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THE CONCEPT OF "ELDERLY CITIZENS" IN THE INDONESIAN CONSTITUTION: A CRITICAL ANALYSIS

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Abstract

Human existence is the most important element of the law and the state. They contribute greatly to the growth and development of a nation. Despite their great contribution, all human beings will experience a gradual decrease in their physical and psychological capacity due to aging. According to the latest Central Statistics Agency report, there exists 29.3 million elderly citizens in Indonesia. This figure is equivalent to 10.82% of the total population. To anticipate this demographic condition, the government ought to ensure the welfare of its elderly citizens in accordance with the mandate of the 1945 Constitution. However, the 1945 Constitution does not specifically regulate the concept of "elderly citizens". Human beings who are considered legal subjects under the 1945 Constitution are simply referred to as "citizens." The concept "elderly citizens" can only be found under Law Number 13 of 1998 concerning the Welfare of Elderly Citizens. Although the law is intended to provide sufficient social and legal protection to elderly citizens, it has not yet grasped the essence of elderly citizens as an overall legal subject. This is indicated by the use of the concept of "Potential Elderly Citizens" and "Non-Potential Elderly Citizens" in its provisions. Therefore, a more in-depth legal study regarding human beings (elderly citizens) as overall legal subjects is required. This article tries to answer how elderly citizens are viewed theoretically as legal subjects, how the 1945 Constitution regulates elderly citizens as overall legal subjects, and how the concept of elderly citizens is critically interpreted as a form of reorientation.

Keywords*: human beings; elderly citizens; constitution; hermeneutics; legal theory*

I. INTRODUCTION

There has been a misconception of the idea of elderly people ("Elderly Citizens") in the Indonesian legal system. According to Article 1 paragraph (3) of the 1945 Indonesian Constitution ("UUD 1945"), Indonesia is a state based on the law (*rechtsstaat*). As a country that has been independent for more than 75 years from colonial rule, it has the integrity and the ability to manage its country to be more advanced in all aspects. Currently, Indonesia has been categorized as a developed country. One of the parameters of a developed country is how the country views its citizens. From this concept, a thought arises on how Indonesia as a *rechtsstaat*, views its citizens through Law Number 13 of 1998 on the Welfare of Elderly Citizens ("Law No.13/1998").

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The study of elderly citizens is by no means a new topic. The discussion, however, is quite dominant in the fields of health, psychology, finance, and even religion, but not so much in the field of law, especially in the realm of legal theory.

This study tries to examine how humans are placed as legal subjects in Indonesia. Preliminary analysis shows that the concept of "elderly citizens" as legal subjects is not fully described in the Indonesian constitution. The absence of concepts or texts relating to elderly citizens in the 1945 Constitution can be understood as the language used in the constitution is a generalist and not explicit. However, one must not ignore the following excerpt from the 1945 Constitution:

> *"To form an Indonesian state, the government must protect the entire nation and homeland and to promote public welfare, to provide education, and to participate in carrying out world order based on independence, eternal peace, and social justice."*[1]

This excerpt is considered the ultimate objective of the Republic of Indonesia. It reflects that Indonesia as a country must care for all of its citizens without any form of discrimination. Special attention must also be given by the state to elderly citizens. Through Law Number 13 of 1998 on the Welfare of Elderly Citizens ("Law No.13/1998"), the state tries to guarantee the rights of elderly citizens by providing welfare services. However, Law No.13/1998 does not fully represent the concept of elderly citizens as a whole. This has been confirmed by the distinction of the concept "Potential Elderly Citizens" and "Non-Potential Elderly Citizens" in Law No.13/1998.

The distinction between these two concepts raises several questions: (1) why are elderly citizens even considered legal subjects? (2) what are the reasons behind the differentiation between "Potential Elderly Citizens" and "Non-Potential Elderly Citizens" in Law No.13/1998? (3) why are those who have reached 60 years of age considered elderly citizens in Indonesia? At a glance, it seems as if the consideration of determining the concept of elderly citizens in Law No. 13/1998 shows that there is a link between the formulation of the concept of elderly citizens and the retirement age in Indonesia. The formulation is also based on economic aspects. Referring to these questions, it seems that Law No.13/1998 has not fully absorbed the concept of elderly citizens as intended in the 1945 Constitution.

Moreover, the preference of the legislator is not based on how the 1945 Constitution regulates human rights, and it may even be said that the policies of the World Health Organization ("WHO") concerning elderly citizens were not considered by the legislators.

The new paradigm was used to follow the developing concept of sustainability. For example, the term "Healthy Aging", "Successful Aging", and "Active Aging". Healthy Aging is a series of processes that optimize the opportunities of elderly citizens in the fields of health, social life, and psychology so that they can actively become part of society without any discrimination, and can enjoy life independently and with quality. Meanwhile, successful aging has 3 (three) interrelated components, namely:

1. elderly citizens who are not easily exposed to diseases including disabilities;
2. elderly citizens with good cognitive ability and undisturbed functional capacity;
3. elderly citizens who can still live their daily lives normally.[2]

The potential of elderly citizens is proven by their activities that are free from

[1] Indonesia, The 1945 Constitution of the Republic of Indonesia ("UUD 1945").
[2] J. W. Rowe dan R. L. Kahn, "Successful Ageing," *The Gerontologist* Vol. 37 No. 4 (2017), 433-440.

functional difficulties, both from a biological and psychological perspective. [3] According to WHO, Active Aging refers to elderly citizens who are still able to work, also still participate in social, economic, cultural, religious, and even civic activities. The concept of Active Aging refers to a process to optimize the opportunities for elderly citizens to live a healthy, participatory, and secure life. These three things are the main pillars in realizing the concept of Active Aging.[4]

This paper is based on legal research, which specifically uses a legal theory approach. Unlike other legal writings which put more emphasis on the normative aspect of the phenomenon, this paper tries to analyze it from a different perspective. Referring to the writings of Fernando Manullang, this research method places itself between the Philosophy of Law and the Science of Law. However, upon observation, the Science of Law is quite different from the Philosophy of Law. The Science of Law examines the aspects of the principle, the understanding, and the distinction of law, while Legal Theory examines the structure and function of norms in a positive legal system. Therefore, Legal Theory directs its attention to the law and its system and utilizes social sciences as a study to enrich the analysis of Legal Theory.[5] In the end, both the study of the Philosophy of Law and the Science of Law can be used through the method of legal theory. This condition is known as the "middle role" of legal theory.

To clarify the "middle role"[6] of Legal Theory and the role of Philosophy of Law and the Science of Law, a brief description of the scope of Philosophy of Law, Legal Theory and the Science of Law is illustrated in a chart below:

[3] Wajdi N. Adioetomo dan C. H. Mulder, "Gravity Models of Interregional Migration in Indonesia," *Bulletin of Indonesian Economic Studies* Vol. 53 No. 3 (2017), 309-332.

[4] *World Health Organization*, *Active Ageing: A Policy Framework,* Policy No. WHO/NMH/NPH/02.8, 2002.

[5] See E. Fernando M. Manullang (2007), hlm. 14 *et seqq*, According to him, legal theory is a theory that is a further development of the teaching of law (*Allgemeine Rechtlehre*/General Jusriprudence*/Theorie Generale du Droit*). It is called a continuation because, in principle, Legal Theory and Basic Legal Theory seek to place themselves between the Philosophy of Law and Legal Science. However, some of them also have important differences, where the Teaching of Basic Legal Theory examines aspects of the principle, understanding, and distinction of law, while Legal Theory examines the structure and positive norms in a positive legal system. He added that, in modern times, if Legal Theory is indeed accepted as the same thing as Legal Philosophy - the discussion of legal issues here has begun to be associated with certain legal systems, as is the case with Legal Science.

[6] The intended middle role is as a bridge. In this dissertation, neither the approach nor the outcome is intended to create ideological conflicts, but the reason for using legal theory is to put it forward as a bridge in providing interpretations regarding the term elderly in the 1945 Constitution. The analysis of this study is in order to present a menu and the reader just has to choose the treatment.

Table

Scope of Philosophy of Law, Legal Theory, and Science of Law [7]

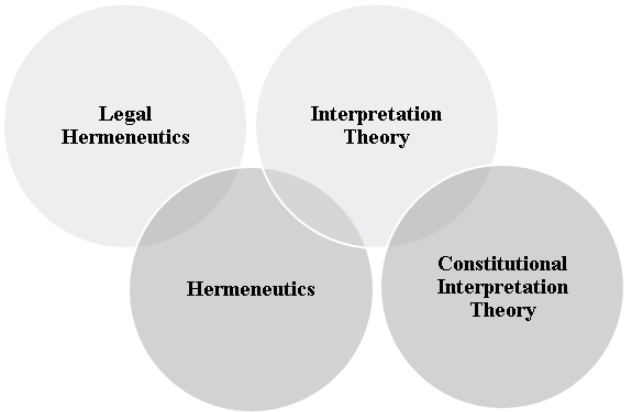
	Philosophy of Law	Legal Theory	Science of Law (Dogmatics of Law)
Development History	Since ancient Greece.	Commencing in the 19th Century.	Since the post-medieval period.
Background	Greek mythology and human existence with nature	Bridging 2 (two) approaches in law, the empirical approach and the normative approach.	The non-concrete factor (reflective – speculative) Philosophy of Law in studying law.
Study Object	Legal ideas and their symptoms in general	Legal Dogmatics, by using reflection on juridical techniques according to Legal Dogmatics, which have positively existed in certain legal systems.	Positive legal rules in certain legal systems.
Study Method	Critical reflection and rational-logical analysis of general problems in the law.	Multi-disciplinary, using other sciences.	Normative-positivist method, in formulating and interpreting the law (deductive-logical).
Nature of Study	Abstract-critical-ethical-speculative.	Combined nature of studies in Philosophy of Law and Legal Studies	Positivist-Prescriptive-practical (rational theoretical).
Scope of Study	Covering the fields of Ontology, Axiology, Ideology, Epistemology, Teleology, Scientific Teaching, and Legal Logic.	Covering, among others, the fields of Juridical Analysis, Teaching of Legal Methods, Legal Dogmatics, and Ideological Criticism of Law.	Interpretation and positive legal system that applies in a society or country.

The narration above is to emphasize the position of this paper so that the readers will not misunderstand the direction and purpose of this paper. The legal theory will be used to analyze the issues in this paper. The term "elderly citizens" in this paper will be further criticized in a hermeneutical manner. So far, the study of the 1945 Constitution with a hermeneutic approach has not been widely carried out by legal theorists in Indonesia. Thus, this paper is expected to provide an alternative understanding, method, and legal history as well as through interpretation, a new legal theory for the effort to realize the interpretation of the term human beings, especially elderly citizens as stipulated in the 1945 Constitution.[8]

[7] See E. Fernando M. Manullang (2007), hlm. 17 *et seqq.* The author made adjustments to the appearance of the table from the original manuscript in its presentation in this study, the purpose of which was to make it easier to understand the meaning of the position of legal theory in this dissertation. This adjustment was made without the intention of eliminating the ideas that were initiated or the fundamental background of E. Fernando regarding why the table display was not the same as what was in the original manuscript.

[8] See H. Suradji, S.H., Pularjono dan Tim Redaksi Tata Nusa., The 1945 Constitution of the Republic of Indonesia along with the I, II, III & IV Amendments accompanied by the Decree of 5 July 1959, the Jakarta Charter, the Provisional Constitution, the RIS Constitution cet.1, (Jakarta: PT.Tata Nusa, 2002), iii. In the history of the Indonesian state administration from 1945 to 2002, Indonesia has undergone eight amendments to the Constitution, namely:
Period I : Dated 18 August 1945 to 27 December 1949: UUD 1945;

Illustration of Hermeneutical Methods and Critical Interpretation



The following is an explanation of the table above:

1. Hans-Georg Gadamer's Hermeneutic Theory will be used in this paper. As we all know, Gadamer's Hermeneutics is not a method. However, in this section hermeneutics is used as a method, but not Gadamer's Hermeneutics;
2. Furthermore, the interpretation theory will intersect with the hermeneutic method, but only in the form of text interpretation. A study using the Habermas perspective is carried out to provide a critical interpretation in a hermeneutic order (which is directed against ideology). The position between the hermeneutic method and the interpretation method (interpretation theory) in this paper will be used side by side;
4. When the hermeneutic method works, the derivative of this method will converge into legal hermeneutics;
5. Meanwhile, if the interpretation method (interpretation theory) works, the derivative of the use of this method is the constitutional interpretation method (which departs from the theory of constitutional interpretation), which is not interpreted as a form of constitutional text in a dispute situation or adjudication process, but critically interprets the text in the constitution;
6. Hans-Georg Gadamer's Hermeneutic Theory will be used. The focus is on the intersection that occurs between each method developed in this paper. Is there a consistent or an inconsistent understanding of the term human beings, especially elderly citizens in the 1945 Constitution and Law No. 13/1998? The primary assumption is that the interpretation of elderly citizens in Law No.13/1998 is not in line with the 1945 Constitution.

Period II : Dated 27 December 1949 to 17 August 1950: Konstitusi Republik Indonesia Serikat;
Period III : Dated 17 August 1950 to 5 July 1959: Undang-Undang Dasar Sementara Republik Indonesia;
Period IV : Dated 5 July 1959 to 19 October 1999: UUD 1945;
Period V : Dated 19 October 1999 to 18 August 2000: UUD 1945 and its First Amendment;
Period VI : Dated 18 August 2000 to 9 November 2001: UUD 1945 and its First and Second Amendment;
Period VII : Dated 9 November 2001 to 10 August 2002: UUD 1945 and its First, Second, and Third Amendments;
Period VIII : Dated 10 August 2002: UUD 1945 and its First, Second, Third, and Fourth Amendments.

Through the analysis process above, it will be seen how humans as a category of the legal subject (*rechtsubject*), apart from legal entities, have become subjects and objects of research in the field of law. At the philosophical level, a human being as a legal subject is considered a fundamental aspect of the history of modernity (Zarka, 2008). In the same context, Rosenfeld (2010: 18-19) asked a more specific question, who exactly is the subject of a constitution, whether the formulators of the constitution (the makers of the constitution)[9], the parties regulated and bound by the constitution (those subjected to the constitution), or anyone regulated by the constitution (its subject matter). The variety of discussions of human beings as legal subjects is also seen when placing human beings who possess legal rights and freedoms since birth, along with the burden of responsibilities that are borne before the law which will differentiate them from other legal subjects, for example, inanimate objects or animals (Dunbar-Brunton, 1979: 76). When viewed from the genealogy of the discussion about human beings as legal subjects, it appears that constitutional documents have an important role because they are formulated as legal subjects.

Concerning the makers of the constitution, J.C.T. Simorangkir provided these notes:

> *"All of them (the makers of the constitution in 1945) participated in the struggle in preparing, compiling and enacting the 1945 Constitution, which is the masterpiece of the Indonesian nation and people. In line with the opinion of Osman Raliby, who also emphasized that its members (Preparatory Committee for Indonesian Independence or PPKI members) came from all over the Indonesian archipelago as representatives of their respective regions, then six more representatives of the most important groups in Indonesian society were added."*[10]

In order to see the integrity of this paper, the next section will provide an explanation of the fragmentation of elderly citizens in Indonesian legislation that is not in line with the concept of human beings as citizens in the 1945 Constitution. The author does not say that this is a form of discrimination or degradation to the understanding of human ontology given by the legislators. It's just that there should be a strong argument, which emphasizes that the idea of elderly citizens in Law No.13/1998 does not take the original concept or idea of human beings as citizens in the 1945 Constitution.

B. ANALYSIS AND DISCUSSION

In initial research that parallels some of the observations above, the authors found that the Governor of DKI Jakarta Regulation Number 100 of 2019 concerning

[9] Initially, researchers will use the term founding fathers. However, after going through several discussions and references, it is interpreted that the founding fathers of the nation are not necessarily all (founding fathers) involved as architects in the formation of the constitution itself. Meanwhile, the constitution-makers are not always those who are also the founding fathers of the nation. The founders of the nation in this study are interpreted as the first compilers of a country's constitutional text. Based on these assumptions, in this study, the term proposed is the makers of the constitution or other terms will be found, namely legislative drafter (designer of laws and regulations).

[10] See J.C.T. Simorangkir, Penetapan UUD – Dilihat dari Segi Ilmu Hukum Tata Negara Indonesia, (Jakarta : Penerbit PT Gunung Agung, 1984), hlm. 216 *et seq*. Although it was said by Simorangkir that this masterpiece was composed by the nation's children, a very fundamental question arises, namely whether the children of this nation in formulating their masterpiece do not point at all or are under the influence of certain teachings (philosophy, theoretical or scientific) that they had previously obtained, or indeed the thoughts in this masterpiece are 100% pure and authentic, originating from the thoughts of the nation's children.

the Provision of Social Assistance to Fulfill the Basic Needs for Elderly Citizens which was promulgated in Jakarta on September 23, 2019 ("Pergub No.100/2019 "). The provisions of Article 3 of Pergub No.100/2019 regulate as follows:

The provision of PKD Social Assistance for Elderly Citizens aims to:

a. prevent elderly citizens from the risk of shocks and social vulnerabilities so that their survival is fulfilled;
b. assisting elderly citizens to be able to meet their primary needs and access to fundamental services fairly according to the provisions;
c. improve the welfare of elderly citizens; and
d. realizing a better quality of life for elderly citizens, justly, physically, and mentally prosperous, independent, and dignified.

The implementation of this Pergub needs a more in-depth study, especially in terms of its connection with Law No.13/1998. Why did the DKI Jakarta Government have the initiative to issue a special regulation on the elderly in the context of the distribution of social assistance? How is the realization or implementation of the distribution of social assistance as regulated in Pergub No.100/2019? The DKI Regional Government uses a method of giving ATM cards to the elderly who have been recorded in the village (*Kelurahan*) database. The bank that manages Regional Financial Management (*Pengelolaan Keuangan Daerah* or PKD) on social assistance funds for the elderly is PT Bank DKI. At the time the research was conducted in April 2021, the ATM card distribution process was still being carried out so that there was an even distribution of all elderly citizens who live in the DKI Jakarta area. The interesting side of Pergub No.100/2019 is the "considerations" section. The regulation is not based on Law No.13/1998. The regulation only refers to other governmental regulations on the regional level.

Maybe it is not important for the public to know this kind of information, but what is more important is the application of the regulation. Was Pergub No.100/2019[11]

[11] The origin of the word social assistance is social assistance. Social assistance is given to people who experience social risks. Social assistance can be given in the form of money or goods. In general, the legal basis for social assistance is regulated in Law No. 14 of 2019 concerning Social Workers which amends Law No. 11 of 2009 concerning Social Welfare. The provisions on Social Assistance were then followed up by Presidential Regulation No.63 of 2017 concerning the Non-Cash Distribution of Social Assistance ("Perpres No.63/2017"). In Article 1 paragraph (1) of Presidential Regulation No. 63/2017, it is stated:

"Social assistance is assistance in the form of money, goods, or services to a person, family, group or community who are poor, underprivileged, and/or vulnerable to social risks."

Meanwhile, the definition given to social risk is as regulated in Article 1 paragraph (2) which states as follows:

"Social Risk is an event or event that can create the potential for social vulnerability to be borne by a person, family, group, and/or community as a result of social crises, economic crises, political crises, natural phenomena, and disasters which, if not provided with Social Assistance, will worsen. down and unable to live in normal conditions."

The management of social assistance is regulated in the Regulation of the Minister of Home Affairs of the Republic of Indonesia (RMHA) Number 77 of 2020. This rule revokes the Minister of Home Affairs Regulation Number 99 of 2019 concerning the Fifth Amendment to the Regulation of the Minister of Home Affairs Number 32 of 2011 concerning Guidelines for Providing Grants and Social Assistance Sourced from the Revenue Budget. and Regional Shopping. Based on RMHA Number 77 of 2020, a social assistance provider is a work unit in a ministry or agency in the Central Government and/or a Regional Apparatus Work Unit in a Regional Government whose duties and functions are to carry out poverty alleviation

formed without any connection to Law No. 13/1998?

Furthermore, let us refer to the Law on Railways, namely Law Number 23 of 2007 on Railways ("Law on Railways") whose further regulation is contained in Government Regulation Number 72 of 2009 concerning the Traffic of Railways and Transportation ("PP No.72 /2009") as amended by Government Regulation Number 61 of 2016 concerning Amendments to Government Regulation Number 72 of 2009 concerning Traffic of Railways and Transportation ("PP 61/2016"), the operator of railway facilities is required to provide special facilities and conveniences for persons with disabilities (the disabled), pregnant women, children under five years, the sick, and the elderly. There is no provision that requires ordinary passengers to give their seats to people who need special facilities such as the elderly. This goes back to the sensitivity of each person. It's just that the obligation to provide these facilities exists for rail transportation service providers. It is interesting that factors, such as legal awareness and individual empathy become the determinants. Indeed, in reality, ordinary passengers can stay seated and are not obliged to give their seats to the elderly. As a consequence, there are no sanctions that will be imposed on them. Perhaps only temporary social sanctions, namely at the time of the incident, and without any follow-up. In other words, there is legal enforcement against these violations that occur in the provision of facilities intended for the elderly.

The two regulations above are examples, that regulations still refer to the 1945 Constitution, but in their considerations, they do not use Law No. 13/1998 as a basis. In an interview session with Prof. Andrew, a lecturer on human rights at the law faculty of UNSW, Australia, which was conducted on the UNSW campus on September 13, 2019, the most important thing for elderly citizens is how legal rights and access to law are available to them. The government needs to ensure from time to time that the enforcement of legal rights and access to the law is carried out properly without any discrimination at all. What are legal rights? One example is that elderly citizens are still given the opportunity to be able to submit each legal case to the court and the court has an obligation to serve the case as well as possible. Meanwhile, access to law means that elderly citizens are still given access to manage their personal documents such as ID cards, Taxpayer Identification Number (*Nomor Pokok Wajib Pajak* or NPWP), or family cards at any government agency and get access to its

programs which include social protection, social security, social empowerment, social rehabilitation, and basic services. See also in https://www.detik.com/edu/detikpedia/d-5761964/apa-itu-bansos-ini-pengertian-jenis-dan-penerimanya accessed on 14 November 2021. If read carefully, Law 13/1998 is not used as a basis for consideration of the enactment of Law No. 14 of 2019 concerning Social Workers which amends Law No. 11 of 2009 concerning Social Welfare above.

Each of these laws directly submits to the provisions of the relevant articles regulated in the 1945 Constitution. The meaning of this submission is the existence of a policy from the legislature/legislative drafter (under sole discretion) to determine which provisions of the 1945 Constitution article will be used as the basis for making laws, without having to pay attention that there has previously been another law that regulates the same thing, where that law has previously referred to certain articles of the 1945 Constitution. In short, the regulations in which it regulates the Elderly, both laws and other regulations, do not refer to the provisions of the 1945 Constitution which regulate or correlate with humans (elderly) or even Law No. 13/1998, but only refer to provisions that have a direct correlation with the main topic/title of the regulation. concerned. In response to such facts, it is not surprising that every statutory regulation focuses on the constitution, but does not refer to statutory regulations that are at the same level or even a weighing part of the laws and regulations governing subjects and objects that have relevance. (to a certain degree). The tendency of this difference in subjecting the legal basis to be sharper in the formation of statutory regulations under the law, especially if there is no significant or operational correlation between the subject and object regulated in the law.

complete service. These two thoughts actually refer to another situation, namely to create confidence in elderly citizens that the community still respects them and tries to free them from the shackles of fear. On the other hand, it is not much different from Hobbes' idea which also aims to free humans from fear. The idea put forward by Prof. Andrew is actually in line with one of the several rights championed by President Roosevelt known as "The Four Freedoms", namely:

1. Freedom of speech and expression (freedom of speech);
2. Freedom of religion (freedom of religion);
3. Freedom from fear (freedom of fear); and
4. Freedom from poverty (freedom of want).

This paper was conducted to seek ideas or rationale and understanding of constitutional drafters regarding the background of the formulation of the concepts on human beings as citizens which are used in the Indonesian constitution. All human beings experience certain phases in their lives. Naturally, the elderly phase is one of the stages that have to be experienced in human life. Furthermore, careful criticism of concepts of human beings as citizens as legal subjects in the Indonesian constitution will be used as a reference to the concepts of elderly citizens. The final aim is to obtain the thoughts of philosophers and scholars who shape the minds of constitutional drafters when formulating concepts about human beings as citizens, especially elderly citizens.

Philosophical studies through a legal theory approach are important in order to know about how the Indonesian constitution puts human beings, especially elderly citizens, as part of a nation. Especially in the role and contribution of the state to its citizens. Understanding the basic ideas of constitutional drafters in the Indonesian constitution becomes the basis of this paper. Exploring the constitutional text (with regard to history and background) regarding the concepts of human beings as citizens is important to confirm whether the current orientation of thought is already in the right frame of mind or if is it necessary to do a reorientation of thought.

1. Law on the Welfare of Elderly Citizens: A Hermeneutical Approach

It would be wrong to say that the term hermeneutics was introduced in ancient Greece. This term actually appears for the first time in modern terminology, especially when it was used by Protestants during the Reformation period to study the Bible.[12] Indeed, in the course of history, hermeneutics has a very close relationship with religious interpretation. Until now, theologians use hermeneutics[13] to interpret the verses in the holy book. In the course of its history, hermeneutics appeared sporadically and developed as a theory of interpretation when it began to be used to interpret

[12] See the notes of John D. Caputo stated that … but why do Reformation theologians mention the god in such a way? They drew on the later Homeric tradition. By then, Hermes had become such a good character, Zeus' winged messenger (angel) to humans. The demon divinity of the previous version of the legend had been restricted to a completely honorable function, reduced to some kind of divine messenger or instant messenger system. This downgrade was carried out by the followers of the cult of Apollo, the high-class aristocratic Greeks, who thought to keep this deceitful god (character) in check. Hermes the impostor was denounced as a truly disgraceful god by Plato and Aristotle, who wished for better god behavior. Thus, the power he gave to the messenger room (Divine) in the Olympian dungeon. Then biblical scholars easily forget the cunning, mischievous Hermes, independent god and messenger child of anyone, more likely to steal the (Divine) message, or tamper with it, than to send it. As a Demigod, Hermes is a troublemaker.

[13] Hermeneutics when it is used to explore and study scriptures is often referred to as interpretation, while when discussing academic issues the term used is verstehen or in language more general interpretation.

authoritative texts. In fact, a person may be trapped in a difficult situation to gain access, either to obtain the manuscript or to interpret it due to reasons of distance, space, time, or language differences. The conditions that have been disclosed should not be interpreted literally.

Hermeneutics as a theory then grew and was developed in the 19th century.[14] In general, there are three major schools in the study of hermeneutics, namely first, objective hermeneutics which was developed by Friedrick Schleiermacher (1768-1834), Wilhelm Dilthey (1833-1911), and Emilio Betti (1890-1968). Second, the subjective hermeneutics, which was developed by Hans-Georg Gadamer (1900-2002) and Jacques Derrida (1930), among others. Third, the hermeneutics of liberation, developed by Hasan Hanafi (1935) and Farid Esack (1959).[15] In contrast to the three hermeneutic approaches, the hermeneutic approach that will be used in this paper refers to Hans-Georg Gadamer's hermeneutics, which is based on the thought of understanding as a form of agreement by using the premise of thinking that hermeneutics is a universal phenomenon. This theory is essentially about interpreting texts in general.

This paper specifically focuses on Gadamer's hermeneutic theory. Gadamer introduced the concept of understanding as an agreement; the central concept is the fusion of horizons and *wirkungs-geschicte* with the area of the application being the interpretation of texts in general. The fusion of horizons or the meeting of horizons is used as a theoretical basis to carry out a critical analysis of the consistency of the idea of human beings as citizens in the 1945 Constitution and its manifestation in Law No.13/1998. The author uses the approach of Jurgen Habermas to provide a critical analysis. According to F. Budi Hardiman, Habermas' hermeneutics is critical hermeneutics. Critical hermeneutics, as another approach in contemporary hermeneutics, places extra-linguistic factors as issues that hermeneutics must solve. According to this stance, both philosophical hermeneutics and theoretical hermeneutics ignore things that exist outside of languages, such as work and domination which really determine the formation of the context of thought and action. It tries to integrate interpretation and reflection and is widely applied in the interpretation of myths, scripture, ideological criticism, and critical social sciences. The use of intertextuality[16]This paper is to find a common thread regarding the concept of elderly citizens in the 1945 Constitution and Law No.13/1998 (and several existing legislation products) depending on the interdependence of one text with the previous text. Sometimes, in the form of a cross between quotations and expressions, where one fills and complements another. The existence of this correlation will be explored.

[14] It was during this period that the works of Friedrich Schleiermacher and William Dilthey appeared. Through this work, they started the use of hermeneutic terminology in relation to efforts to find a theory of knowledge for the study of data, where culturalists tried to focus their concentration on studying objects, such as texts, signs, and various forms of symbols, rituals, images, replicas of works of art. beautiful and usable. In short, the products studied by humanists are more objects formed from human reasoning than the work of nature.

[15] Fazlur Rahman, *Islam dan Modernitas,* trans. Ahsin Muhammad, (Bandung: Pustaka, 1985), 9-15.

[16] See Richard Nordquist in https://www.thoughtco.com/what-is-intertextuality-1691077, accessed on 16 November 2021, who states: *Intertextuality refers to the interdependence of texts in relation to one another (as well as to the culture at large). Texts can influence, derive from, parody, reference, quote, contrast with, build on, draw from, or even inspire each other. Intertextuality produces meaning. Knowledge does not exist in a vacuum, and neither does literature*. Furthermore, a central idea of contemporary literary and cultural theory, intertextuality has its origins in twentieth-century linguistics, particularly in the work of the Swiss linguist Ferdinand de Saussure (1857–1913). The term itself was coined by the Bulgarian-French philosopher and psychoanalyst Julia Kristeva in the 1960s.

Our opinion is that the concept of human beings in the 1945 Constitution is not fully understood by the makers of Law No.13/1998. Law No.13/1998 defines Potential Elderly Citizens as elderly who are still able to do work and/or activities that can produce goods and/or services.[17] For the category of Potential Elderly, social assistance is given. As for this social assistance, it is not permanent and aims to increase the level of social welfare of the potential elderly.[18] Meanwhile, Non-Potential Elderly Citizens are defined as elderly who are powerless to earn a living so their lives depend on the help of others.[19] For the category of Non-Potential Elderly Citizens, the facilities provided by the government and/or the community are social protection. Social protection is provided by the government and/or the community so that Non-Potential Elderly Citizens can realize and enjoy a reasonable standard of living.[20] Based on Article 5 paragraph (1)-(4) of Law No.13/1998, Non-Potential Elderly Citizens can obtain services and facilities, except for employment opportunities, education, and training, as well as social assistance. Meanwhile, for the category of Potential Elderly Citizens, all services and facilities can be provided, except for social protection.[21]

Intertextuality is a reference that is used as a bridge between critical interpretation efforts and Gadamer's Hermeneutics theory. Especially to provide assistance in studying the fusion of horizons (*Horizontverschmelzung*). It is an attempt to read old texts with contemporary meanings. In other words, it will serve as a meeting between the past and the present. Our analysis concludes that there is no meeting of horizons or fusion of horizons between the meaning of human beings as citizens in the 1945 Constitution and the meaning of elderly citizens in Law No.13/1998. Partial identification of the meaning of human beings is only given by the constitutional drafters when formulating the substance of the provisions of Article 27 paragraph (1) of the 1945 Constitution, which reads:[22]

> *"All citizens are equal before the law and the state. They are obliged to uphold the law and there should be no exceptions."*

The makers of Law No. 13/1998 have failed to understand the meaning of human beings which is fully contained in the 1945 Constitution, which is marked by the existence of human categorization groups which, if interpreted critically, are a form of discrimination against their citizens. In fact, the legitimacy of the rights of the elderly as regulated in the 1945 Constitution emphasizes that the state should provide protection for the basic rights of elderly citizens without discrimination or distinction.[23]

Habermas' slogan reads, "there is no legal system without radical democracy."

[17] Indonesia, *Law on the Welfare of Elderly Citizens*, Law Number 13 of 1998, LN No. 190 Tahun 1998, TLN No. 3796, Art. 1 Number 2.
[18] *Ibid*., Art. 1 Number 8.
[19] *Ibid*., Art. 1 Number 3.
[20] *Ibid*., Art. 1 Number 7.
[21] *Ibid*., Art. 5: "(1) The elderly have the same rights in the life of society, nation and state. (2) As respect and appreciation for the elderly, the right to improve social welfare includes: a. religious and mental spiritual services; b. health services; c. employment opportunities services; d. education and training services; e. ease of use of public facilities, facilities, and infrastructure; f. convenience in legal services and assistance; g. social protection; h. social assistance. (3) For the elderly, there is no potential for the facilities as referred to in paragraph (2) except for the letter "c", the letter "d", and the letter "h". (4) The elderly have the potential to get the facilities as referred to in paragraph (2) except for the letter "g""
[22] Indonesia, *1945 Indonesian Constitution*, Art. 34 Par. (1).
[23] *Ibid*.

This means that the validity of a country's constitution is not only proven by the implementation of the judicial review function by the judiciary and the process of formulating laws and regulations by the legislature alone but also evidenced by the active political participation of the citizens in the public sphere. In other words, Habermas views that the legitimacy of a legal system cannot be obtained from government administrative procedures alone through the promulgation of laws and regulations in a democratic manner, but also from an interaction between formal government institutions and the informal and egalitarian public sphere. Government power and the emergence of the authority to form laws and regulations essentially stem from communicative actions in the public sphere:

> *"For Habermas, then, not only lawmaking but also governance in its ongoing, administrative aspect must draw its energy and authority from the citizenly generation of communicative power."*[24]

In the judicial review process, communicative actions from the community must be prioritized so that the voices of the marginalized can be heard and the right of the community to be able to actively participate in government can be actively implemented:

> *"In Habermas's more probing view, democracy-reinforcing judicial review must lend "communicative and participatory rights… a privileged position." It must start by examining the communicative structures of a public sphere subverted by the power of the mass media; go on to consider the actual chances that divergent and marginal voices will be heard and that formally equal rights of participation will be effectively exercised; and conclude with the equal parliamentary representation of all the currently relevant groups, interest positions, and value orientations."*[25]

Communicative action in the public sphere for Habermas is a form of resistance to the concept of Human Rights which is considered a "false promise" to liberal society to cover up new forms of exploitation and empty rationalizations that rely solely on market forces. Discourse or debate in the public sphere marks the existence of a democratic government process. Communicative action also becomes a form of reflection and critical awareness to evaluate tradition, prejudice, and authority. Habermas' critical hermeneutics is a form of criticism of Gadamer's hermeneutics. According to Habermas:

> *"Gadamer was motivated by first-generation conservatism, by the influence of a Burke not yet directed against eighteenth-century rationalism, true authority, according to Gadamer, differs from false authority by confession; "Indeed, the authority has nothing to do with obedience, but with knowledge." This very harsh sentence expresses a fundamental philosophical belief that coincides not with hermeneutics, but with its absolutes."*[26]

Knowledge according to Habermas can be passed on through authority and tradition, so prejudice also allows that knowledge. Habermas questions not the elements of authority and tradition in understanding, namely something that under normal circumstances can happen without problems, but the power relations that exist in it.

[24] William Rehg, "Habermas's Constitution: A History, Guide, and Critique Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy by Jurgen Habermas," *Law & Social Inquiry* Vol. 23, No. 4 (Autumn, 1998), 993.
[25] *Ibid.,* 996.
[26] Hardiman, *Seni Memahami*, 211-212.

Gadamer focuses too much on the process of understanding and ignores the fact that understanding is also controlled by processes of power. Language for Habermas can also be a medium of power and can be used to justify power relations.[27]

Habermas' critical hermeneutic approach to the understanding of elderly citizens as "a person who has reached the age of 60 (sixty) years and over"[28] and the division of the concept of the Elderly into the categories of Potential Elderly Citizens and Non Potential Elderly Citizens in Law no. 13/1998 shows how language moves in the medium of power.[29] The understanding and distinction of the concept elderly certainly contain repressive and discriminatory forces from those in power. Therefore, communicative action is needed as a critical reflection on the notions that are considered truth. Especially when these meanings are formed by those in power. The explanation above intends to position the author as if he were Habermas, so it is almost certain that the inconsistency that occurs in understanding the concept of Elderly Citizens is a form of degradation from human understanding in the constitution and there is no clear systematics when formulating or transplanting the concept Elderly Citizens in each government policies will lead to sharp criticism from Habermas.

2. On Human Beings and How Human Beings are Regulated in the 1945 Constitution

Kant's moral philosophy is based on the categorical imperative approach[30] in each of its studies, which it turns out that it also strives to review human nature. The study of humans is meant to move from the big question "what is human being?" In reviewing what is human nature, Patrick R. Frierson in his book "Kant's Questions – What is Human Being?" divides Kant's thinking in a form of chapter, namely Kant's ontological study of (1) transcendental anthropology; (2) empirical anthropology; (3) human history; (4) human plurality; and (5) pragmatic anthropology.[31] Discussions about humans to this day will never end. Even Kant himself did not offer a final answer to the question of what is human being itself, because he believed that it was impossible to give a perfect answer to the question.[32] It's just that Kant's thoughts take a position as a framework, which helps scholars in continuing their study of what is a human being. Kant's thinking about humans is simplified to:

First, the Humanity Formula does not rule out using people as means to our ends.

Second, it is not human beings per se but the "humanity" in human beings that we must treat as an end in itself.

Third, Kant's idea of an end has three senses: two positive senses and a negative sense.

Moving on from Kant's thought, the formulation of the concept of humans in the 1945 Constitution is the main objective of this paper. The search for the concept of

[27] *Ibid*., 214.
[28] Indonesia, *Law on the Welfare of Elderly Citizens,* Art. 1 Number 2.
[29] Hardiman, *Seni Memahami*, 215.
[30] See Paul Strathern, 90 Menit Bersama Immanuel Kant, Penerbit Erlangga – 2001, 30.
[31] Patrick R Frierson, *What is the Human Being*? Routledge – *Taylor and Francis Group, London and New York*, 2013, 9 -119.
[32] Kant's system is a system that resembles Newton's idea of gravity. What Kant produces is neither a perfect nor final discussion, but his work is a very close basis for how we explain the phenomena around us. Thanks to the guidance provided by Kant, we will only make small mistakes when viewing a phenomenon (Kant's study).

Elderly Citizens was carried out using the texts of the 1945 Constitution Draft, using the main references from the writings compiled by R.M. A.B. Kusuma who compiled the formulation of the 1945 Constitution in his book. In his book, R.M. A.B. Kusuma mentioned that R. P. Soeroso thinks that Mr. M. Yamin has deviated because he stated that "defense of the state," "state character," "state area," "population and sons of the state" are included in the "foundation of the state". After hearing the warning, Mr. Yamin continued to insist that "the basis of the state is also about the population, as well as the composition of the government. And the same goes for land rights."[33] Next in the speech of Prof. Soepomo, who stated that "humans as a person are not separated from other people or from the outside world, groups of humans, even all classes of creatures, everything is mixed and related, everything influences and their lives are interrelated. This is the totalitarian idea, the integralistic idea of the Indonesian nation which is also manifest in its original state structure."[34]

Based on a stenographic quote from a statement by Wiranatakoesoema, there are references to the discussion of human beings. This statement appeared in Dokuritu Zyunbi Tyosa Kai on the first day of the trial on May 29, 1945, where the trial lasted from 11.00 to 13.00 PM. Excerpts from Wiranatakoesoema's statement are as follows:

> *"We know how great is the merit and fruit of man in all kinds of fields. But let's not forget, that history also clearly proves, that together with things that are really of great benefit to humans in human society there is always confusion (chaos)…."*[35]

> *"The rights of other people or nations are ignored and trampled on, while their own obligations are negligent."*[36]

Wiranatakoesoema has mentioned that human beings in the context of the population must be considered for their happiness, safety, and prosperity. In the Dokuritu Zyunbi Tyosa Kai meeting on the third day of the session on May 31, 1945, Soepomo expressed his aspirations. His aspirations are fundamentally theoretical, namely with regard to the absolute conditions (constitutive factors) of the formation of a state, where his statement is as follows:

> *"The absolute conditions for establishing a state from a legal point of view and from a formal point of view (jurisprudence) are that there must be a territory, people, and there must be a sovereign government according to international law…."*[37]

It doesn't even stop there regarding the discussion of human beings in their manifestation as a nation, as Ki Bagoes Hadikoesoemo said, quoting Islamic teachings:

"*Ka:nan na:su ummatan wa:hidah*"

Meaning: "Human life is essentially a society."[38]

The view of Islam as a harmonization of Western and Eastern thought has been rolled out in the course of the meeting until the 3rd day.

In the notes on the process of drafting the constitution, there is no discussion

[33] See R.M. A.B. Kusuma, *Lahirnya Undang-Undang Dasar 1945* (Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2004), 12.
[34] *Ibid.* 14-15.
[35] *Ibid.,* 100-101.
[36] *Ibid.,* 101.
[37] *Ibid.,* 123.
[38] *Ibid.,* 136.

about human beings, at least that is close to the study of this dissertation. Until the big meeting on July 15, 2605 (the year of Japan), Soekarno, in an excerpt of his oration conveyed the following:

> *"…. After the Draft Constitution was distributed among the members, many members of our committee were visited by many members who asked why in the Constitution that we drafted, for example, human rights, the rights of citizens, were not stated. It is not explained there that we also want in the Constitution what is called "Droit de l'homme et du citoyen" or "rights of the citizens". Why is it not explicitly stated in this Constitution that for example, humans have the right to experience independence, that for example, household security is guaranteed, that for example, the confidentiality of letters is guaranteed, that for example, freedom is guaranteed to express thoughts that for example the right to meet and assemble is guaranteed and so on?…."*[39]

Based on the things found in the Preamble, Body, and Elucidation of the 1945 Constitution, it is concluded by Azhary (1995) that the 1945 Constitution recognizes individual human rights, but it is not the same as individual human rights according to a liberal view, which prioritizes individual interests or even communism-fascism that puts the people or the country first. Thus the interests of individual human rights are placed in the context of the interests of the community. Individual human rights are recognized in substance, but at the same time are limited with the aim that they do not violate the rights of other individuals or, more importantly, do not violate the human rights of many people/society. Azhary added that if we pay attention to Articles 28, 29, and 34 of the 1945 Constitution, the original text regarding the position of the population will find an explanation "Articles, both concerning citizens and concerning the entire population, contain the desire of the Indonesian people to develop a democratic country. and want to carry out social and humanity justice." The conclusion drawn by Azhary is that the freedoms embraced in the 1945 Constitution are freedoms that are in accordance with the ideals of the Pancasila state. If there is someone who wants the 1945 Constitution to contain or regulate details on human rights, then surely that person has not studied the 1945 Constitution carefully. Because in the explanation of the 1945 Constitution it is stated, **If you want to understand the Constitution of a country, it is not enough to just read the text and its explanation, the explanation must be known, it must be known in the atmosphere in which the text was made, knowing the background of the spiritual/psychological atmosphere (*geistlichen Hintergrund*) of the Constitution.**[40] So the 1945 Constitution only regulates basic issues, further regulation is left to be regulated or stipulated by law. The constitution is only generalist in nature and this is the main idea that the 1945 Constitution will never regulate in detail about various things in the state.

Furthermore, when we discuss the 1945 Constitution, of course, it cannot be separated from the discussion about the values of Pancasila. Pancasila values are a source of value in normative and practical realization in state and national life. In

[39] Ibid., 345.

[40] Azhary conducted a study which at that time was not yet popular with the hermeneutic method. Through the verstehen effort made by Azhary by comparing the existing texts, including the opinions and thoughts of classical philosophers, the research he did was actually a critical study of the Indonesian *rechtsstaat*. Azhary's research can actually be categorized as legal theory research that is brought into the realm of Constitutional Law, considering that he is a professor in the field of Basic Law Studies at the Faculty of Law, University of Indonesia.

this sense, the values of Pancasila are being regarded as *das sollen*, a necessity for the Indonesian people, to put the philosophy of the nation and state on Pancasila, so that all normative and practical derivations are based on the values of Pancasila. In the development of legal philosophy in Indonesia, legal theories originating from the West influenced legal perspectives and behavior in Indonesia which are not in accordance with the philosophical values of Pancasila, as the basis of the philosophy of the Indonesian state.[41]

The Second Precept contains an acknowledgment that the Indonesian nation is part of the human race in this world and wants prosperity for all people and all other nations. The Precepts of Fair and Civilized Humanity show recognition, namely placing humans in human dignity. This dignity is closely related to human rights and at the same time to human obligations. The consequences of this Second Precept oblige us to treat every human being and society according to their dignity and worth. The Fair and Civilized Precept of Humanity is a form of attitude, action, and behavior based on the first Precept. The principle of "Just and Civilized Humanity" implies that the state treats every citizen on the basis of recognition of human dignity and the human values that derives from that dignity. It is clear that this Second Precept rejects violence committed against citizens either by the state, groups, or individuals. The most heinous violence is violence committed against the core of human dignity itself, namely freedom.[42]

3. The Role of the Legislative Power and the Possibility of Escalating Its Role

The process of drafting laws and regulations in Indonesia has been regulated in Law No. 12/2011, as amended through Law No. 15/2019 and Law No. 17 of 2014 on the People's Consultative Assembly (MPR), House of Representatives (DPR), Regional House of Representatives (DPRD) and the Regional Representatives Council (DPD) ("MD3 Law") and its amendments. In addition to the regulations regarding the procedures for the formation of laws and regulations, there is also a hierarchy or order of laws and regulations that serve as guidelines. The 1945 Constitution and the Law in question also explicitly regulate the institutions that have the duty and authority to form laws in Indonesia. What is quite interesting is that in the formation process based on Article 10 paragraph (1) of Law 12/2011, the content that must be regulated through the Act is stated to be "further regulation regarding the provisions of the 1945 Constitution."

Thus, it has been clearly regulated that the Act was made as a further arrangement. Researchers have conducted a literature search on the existence of a norm or theory, which requires that legislators must have an adequate understanding of the content, intent, and purpose of the 1945 Constitution. However, the researcher is in a deadlock position. It turns out that such a requirement is not needed. It is known that there is no obligation for officials sitting in parliament to understand the content, intent, and purpose of the 1945 Constitution. Understanding in this case is different from

[41] H. Kaelan, *Filsafat Hukum Pancasila dan Semiotika Hukum Pancasila* (Yogyakarta: Paradigma, 2020), iv. This can be seen in the reality of legal developments in Indonesia lately, for example regarding the Omnibus Law Bill, which is less in favor of the marginalized people, the small people, especially the workers, so the bill is more proactive and provides space for capital owners and the political elite to enjoy economic resources in this Pancasila state.

[42] M. Sastrapratedja, "Pancasila Sebagai Prinsip Politik Pembangunan Bangsa dan Negara serta Kaitannya dengan Pandangan Gereja," *Jurnal Iman Ilmu Budaya* Vol. 6, No. 15 (2007), 1.

the idea of interpreting. An adequate understanding of the constitutional idea will produce good laws in the state. The commitment to pay attention to and implement Pancasila and the 1945 Constitution for members of the House of Representatives was mentioned by him or her at the time of taking the oath of office.

It's just that the DPR has been locked down by the MD3 Law that in drafting laws and regulations, it is required to be guided by the 1945 Constitution. The conditions regulated by this law are locking lawmakers in order to uphold the hierarchical order of the laws and regulations in force in Indonesia.

Indonesia has a law that regulates the welfare of elderly citizens that was promulgated during the reign of President B.J. Habibie. Former President Habibie claims that during his reign, he had succeeded in promulgating hundreds of legislative products. In fact, if we look carefully at the course of history, the reign of President Habibie was not too long. He served as president because he took over the position of President Suharto, who in 1998 ended his position. Of the hundreds of laws that were issued at that time, one of them was Law No. 13/1998. Interestingly, Law No. 13/1998 has provided a definition of Elderly Citizens. However, based on the results of this research study, it was found that the definition of Elderly Citizens given at the same time made it a manifestation of human categorization, which mentions the existence of Potential Elderly Citizens and Non Potential Elderly Citizens.[43]. The researcher sees that the definition of Elderly Citizens stipulated in the law is a definition that has gone through the process of the stages of legislation before it was finally promulgated. However, does the legislator know that there is a misunderstanding of the context, or is this intentionally done as a prerogative of the legislator in determining the content and substance of the legislation he or she makes?

It is not known for certain whether, due to the reason that President Habibie is a technocrat, there is a practical aspect in the formation of legislation or based on the idea that it is better to have law than not, so it is found that there is a law that needs to be criticized. The productivity of the legislative performance deserves to be recognized, but to form laws and regulations by paying attention to quantity rather than quality will cause a situation where there will be discrepancies or even errors in the resulting statutory products. Moreover, not all of the people's representatives who sit in the legislature have educational backgrounds as law graduates, who at least have an understanding of how the law should work.

The interpretation of the law from the perspective of a state function means that this function is actually in the hands of the Judiciary, not the Legislative Body. The main function of the House of Representatives is not to interpret the 1945 Constitution, because its main function is to conduct *rechtsvorming*. Whereas in Article 10 paragraph (1) letter (a) of Law No. 12/2011, that in making a law it must contain further regulations regarding the provisions of the 1945 Constitution. If the two norms are analyzed carefully, then the legislature should also have insight and understanding concerning the 1945 Constitution. This statement is relevant because Indonesia is a country that adheres to the Civil Law legal system. In the Continental European tradition, there is a culture of complying with existing norms/dogmas by taking into account the hierarchical legal aspect.

After going through a long study exploring the meaning of interpretation,

[43] It is as if Bentham's thoughts, especially his utilitarian ideas, dominate the subconscious mind of the compilers of Law No. 13/1998. In fact, its influence is still attached to the draft amendment to Law No. 13/1998 which has been brought into the Prolegnas agenda.

the interpretation of laws only emerges when a constitutional dispute occurs. Interpretation is not a commodity that existed during the process of drafting legislation in Indonesia. Therefore, in this section, the interpretations must be regarded in the context of constitutional disputes. The word "interpretation"[44] in the context of the Law, can be explained in a broad and narrow sense. In a broad sense, interpretation can indicate various creative activities of a judge in expanding, limiting, or modifying a legal regulation stated or contained in a form of law. However, in a narrow sense, interpretation can refer to the explanation given by a judge regarding the meaning of the words or sentences contained in the Act.[45]

Constitutional interpretation can be divided into two views of legalism, namely Originalism and Non-originalism. When interpreting the rules in the text of the constitution, judges who adhere to the Originalist view remain guided by the aims and objectives of the drafters of the constitution. Meanwhile, the judges adhering to the non-originalist view hold that the intent and purpose of the drafters of the constitutional text are irrelevant. Therefore, the adherents of this view are given the freedom to interpret the whole or part of the contents of the constitutional text according to the meaning, value, or understanding of the judge himself based on the principles adopted by contemporary society. When reading Goldsmith's writings, we had an initial assumption that lawmakers should have an approach in accordance with this idea in drafting laws. However, in Indonesia, there is no obligation for legislators

[44] See the research of Tanto Lailam from the Faculty of Law, the University of Muhammadiyah Yogyakarta concerning the interpretation of the constitution in examining the constitutionality of laws against the 1945 Constitution, where in the study of the interpretation of the constitution in examining the constitutionality of laws against the 1945 Constitution, this study was motivated by the broad authority of the Constitutional Court in interpreting the constitution, including various decisions that are considered as legal breakthroughs or legal circumventions. The results of the study show that the 1945 Constitution implicitly grants the Constitutional Court the authority to interpret the constitution to assess the conflicting legal norms in examining the constitutionality of the law, meaning that the Constitutional Court is "*the guardian of the constitution and the sole interpreters of the constitution*" and as legal interpreters of the constitution or constitution (*the legitimate interpreter of the constitution*).

It is further stated that in carrying out the interpretation of the constitution as a benchmark for assessing conflicting legal norms, it includes: First, the point is that the interpretation of the constitution is one way to elaborate the meanings contained in the constitution and the process of finding meanings from the text of the constitution. . Second, related to the independence and freedom of judges in using interpretive methods that are not regulated in positive law, judges are free to use such interpretation methods in accordance with the judge's beliefs. Judges in using the interpretation method do not only function as mouthpieces of the law, but also function as mouthpieces of justice because judges are obliged to explore, follow, and understand legal values and a sense of justice that lives in society (substantive justice). Referring to the theory of the living constitution, the 1945 Constitution must be understood as a constitution that has dynamics with textual and contextual dimensions. Third, the limitation in the use of the interpretation method is that constitutional judges should not only be fixated on the method of interpretation of originalism which is based on the original intent/formulation of the articles of the 1945 Constitution, or use other interpretations (non-originalist) which causes such an interpretation to actually cause the provisions of the Constitution not to work. 1945 as a system and/or contrary to the main idea that underlies the Constitution itself as a whole related to the objectives to be realized. Fourth, the use of the interpretation method must be accountable to the public, so that its validity can be tested in certain cases. This needs to be done because the Constitutional Court has broad interpretive authority over the constitution, so as to protect the Constitutional Court judges from abuse of power in interpreting the 1945 Constitution. From the explanation above, the big idea is that the function to interpret is a portion of the authority of the constitutional judges. In fact, to ensure that there are no intersections or contradictions between the main ideas contained in the 1945 Constitution, ideally, this portion of responsibility also falls into the hands of policymakers.

[45] See Backy Krisnayuda, 232.

to interpret/make an in-depth interpretation of the constitution and again this theory is actually aimed at the judiciary. The judiciary is none other than the Constitutional Court.[46]

Both Originalists and Non-originalists can act as positivists[47] or normativists[48]. A positivist from the Originalist view interprets the meaning of the provisions that are explicitly regulated in a constitution by referring to the true intentions and understanding of the drafters of the constitution. Meanwhile, a normativist of the Originalist view equates the intent of the provisions that are not expressly regulated in the constitution with the actual intention of the drafters of the constitutional text. Likewise, in the Non-originalist view, a positivist or normativist who adheres to this view interprets the provisions explicitly or unequivocally in a constitution based on contemporary understandings or values.

Normativism makes the law easier to understand than Positivism. This is because normativism is able to offer more normative sources to guide the preparation or formulation of new legislation. However, if taken to an extreme level, non-originalism and normativism can change the constitution in three ways, namely:

a. by changing the actual meaning of the words contained in the provisions of the constitution;
b. by "rewriting" the provisions that have been expressly regulated in the constitution with the aim of implementing the values contained in these provisions in greater depth; and
c. by adding new unwritten principles.

The legalists who reject this extreme flow are essentially trying to prevent any interpretation of the rules in the constitution that is only guided by the ends of the drafters of the constitution alone, without considering the means determined by the drafters of the text to achieve that objective. However, the opinion of legalists on the interpretation method of adherents of non-originalism and normativism is not so strong, because the content of the constitution essentially contains abstract norms. Understanding these abstract norms comprehensively requires a full understanding of the purpose, context, and assumptions that underlie an interpretation of the constitution.[49]

If it turns out that there is no necessity for *verstehen* efforts, then how can the ideas in the 1945 Constitution be fully interpreted by legislators? As a response to this situation, the researcher agrees with Hamid Attamimi's thoughts as quoted by Maria Farida Indrati in the book "Science of Legislation 2: The Process and Technique of Its Formation" (p.236), a comparison was made between the concept of *staatsfundamentalnorm* and its derivative norms with the hierarchy of laws and regulations in Indonesia. . It is explained that from the formulation of the explanation of the 1945 Constitution, it becomes clear that the main ideas in the Preamble to the

[46] Jeffrey Goldsworthy, *Interpreting Constitutions: A Comparative Study* (New York: Oxford, 2007), 322.
[47] A positivist is a person who provides an interpretation of the provisions that have been expressly regulated in the constitution. Even though a positivist is quite rigid, he still has the freedom to make interpretations, both original and non-original, depending on the case and the current situation, so that he is not always guided/shackled to the original text of the constitution.
[48] A normativist is a person who provides an interpretation/interpretation of things/equalizes the intent of the provisions that are not expressly regulated in the constitution with the actual intent of the drafters of the constitutional text.
[49] Goldsworthy, *Interpreting Constitutions*, 323-324.

1945 Constitution are none other than Pancasila, which is the basic norm of the state or the fundamental norm of the state (*staatsfundamentalnorm*) and is at the same time a legal ideal (*Recht idee*). Moving on from this thought and also looking at what is regulated in Law No. 12/2011, the drafting of legislation is still having to use the 1945 Constitution as the main guideline. This is in line with the idea that the state is the embodiment of the national legal system so that the state is equal to the law. The purpose of a National Legal System is not a confusing law, but a level of national law, where lower laws must be sourced from higher laws, and so on until it reaches the Basic Norm (*Grund Norm*) which is the source of all applicable law. This legal-level theory is called *Stufenbau des Recht*.[50]

One thing that is certain and is the burden of responsibility of the legislators is to have an adequate understanding from time to time of the substance of the 1945 Constitution which will then be revealed in the form of laws and regulations, but it is clear that the material of the legislation must still be sourced from the 1945 Constitution. In other words, when the DPR drafts a law, it is of course obligatory to adhere to the 1945 Constitution. When there is a constitutional dispute, then the Constitutional Court will conduct a judicial review.[51] The situation with reference to

[50] Padmo Wahyono, SH., Kuliah-Kuliah Ilmu Negara, cet.1, (Jakarta : Indo-Hill, 1966), 18 *et seqq*.

[51] Regarding the authority and function of the Constitutional Court and the judicial review process, in general, there are 3 categories, namely:

1. Judicial review process conducted by the Constitutional Court. After the amendment to the 1945 Constitution, there has been a shift in the state administration and administration system, with no more supreme institution previously played by the MPR and an affirmation of the separation of powers and the principle of checks and balances. The presence of the Constitutional Court in the state administration system plays a role as a guardian of the constitution so that the constitution is always used as the basis and carried out consistently by every component of the state and society. Article 10 Paragraph (1) of Law Number 8 of 2011 concerning amendments to Law Number 24 of 2003 concerning the Constitutional Court emphasizes one of the functions of the Constitutional Court, namely that the Constitutional Court has the authority to adjudicate at the first and final levels whose decisions are final to examine laws against the 1945 Constitution. This authority is known as judicial review. See Irma Oktavia Sukmawati dan Isharyanto, Gagasan Pembadanan Pengujian Preventif ke Dalam Sistem Ketatanegaraan Republik Indonesia (Perbandingan dengan *Conseil Constitutionnel de la République Française*), Jurnal *Res Publica* Vol. 2 No. 1 Jan-April 2018, 88.
2. The judicial review process is carried out at the time of drafting laws and regulations. In contrast to Indonesia, the French state has an institution called the Conseil Constitutionnel de la République Française or commonly called the French Constitutional Council whose duties and authorities are almost similar to the Constitutional Court in Indonesia. The Constitutional Council also carries out the function of examining constitutionality. However, the function of the examination carried out by the Constitutional Council is different from the examination of constitutionality in the pattern of the Constitutional Court in Indonesia, it is not a posteriori, but a priori or preventive in nature. The Constitutional Council examines bills that have been passed or have been approved in parliament but have not been properly promulgated. If a constitutionality issue arises in it, then the Constitutional Council must decide whether or not it is contrary to the Constitution. Once a law has been promulgated, the board may no longer conduct testing. This mechanism is referred to as preventive constitutional review or a priori constitutional review, which scholars refer to as constitutional preview, because the testing carried out is preventive in nature before the draft law concerned officially becomes a binding law (legislative act) for the public. . After a draft is previewed and declared not contradictory to the constitution, then the draft can be promulgated as it should be so that it can be valid and binding on the public. *Ibid*., 90; and
3. Combined process, namely judicial review at the time of drafting laws and regulations, and there is a judicial review function carried out by the Constitutional Court. See in the South African constitution quoted https://www.concourt.org.za/index.php/about-us/role on 22 May 2022, *Section 167(4) goes on to give the Constitutional Court exclusive jurisdiction in deciding disputes about the powers and constitutional status of branches of government. Only the Constitutional Court may:*

the said norm can be analogous to that attached to the obligation to interpret the norm, specifically the interpretation made to the grundnorm applicable in Indonesia.

C. CONCLUSION

From the discussion as described above, related to the formulation of the concept of Elderly Citizens in the Indonesian constitution, it can be concluded as follows:

1. The study of human beings will never end. Meanwhile, human beings need a legal definition. The legal definition of human beings should not be interpreted crudely only as a limitation, but as something definite or certain. Certainty is something that is offered by law in creating an order. The adoption of Immanuel Kant's thoughts in this dissertation is relevant, especially as it opens the opportunity to review what human beings are. Defining a human being is not an easy task and the discussion about it will never end. Kant, as a very perfectionist thinker, finally gave up elegantly when discussing human beings. Reflectively, this shows that it is not surprising that even the legislators are trapped in the fragmentation of thinking about the ideas of human beings. The challenge is how the deviation of the idea of human beings can still be considered within relevant limits.
2. The collection of notes from the 1945 Constitution Draft is to picture how the discussion about human beings took place in these very decisive sessions. The discussion about human beings turned out to be very thoroughly discussed by the drafters of the constitution. There is no tendency to see Indonesian people in the form of fragmentation of thought or the formation of groups. The concept of human beings in the constitution contextually intersects with the idea of the Indonesian nation. In fact, it turns out that Pancasila exists in order to protect Indonesian people, regardless of all the advantages and disadvantages that they have experienced, the study of the meaning of human beings has been constructed in such a way based on solid arguments.
3. The concept of the Elderly has just been discovered and regulated more specifically in Law no. 13/1998. The provisions in Law no. 13/1998 regulate the main points of service for elderly citizens, among others in the form of services to use public facilities and infrastructures. Services to use public facilities and infrastructures are intended as an embodiment of respect and appreciation for elderly citizens. However, Law no. 13/1998 does not represent the essence of the concept of Elderly Citizens as a whole legal subject. This is indicated by the difference between the concept of Potential Elderly Citizens and the concept Non-Potential Elderly Citizens.
4. There is no common ground between the meaning of human beings in the 1945

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decide disputes between organs of state in the national or provincial sphere concerning the constitutional status, powers, or functions of any of those organs of state;
decide on the constitutionality of any parliamentary or provincial Bill
decide on the constitutionality of any amendment to the Constitution; and
decide that parliament or the president has failed to fulfill a constitutional obligation.

Interesting from the contents of the South African constitution above, it appears that there is a dual function of the South African Constitutional Court. The active role of the Constitutional Court in drafting laws and regulations that occurred in South Africa seeks to maximize the harmony of constitutional ideas with draft laws and regulations, but still opens the authority of the Constitutional Court to conduct judicial reviews in the event of a constitutional dispute.

Constitution and the meaning of Elderly Citizens in Law No. 13/1998. Law No. 13/1998 mentions the definition of Potential Elderly and Non-Potential Elderly. One article which according to the researcher is quite fatal is Article 5 paragraph (1)-(4) of Law no. 13/1998, Non-Potential Elderly Citizens can obtain services and facilities, except for employment opportunities, education, and training, as well as social assistance. Meanwhile, for the category of Potential Elderly Citizens, all services and facilities can be provided, except for social protection. This article contradicts the spirit of protecting human rights. The researcher thinks that the legislators have failed to understand the nature of human beings which is fully contained in the 1945 Constitution, which is marked by the existence of human categorization groups which, if interpreted critically, are a form of discrimination by laws imposed on their citizens. If we look at the Philippines, it is true that in their law there is a distinction against elderly citizens, but this distinction is not discriminatory and does not eliminate the rights to improve the social welfare of the elderly, such as the right to employment opportunities and the right to education and training services.

5. Adopting Habermas' critical hermeneutical theory, it is, therefore, necessary to conduct a study on the possibility of expanding the authority of the Constitutional Court by adopting the combined system from South Africa, where the Constitutional Court does not only conduct a judicial review by adjudicating at the first and final level, laws against the Constitution, but also conduct a judicial review of the drafts that have been ratified or has received approval in the legislative body, but has not been properly promulgated. Thus, constitutionality testing in the Constitutional Court is not only conducted *a posteriori*, but also *a priori* or preventive. The preventive or *a priori* approach is taken as a form of anticipation from the low understanding of the substance of the 1945 Constitution so that the products of the Law in Indonesia do not become misguided in its direction and purpose.

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