COMPARISON OF THE CONSTITUTIONAL COURT IN VARIOUS COUNTRIES

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ABSTRACT

The existence of the Constitutional Court is a reflection of the development of the law's attempt to appear modern 20th century due to the constitutional crisis. Further development of the test Act in various countries based on the experience of the system's attempt to each Country As Germany, France, Austria and Indonesia who instituted the function testing laws by name Institute testers of different laws, but at the substance judicial review of legislation against the Constitution (UUD) and ensure the protection of human rights for the sake of realizing the principles of State constitutional law.

Keywords: constitutional law, constitutional crisis, human rights

INTRUDUCTION

Study of the reflection of the Constitutional Court in a country was accessible from the development of the modern law of thought attempt to appear in the 20th century. In the country who know the steps in the past to authoritarian democracy, history, but also the idea of the creation of the Court became a very important thing. Constitutional crisis usually accompanies a change to democracy, in a process of change that the Court must be trained to handle a violation of the Constitution. In the country of the Indonesia, the authority of judicial review rests with the institutions of the State special, namely the Constitutional Council. The form of a unitary State in Indonesia only allows testing of the constitutional laws (there is no other institution in the Court). In the position of the other the Indonesia has a supreme court that has a hierarchical function with other courts, such as the Court, the District Court of the court martial, courts, TUN level II/appeals courts and other special courts. This has at least three reasons why to include judicial review of legislation against the Constitution, not granted to the supreme court: (1). Reason: the reason for this is based on a philosophical journey in the past in the Indonesia State. Before the reform in 1998 an Executive in particular President has broad power (Executive weight). State agencies whole (including the legislative and judicial powers) controlled and influenced by the power and MA is also included. Then, as a form of keeping the independent order to control the Constitution and to transmit the voice of the people (as the holder of sovereignty as in article 1, paragraph (2) of the Constitution of 1945 NRI) then formed a separate agency outside in my. (2) Reason: legal authority of my in the Constitution, particularly article 24, paragraph (1) had the authority assessed quite heavy and large in view of the region test. This is obviously different from the authority of the Court, in particular on issues related to the Constitution. (3) Empirical reason: by the naked eye can see that a comparison of the number of judges with the large number of cases and wide scope is one of the reasons why it is necessary the judiciary specifically protecting the Constitution.

Spend three problems, judicial review (material test) is the authority of the judiciary to test the validity and the supply and sale of legal products emanating from the Executive and the legislature before the Constitution apply. "Trials by judges against the legislation on products branch the legislative (legislative acts) and the Executive (branch's) is a consequence of the respected principal" checks and balances "based on the doctrine of the separation of powers

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(separation of powers). Therefore, the power of a "judicial review" of him attached to the functions of the judge as a subject, not on other officials. If the test is not performed by judges, but by the parliamentary institutions, then these tests can not being referred to as " judicial' ', but rather 'a' legislative review of "legislative and product test ekskutif the charged to the institution of the Council constitutional aims to assess whether the law aligned product and contains the values of security and justice legal the benefit.Because as the higher a country standard, the Constitution serve as guidelines for the formation of another Act, it is said by Hans Kelsen on the theory of the hierarchy of norms of law (hierarchy of norms). [2] Relationship to the test of the law with the Constitution between one and the other countries vary, this raises the question of the position of these institutions in order to create the structure respectively; First of all, the State of the Austrians, which instituted the examiners of the Office Act separately to the supreme court, such as defined in the Constitution of the Austria, 1920. The two countries Germany, adopting the Constitutional Court in the system of ketatanegaraannya based on the experience of ketatanegaraannya is based on a basic law of 1949, third; the institutions act trial of the investments of State French unlike two countries above the Constitution Council, formed after the revolution of 1958 as well French writers would like to conduct research of comparative institutions right of such testers noted particular similarities and the position in attempts to structure, respectively, regarding the background exposure above authors deduct the following questions: (1) if the raison d'etre fundamental training the Court in different countries (particularly in Indonesia, France, Germany and Austria. (2) How the position of the Constitutional Court in the system of each country and the shape of the final verdict.

THE ANALYSIS

2.1 The Fundamental Thought of the Formation of the Constitutional Court in Indonesia, Germany, Austria

The training of thinking or the establishment of the Court as a special court independently of the supreme court, special task, is the modern design of the UN (modern nation-State), which is basically stable harmony more than the standards of low with law higher legal standards. In essence, the presence of task of court constitutional review constitution. The concept of revision of the Constitution itself can in fact be regarded as the result of the evolution of the modern idea of a democratic system of Government based on the ideas of the rule of law (rule of law), the principle of separation of powers) operation of powers) and the protective cover and the promotion of human rights (protection of fundamental rights). in the constitutional review system which includes two basic tasks, firstly to ensure the good functioning of the democratic system consider the role of the inter between branches or power legeslatif game, the general and the judiciary) judiciary) with other words the constitutional review in the meant to prevent the efficient use of energy by one of the branches of power such as the branch other powers; Second, to protect individual citizens from the abuse of power by the State institutions at the expense of their fundamental rights guaranteed by the Constitution in the history of judicial review in Indonesia.

Hans Kelsen, a legal expert who has been very influential in the 20th century (1881-1973) was also a constitutional expert and Professor of public law and administration Unuversity of Vienna, was invited to develop a Constitution for the Austrian public that has emerged from the rubble of the Austo-Hungarian Empire know 1919. Even with Marshall, Kelsen believed that the Constitution should be held seperangkap of higher legal norms (higher than that of ordinary and must laws be applied this way). Kelsen also recognizes the existence of a lack of confidence in the ordinary judicial bodies to perform such execution konstsitusi, that's why

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he created a special court that is separated from the judiciary to the right and megawasi cancel case of conflict with the basic law.

Although this model for the design of Austrian Kelsen, who established the Constitutional Court based this model for the first time was Cecoslowakia in February 1920 years Bull. New in October 1920, the design Kelsen embodied in Austria. After the second world war, the idea of the short constitutions with judicial review spread throughout Europe, establishing the Constitutional Court of the supreme court. The French, however, adopting this concept differently in forming the Council constitutional (Constitutional Council) of the mandate of the French following the French model. So this time, there are 78 countries that have adopted the idea of the creation of the Constitutional Court and the country to the Indonesia was a adopted 78. the Indonesia adopted the Court of Kostitusi, because the needs of the rule of law, where the existence of a variety of State issues.

Philosophical thinking relating to the formation of the Constitutional Court various in different countries, first: change the attempt by the system of authoritarian rule to democracy. Second: uphold the Constitution supermasi; Thirdly: the protection of the rights of citizens, it is what makes countries in the world with such an initiative adopts the Constitutional Court in the constitutional system, although only under another name, of the institution, but for the most part, to judicial review (test of laws with the Constitution). ((1). The cornerstone of the creation of the Constitutional Court of the Indonesia one) of constitutional review about leaving the father in 1945 the process of formation of the 1945 Constitution held a debate on proposed M o h. Jamin authorized institutions has launched a dispute the Constitution, commonly referred to as the constitution or geschil constitutional disputes. Beginning with the idea of the Ministry of health. Involved of yam in imposing a natural toetsingrecht (test equipment) of the Act. The Ministry of Health. Yamin suggested that the need for the supreme court has authorized "call" of the legislation. But Soepomo Yamin proposal report with four reasons; (i) the basic concept embraced in the Constitution, which has been developed rather than the concept of separation of powers (separation of power), but rather the concept of sharing of power (power supply), in addition, (ii) the task of the judge is to apply the Law, not the test Act, (III). The judge's authorization to conduct testing of laws conflict with the concept of the supremacy of the Consultative Assembly of the people and (iv). As a newly independent country who doesn't yet have the expertise-Ali to this topic and experience about the judicial magazine. Finally, the idea that helps to adopted in the 1945 Constitution. so supreme court as judicial power holders are given the authority to determine if a rule is in accordance with the Constitution. Soepomo didn't agree with Thebecker.com. Yamin, because according to him on the State system of separation of powers (the concept of the trias politica) so there. While the draft constitution is not, and the judiciary does not control the legislature as a shaper of the Act. Supomo, in other countries like the Austria, the Czech Republic, the Germany and the Slovakia power exercised by a court that deals specifically with the issue of the Constitution. Finally the BPUPKI and reject the parking and not put it into the constitution as part of the judicial authorities of the My.

Constitution of RIS

The Constitution promulgated in 1949 RIS mentioned that, the power to determine if a State law is in conflict with federal law and the Constitution of RIS is given to me. To meet development, around the years 1956-1959 IKAHI and I suggest that I should have the power to declare a law unconstitutional rule. Later in the discussion of the Constitution in the field of justice, the Assembly decided to include the creation of special test consisting of the powers of the Chief Judge evaluate the regulations in force. However, by the Decree of 1959, the President dissolved Parliament.

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The idea of testing the law of 1970-1985 of the year

The idea of the establishment of the Constitutional Court in Indonesia to enable the requirements of the supreme court. From 1970 with the struggle of the Indonesia judge Bond (IKAHI) who fought for the supreme Court of Indonesia in order to be authorized to examine the legislation of the basic law. This statement was never taken because it was performed by the atmosphere and the attempt of the paradigm of life and politics monolithic at the time. It is also not diperkenankannya any changes to the Constitution, even the basic law the appropriate disakralkan. Based on UU 14 1970s concerning the powers of the judiciary gives the authority to the MA to judge the suitability of a rule with a higher Regulation (judicial review). However, it is limited to the regulation of the administration, which decrease the rate of the Act and does not control the assessment ACT against the Constitution. Act No. 14 of the 1985 supreme court also mentions things that are more or less the same. The year 1993 published the rules of the supreme court (PERMA) n ° 1 year of 1993 for the rights of the test material is dated June 15, 1993, in response to the application for judicial review filed daily priority in my against the regulation of the Minister of information no. 01. By/Menpen/1984 on a press publishing Business License (SIUPP) about 7 months ago. Year 1999 delivered me letter, circular No. 1 my 1999 year judicial review in order to renew the technical implementation of a judicial review, which was previously defined in the PERMA No.1 year 1993. Differences of principle with the rules previously were judicial review petitions may be filed separately of the question (the petition). In November 1997 the PDI - F proposes to give me authority performing judicial review against the law, but the PAH BP MPR II refused, citing that my has no right to conduct a judicial review against the provisions of the outcome of the high peaks of the Agency. F KP, F - UD, F-F-PP, shelter said that the right to a judicial review against the law is the Act of producing institutions, namely, the Government and the House of representatives.

Has. Stages of formation of the constitution of Indonesia

1) The first step: the implementation of the Indonesian Constitutional Court of Indonesia is inseparable from the application of the amendment to the law of 1945 which took place in 1999, but in amadamen this idea to incorporate the Constitutional Council as the institution the judiciary is not made. At the time where items including this **diamandamen** include;

    - 9 article 16 paragraph sets out on October 19, 1999: article 7: Limitation of the mandate of the President and the vice-president
    - Article 13 paragraph 2 and 3: placement and the appointment of ambassadors
    - Article 5 paragraph 1: on the right of the President to present the Bill to the House of representatives
    - Article 14 paragraph 1: the granting of Pardons and rehabilitation
    - Article 15: on the grant of honors, titles, and other honors
    - Article 9 paragraph 1 and 2: on the oath of the President and the vice-president
    - Article 21: the right of the House to ask BILL
    - Article 14, paragraph 2: awarding of abolition and Amnesty
    - Article 20, paragraph 1-4: around the House
    - Article 17 paragraph 2 and 3: the appointment of the Minister

So the first change laws 1945, the idea of forming, the Constitutional Court existed, but to make it possible, amandament the second phase later in the 1945 constitution.

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2) Phase

The idea of forming the Constitutional Council, on the edge at the second session of the Committee Ad Hoc Working the body of MPR RI (HAP I BP MPR), in March-April of the year 2000. First, the Court would be placed in an environment of MA, with permission to make the substance of essays on the legislation, gave the verdict on the contradiction between the law and any other law authorities. The other proposal, the Court authorized giving the judgment of the case on the authority of the country of between state institutions, between the Government with local governments and local government. And after going through the lengthy debate, in-depth discussions, as well as by examining the legislation of institution constitutional test in various countries, as well as listening to the entrance of the various parties, including State of law experts. Administration the formulation concerning the implementation of the Constitutional Court of unity in the third change to the constitution of 1945 in july 2000 in the deliberations of the second amendment to the constitution of 45 by HAP I BP team experts suggested to MPR soon formed Constitutional Court has accepted this proposal. Plenary meetings 26. Article 25 b, chapter IX of the powers of the judiciary and the repression in the draft amendment to the constitution of 45 second established by HAP BP MPR, the Constitutional Council planned to have 3 authority: (i) test are substantially higher than the law and the constitution; (ii) to the cessation of a conflict between the law; (iii) breach of the disputes between the institutions of the State, power between the Central Government with the regions, between local governments. The deal finalizes BP MPR, July 22, 2000 I HAP, HAP, I agree that MK is in me. In August of 2000 at the annual session of the MPR this chapter I spoke to ST I MPR, but not reached an agreement. As a result, the MPR published tap III/2000, which reaffirms that a review of the law and the constitution as well as 45 TAP MPR MPR have on hand, are permitted only to test the rules of my Act.

2) **The Third Step**

In September 2001 in the deliberations of the amendment to the 1945 constitution, the entire HAP I BP MPR faction decided to incorporate the rules of the Court in the third amendment of the constitution 45. Ideally, the material testing regulations are integrated into the authority of the Constitutional Court. Unfortunately, the drafters of the Constitution of our country did not argue the case. In changes to the wording of article 24 constitution 1945 the third change of results adopted in November 2001, the test substance by the authorities of the Constitutional Court is limited to the level of the law, that the below is determined under the authority of the supreme court. In article 24, paragraph (1) a change of the third constitution 1945 said: "the supreme court is authorized to decide on the level of the regulation of the Supreme Court, trial perundangundangan under the law against the legislation, and any other statutory authority"while the Article 24C of paragraph (1) States:"the Constitutional Court is authorized to decide on the level of the first and the last that an award is final to examine legislation against the Constitution, disputes breaking approval of its State institutions are given by the Constitution, cutting the dissolution of political parties and interruption of their conflicts about the results of the elections"

3) **The fourth step**

PAH II BP adopted in May 2002 amendments to the rules of conduct of the MPR where if approved in 2001 ST, BP MPR will be empowered to perform the test material on law, TAP MPR and the Constitution. While recognizing the Court, which must be authorized, before, BP formed appropriate TAP MPR III/2000, BP, MPR who fulfills. If this view is justified, piloted by the MPR is not can be classified as "judicial review", because it is not at all done by judges, but by the "legislators". These provisions, however, it is mistaken because it authorizes the institutions is not appropriate.

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Sri Soemantri said, the procedure and system changes to the 1945 Constitution of an embodiment of two things, namely to ensure the survival of the nation of the Indonesia and allow modifications. [8] Refers to this view, in the case of a change in the constitution since 1945 the first change in the fourth change, certainly it must affect attempt by the system of the Republic of Indonesia.

The occurrence of a fundamental change in the attempt by the system to the Indonesia including related state agencies. Therefore, test equipment against regulation by the limited Constitutional Council only concerns the constitutionality of the course of laws and regulations, disputes between the Centre and the regions or between local governments is not specified as the authority of the Constitutional Court. Settlement of disputes which were disconnected by the Constitutional Court limited the dispute concerns only the authority between the State bodies that those powers conferred by the Constitution. Until the judge of the Constitutional Court exists, the administration conducting the verification has been affected to the supreme court.

4) **The cornerstone of the creation of the Constitutional Court of the Germany**

a) The history of the attempt of the Germany

In fact, before making the MK Germany in 1949, Germany formed a sort of State of the judiciary (assessment) the Confederation of the tahun1815 function is similar to the Constitutional Court. The idea of the creation of the State of the judiciary is via the need of in a dispute between the arbitrariness of the State that exists under the Confederation of the Germany, 1815. So competence of the judiciary in this conflict of authority of the organized countries is Interstate who shelter under the Confederacy of the Germans when it amounted to 36 States. This is what Justice can be considered a precursor of the Constitutional Court of Germany that we know today. In his travels, the judiciary of the country has failed to demonstrate the existence and supremacy. This is because at that time the idea of constitutionalism and human rights issues did not receive attention in Germany. The development of the Germany of trying to enter a new chapter at the time of the Weimar Constitution of 11 August 1919. The Constitution created a year after the defeat of Germany during the first world war were officially replace the form of Government of the Germany that was originally shaped Empire (since 1871-1918) became a Republic (1919-1933).

Through the Constitution of Weimar, was an organist named Reichgerichtshof Staatsgerichtshof. This body was referred as the embryo of the MK Germany. These bodies have jurisdiction to settle the dispute between the Government of the State, federal/with the Center as well as the dispute happening between the States themselves. However, the mechanisms of protection of human rights and judicial review less developed during this period because it was not incompatible with the constitutional theory that applies at that time, i.e. the theory of the supremacy of the Parlement.Pendant the period of the Weimar Constitution (1919-1933) Reichgerichtshof and the institution of judicial review more cover a wide range of controversies on the achievements. As a result Reichgerichtshof of many circles (among which Carl Schmitt), found that failed to perform tasks as guardian of the Constitution (the guardian of the Constitution).

b) The cornerstone of thought formed the Court of Germany

We hope to form a solid constitutional judicial and effectively find bright spots as well as the end of the 2nd World War. A moment of war, then finished has the right to administer State Germany seeking to design the back of the building of the judiciary (Constitution) is ideal for a party of reform in Germany post 2nd World War. Among legal experts that

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they're three greats of greatest influence in the formation of the Constitutional Court launched Germany as an independent judiciary and institutions out of me. They are VIP Thoma Anschutz and Gustav Radbruch.

According to the trio. Duties and obligations to resolve civil matters ought implemented by the Constitutional Court, not the ordinary courts which resulted in me as an American model. An attempt to form a concrete probably Germany in the Court in meetings held in order to draw up the Constitution of the Germany, which is known as the 'Big meeting' of the Constitution "in 1948 to Herrenchiemdee. The spirit of the creation of the Constitutional Court, the meetings in Germany seems to have been no unstoppable again. The meeting put successfully a vital substance in the Constitution (Basic Law), which will be adopted in the future. The implementation of Germany Constitutional Court (gericht pronouncements) in 1949 was part of the reform of annihilation after the war because of World War 2. Its creation could be released from the background to the situation that existed at the time in which appears a strong desire of the population of Germany to establish a democratic State after already hampered by the Nazi totalitre regime. The objective is to ensure that in the future, is no longer a totalitarian Government or fascist in Germany as he has done in the past under Adolf Hitler, [18] on this Michaela b said: "the Constitutional Court of German strength considerably in reaction to past German Nazi: because the rights abused Nazis and had been elected by the people, the argument runs, it will take to create a high court to protect those rights in the future. [19] the formation of the MK Germany poured into the Basic Law (Grundgesetz) 1949. The Constitutional Court of Germany, domiciled in Kalsruhe, a city that has been mentioned as the capital of the law, because in the city, it's the high courts and the supreme Court of Germany is based. [20] one of the important substance than agreed in the meeting successfully was the need for the implementation of the Constitutional Court of Germany, complete with its spacious and much more Staatgerichtshof that was strong in the past. So that these institutions are expected to become leading guard ensuring the protection of human rights and the Constitution of supreme Germany. [21] Martin Borowski's writings that one of its side look at a brief history of the development of the Constitution of 1949, Germany says that: the expertise of the participants of the conference made established contest - worked on a draft constitution as a guideline for the debates that followed. The accomplished in the good seedling establishment number fundamental principles of the future constitution. The project of the Conference of Herrenchiemsee (HCHE) includes, in section view, art. 97 to 100, an independent section on the Federal Constitutional Court,... the Herrenchiemsee Conference pointed out that the powers of the Court of constitutional, compared with the constitutional tree Staatsgerchtshof Weimar, should be enlarged. In this way, the new Constitution could become the "true guardian of the constitution". Finally, the passage of the Basic Law on May 23, 1949, the birth of a new judicial institute, Germany designed to deal with the constitutional questions, named "Bundesverfassungsgericht" or that we know as the Court constitutional of Germany. Thus the cornerstone of the formation of courts of the Constitution of the Germany based on the claims of total change in society that wants to put in place a Constitutional Council as an alternative to address the issue of the State of the Union front.

3) The cornerstone of the creation of the Court of Austria

a) History of the attempt of the Austria

The development of the Constitutional Court of Austria is inseparable from the history of the attempt to change several times against the Constitution of the Austrians in 1848, there were

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two in the quote from this experience; first; from the revolt of the nobility against the imperial powers Viena and Habsbourg who want restrictions on the authority of the King or the hegemony of the King. Second; the publication of the Commission decision approving the formation of the Emperor in the Constitution. On the basis of this question, the Constitution of 1848 was formed in order to limit the power of the King, but not more than portable since the system of monarchy, constitutional Government of the Reichstag, the King fixed legislatif the power and the right of veto. In the structure of the Reichstag is the bicameral Parliament consists of a Senate whose composition is determined by the emperor himself, otherwise members of the House of representatives directly elected by the people. There are two things in history, constitutional of Austria; those first formations of the Senate are appointed by the King, the second representative House is directly elected by the people. After that the Constitution of 1867, enacted in parallel on the Empire of Austria and Hungary, therefore Austro-Hungarian Empire is born. Ally with the system illustrates the dual model of constitutional Kingdom. During this decade the 1967 Constitution contains human rights. [26] the presence of the Constitutional Court of Austria by forming the Constitution of 1920, which was designed by Hans Kelsen is the basic law only of the Austria's most eligible. Due to the Auatria of the Constitution, the system of representative democracy, guarantees of human rights and the introduction of the principle of separation of powers, acquire the certainty. Through the Constitution of 1920, which was clearly the relationship between the State institutions.

b) The foundation of the thought of Hans Kelsen to form a court special trial law Austria

In principle, the presence of the Constitutional Court of Austria is to restrict the powers of the parliamentary votes have unmatched power **it,** is Mecca many settings requires especially expertise, legal administration of the State to provide the idea of the constitutional tests or the creation of institutions outside the Supreme Court of governance. costitusonal test is designed to test the product legilastif conflict with the Constitution of the rights of man come and guardians of 1920. Like the idea of the creation of the Constitutional Court and the idea of the trial constitutional that appear by Hans Kelsen indicating that the constitutional law enforcement can be effectively guaranteed only if one body other than the legislature given the task of verifying whether a product of the Constitution, law or not and does not apply if this product according to the body of the law unconstitutional. For that a special body can be considered as a special court called the Constitutional Court (Constitutional Court), or benefit from control over the constitutionality of laws (judicial review) before the courts in particular the supreme court. Specialized bodies that control can be deleted in its entirety the law unconstitutional and cannot therefore be applied by other bodies. Whereas if an ordinary court has jurisdiction to check the constitutionality of the law, maybe in form to refuse to apply it in a specific case when he stated that these laws unconstitutional so that other bodies are still required to apply them. The Kelsen thought expressed above, encourage the creation of an institution that is called Verfassungsgerichtshoft or the Constitutional Court (Constitutional Court) that stands on its own outer part, the supreme court, so that its model is often referred to as 'The Kelsenian Model'. This idea is presented when Kelsen was appointed member of the constitutional institutions Austria renewal (Chancelery) in 1919-1920 and accepted in the Constitution of the year 1920. It is first the constitutional World Court. This model concerns the relationship between the principle of the supremacy of the Constitution (the principle of the supremacy of the Constitution) and the principle of the supremacy of the Parliament (the principle of the supremacy of the Parliament). The Constitutional Court does well against the testing standards that are abstract (summary review) and also allows tests based on the standard of concrete (concrete review). The test is usually performed on a posteriori, so that without closing the opportunity to test the priori do.

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2.2 Council Constitutional Position in different countries (Indonesia, Austria, Germany and France)

1. The Position of the Constitutional Court of the Indonesia

The Constitutional Court of the Republic of Indonesia is an institution (high) this new position of equality and everything as high with the state supreme court (MA). In accordance with the provisions of the Constitution of the changes of the Republic of Indonesia year 1945 after the war of the fourth (year 2002), the institutional structures in the Republic of Indonesia, there is (at least) 9 (mine) of the organs of the State whose harvest is directly received authority directly from the Constitution. The organ is the ninth (i) House of representatives, (ii) Consultative Assembly regional representative of the people's Council, (iii), (iv) agency financial reviewer, the President, Vice President, supreme court (v) (vi) (vii), (viii) the Court constitutional, and (ix). The judicial Commission. In addition to their ninth Institute are several establishments or institutions in the Constitution of the Institute, namely the national army of Indonesia, the Government (b) the State of the Republic of Indonesia police, local c, (d) party. In addition, there are also institutions that do not mentioned its name, but referred to in its function, but the Authority said to be governed by the law, namely: (i) the Central Bank has not mentioned his name "Bank of Indonesia", and (ii) the Electoral Commission is also not the name for it is written with small letters. Both the Bank of Indonesia, nor the Electoral Commission, which is now to call a general election is the independent institutions who receive these powers of the law, so we can clearly distinguish between the authorities of the organs of the State on the orders of the Constitution (application to power by the Constitution), the organs of the State and authorities only on order of the Act (application to power through legislation) and even in reality it also, the institution or its bodies derived or from the decision of the President. An example of this last example is the formation of the National Commission of the Ombudsman, a Commission of national legislation and so on. While examples of institutions which the powers conferred by legislation, for example, is the National Commission on the rights of man, the Indonesia, Central Broadcasting Commission report and financial analysis of trancsaction (PPATK). The explanation that precedes, the Constitutional Council can say to have an equal and equally high position at the supreme court. The Constitutional Court and the supreme court also run the branch the power of Justice (judiciary) is independent and distinct from the other branches of power, i.e. the Government (Executive) and the representative-provisional institutions (Legislative Assembly). Both this Court is also based in Jakarta as the capital of the Republic of Indonesia. Only the structure of the two organs of the judiciary is entirely separate and distinct from each other. The Constitutional Council as the legal institution of the first and the last level do not have the organizational structure of the supreme court that the justice system is the culmination of a vertically and horizontally layered structure in include five judicial environment, namely the general environment of Justice, the environment of the judiciary the judicial environment, State religion and the environment of the military judiciary.

a) The composition and the recruitment of the judges of the Court Kostitusi

Constitutional Court of Indonesia which was formed in 2003 and through the debate long enough and many, so to fill the position of judges who will undertake tasks and functions as a judge of the Court of konstitui, in accordance with article 18 undag-number 24 the year 2003, which outlines nine judge Constitution filled by candidates selected by the three institutions, i.e. three 3 person of the House of representatives, three 3 person by the President and three 3 person by the supreme court [30]. If there are vacancies, the

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position, then the Agency will fill the vacancies is an institution where come from the appointment of the previous judge. For example, 'A' judges died or was rejected, so when bid had already come to the Government, means the Presidenlah authorities determine the potential substitute judge who died. If the previous nomination came from the House of representatives, then load the Office of his successor must also be filed by the House of representatives after passing the selection process, as it should be. In other words, in the recruitment of the judges of the Constitution, the Constitutional Court closely associated with the 3 three countries equal institutions, namely: the President, the House of representatives and the supreme court.

2. **The Position of the Court of Germany Konstittusi**

Talks on the Constitutional Court in the world, Germany is in the position that the Court is very respectable. This is because the extent of the powers of the Constitutional Court, owned by the Germans as a bodyguard in the Constitution of his country (Grundgesetz). In addition, the Court in fact Germany is also able to carry homework that him and vast it very well, so more consolidates its position as a well-respected federal organs and organizations, not only in Germany but also in the world. [31] the extent of the authority that possessed the Constitutional Court of Germany derives from the Constitution and the law on the Constitutional Court of Germany also. A factor that is originally very widespread and authorities the constitutional court flexibility is the Germany because the Constitution of Germany, more precisely article 93 paragraph 2, allow the presence of the addition of MK Competence, Germany, via the legislation (law on the Constitutional Court). [32] it is a provision which is very against the wording of the authority of the Court officially limiting Indonesia has already determined and limited by the constitution of 1945, precisely by article 24 c. Germany as a federal State, in addition to having the Constitutional Court at the central level (Bundesverfassungsgericht), each of the States in Germany totalling 16 [33], the Court also has the State each. [34] Although the Constitutional Court between a State by another State constitutional tribunal is authorized to change, but in general it is said that the functions of the Constitutional Court of the State is to resolve the constitutional questions at the level regional or State with regard to the Constitution of the State of parts each. In other words, the role of the Court of the State is to defend the Constitution of the State of each beginner all forms of organizers. Among the different authorities that are owned by the respective constitutional court, this part of the country, the powers of the constitutional test (abstract and concrete examination) and the election of authorities of dispute settlement (at the State level section) are the two most common authorities and owned by all of the Constitutional Court of the State in Germany. [35] the scope of the power or competence of the Constitutional Court in the different countries of course limited only on the territory of the State only.

a) Method Rekrument and the composition of the judges of the Court of Germany

The implementation of the Constitutional Court of the Republic of Germany, Federal (Bundesverfassunggericht) is a process of a long journey to try to enforce the rule of democratic law. The Germany adopted at the same time as the implementation of Basic Law 1949. Germany is based in alsruhe, a city known as the capital of the Act. The Court of the Federal constitution of Germany had two of the Senate, who worked independently in the Organization of the Constitutional Court and equal relations. [36] later in the recruitment of the judges Mahkmah the Constitution, for the post of 16 judges, which is located in section (1) of article 94 of the German Constitution as follows;

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- The eight judges filling first or the Senate (1) chosen by the Bunsdetag and the Bundesrat Committee
- Eight judges fill the second roundtable or the Senate (2) of the Confederation and the Supreme Federal Court

Thus, the method of recruitment and composition of the judges of the Constitutional Court of Germany was confirmed in the Constitution of the Germany, but the Division is clearly the judge chosen by the institutions not described, things systems with different recruitment **in** by the Constitutional Court of Indonesia and consultancy Court of Austria

3. The position of the Court of Austria

The formation of the Court constitutional Austria year 1920, align the position of the institutions of the State of the system with regard to the position of the attempt of Austria to the Constitutional Court in the system constitutional; based in the national capital; Viena, while in the attempt of the book to have the position parallel with 70 other institutions as Chapter vii, article 137 of the Constitution of Austria 1920 (after amendment in 2013). [37] it is clear from the article, basic implementation of the Constitutional Court of Austria as a State institution, based on an equal footing with the other institutions. Similarly, there are a called Länder Mahakamah Austria constitutional members, including the President, the vice-president and the other members of the twelve judges of the Federal Court.

a) The methods of recruitment of judges of the Court constitutional Austria

Court Austria constitutional members, including the President, the vice-president and the other members of the twelve judges. In addition, the Court also has seven judges, whose status as a substitute judge, all officially appointed judges on the recommendation of the President. The President and the vice-president of the Constitutional Court, as well as the seven judges more three members and other replacement judges appointed after obtaining a recommendation from the federal Government. While the rest of the seven members and three alternate members are appointed on the recommendation of the two chambers of the Parliament (three judges and two judges of the surrogate mother of majestic national), while the two judges and other replacement Assembly Federal. Three prospective judges prepared to fill the vacancy of judges in office at any time that there is nothing to occupy. [38]

CONCLUSION

Based on the discussion of the exhibition has been explained, the authors conclude that; (1) philosophically, the formation of the Pengguji authorities, four countries (Indonesia, Germany and Austria) to respect the principle of the supremacy of the Constitution and the protection of the rights of man (State law) in order to create equity, safety and benefit of the law. (2) The seat of the institutions of law Pengguji of four countries; Austria, Germany, Indonesia, is basically the same, namely the Constitutional Council and the Council constitutional parallel existence in the attempt of the structure, but the Constitution of the Council of France, only not part of the judiciary.

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