekerja BUMN	Law Number 19 of 2003 concerning BUMN 1. Article 14 (2) (3)	1. Article 20A (1)	1. The main points of the Petitioners' petition are groundless according to law	Rejected the petition of the Petitioners in its entirety
6	Nomor 14/PUU-XVI/2018	Research institutions	Law Number 19 of 2003 concerning BUMN 1. Article 2 paragraph (1) 2. Article 4 paragraph (4)	1. Article 33 paragraph (3) (4) 2. Article 28C paragraph (2) 3. Article 28D paragraph (1) 4. Article 28H paragraph (1)	1. The Petitioners' provisional requests are groundless according to law 2. The principal of the petition is groundless according to law	1. Rejected the Petitioners' provisional application 2. Rejected the petition of the Petitioners in its entirety

Source: Compiled from Decision of the Constitutional Court www.mkri