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Constitutionality of the People's Consultative Assembly Decree in Article 7 Paragraph (1) Item b Law No. 12 Year 2011 on the Establishment of the Regulation Legislation

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Abstract
The hierarchy paired of Regulation Legislation based on the People's Consultative Assembly Decree No. III/MPR/2000, Law No. 10/2004 and Law No. 12/2011 which incidentally is the sort order paired of legislation at the same time that the Reform Period, showed an all's not the same with the indication "appears - missing - appears" the existence of the People's Consultative Assembly decree which raised the problem: "How the constitutionality of the existence of the MPR Decree in Article 7 Paragraph (1) Item b Law No. 12/2011 on the Establishment of the Regulation Legislation?"Methods to address issues to do with normative juridical research through library with approaches and techniques juridical and historical analysis. The results showed that the presence of the MPR Decree in the types and hierarchy of legislation as Article 7 Paragraph (1) Item b Law No. 12/2011 not in accordance with the constitutional values of the organizing country experiencing a paradigm shift from the supremacy of the Assembly be constitutional supremacy by subjecting all state institutions are equal as the provisions of Article 1 Paragraph (2) the Republic of Indonesia 1945 Constitution.
Keywords: Constitutionality, the MPR Decree, the Hierarchy of Laws and Regulations

1. Introduction

During the reform period in Indonesia, the existence of the People's Consultative Assembly Decree provisional No. XX/MPRS/1966 (MPRS Decree No. XX/MPRS/1966) regarding the form and sequence of Regulation Legislation Unitary Republic of Indonesia (NKRI) was replaced by the MPR Decree No. III/MPR/2000 the sources of law and order legislation sequence of set forth in MPR Annual Session Year 2000 while looking at the MPR Decree as one type of legislation that is important. Article 2 the MPR Decree No. III/MPR/2000, stated that the sort order NKRI legislation are: 1. Constitution of the Republic of Indonesia Year 1945 (UUD the Republic of Indonesia 1945), 2. MPR Decree, 3. Act (UU), 3. Government Regulation a Substitute to Law (Perpu), 4. Government Regulation (PP), 5. Presidential Decree (Kepres) and 6. Local Regulation (Perda) [1].

MPR Decree No. III / MPR / 2000 has been declared incompatible RI constitutional law as preamble Point C Law of the Republic of Indonesia Number 10 Year 2004 (Law No. 10/2004) on the Establishment of Laws and Regulations. This Act is the first legislation that regulates the formation of legislation by the Constitution the Republic of Indonesia 1945 results change. As the opinion of Ahmad Yani that prior to the amendment of the Constitution the Republic of Indonesia 1945, the MPR Decree including the part of the hierarchy of legislation, but after the amendment, the highest hierarchy of legislation is the Constitution the Republic of Indonesia 1945[2]. Article 7 Paragraph (1) of the Act No. 10/2004 mentioned types and hierarchy of legislation of RI are: 1. Constitution the Republic of Indonesia 1945, 2. Act/Perpu, 3. PP, 4. Presidential decree (Perpres), and 5. Local Regulation (Perda). Thus, Act No. 10/2004 issued the MPR Decree of types and hierarchy of legislation prevailing in the region of The Unitary State of the Republic of Indonesia (NKRI).

But the MPR Decree re-incorporated as one kind of legislation by the replacement of Law No. Law No. 10/2004 12/2011 regarding the establishment of the legislation in force today (positive law of NKRI). Article 7 Paragraph (1) of Law No. 12/2011 specifying the type and hierarchy of legislation consists of: 1. Constitution the Republic of Indonesia 1945, 2. MPR Decree, 3. Act / Government Regulation a Substitute to Law (Perpu), 4. Government Regulations, 5. Presidential Regulation, 6. Provincial Regulation and 7. Local regulation of Regency / City.

The hierarchy of legislation paired based on the MPR Decree No. III/MPR/2000, Act No. 10/2004, and Act No. 12/2011 certainly nothing more than a sort order paired of legislation undertaken at the same time namely the Reform Period. But it shows that there is an inequality with indication "Appears - Missing - Appears" the existence of the MPR Decree as the following table.

[1] Soehino, *Constitutional Law: Technical Regulations,* (Yogyakarta: Faculty of Economics UGM, 2006), p.9.
[2] Ahmad Yani, *The Establishment of Law & Regional Regulation*, (Jakarta: Rajawali Pers, 2011), p.1.

Table 1. Comparison Hierarchy of Laws and Regulations on the Reform Period

No.	MPR Decree No. III/MPR/2000	Act No. 10/2004	Act No. 12/2011
1	Constitution the Republic of Indonesia	Constitution the Republic of Indonesia	UUD the Republic of Indonesia
2	MPR Decree	Act/Perpu	MPR Decree
3	Act	Government Regulations	Act/ Perpu
4	Government Regulation a Substitute to Law (Perpu)	Presidential Regulation	Government Regulations
5	Government Regulations	Local regulation	Presidential Regulation
6	Presidential Decree		Provincial Regulation
7	Provincial Regulation		Local regulation of Regency/City

Meanwhile, as the opinion of Pramoedya that the old paradigm of viewing the law as a tool of social engineering adopted by the New Order government. Then switch to the new paradigm espoused Reform Order which made the law as a container for the aspirations and needs of the people[1]. Law is the implementation of public policies aimed at providing welfare and justice for the people. This phenomenon managed to improve the existence of the legislature as a representative of the people who have bargaining power in determining public policy of the executive agency. As was stated before that the New Order, the Assembly is the highest institution of the State and has the authority to issue a Decree as state policy (authorized to make legal products such as the MPR Decree). While the reform period, the Assembly becomes equal to the higher institutions of other countries and does not have the authority to issue a Decree as state policy (not authorized to make legal products such as the MPR Decree).

Description existence/presence of the MPR Decree in the sort order legislation Indonesia in accordance with Article 7 Paragraph (1) Item b Law No. 12/2011 The above has a philosophical problem both from the ontological, epistemological, and axiological. In addition to the philosophical problems, there is also a juridical problem, theoretical, and sociological.

Uncertainty existence of the MPR Decree in the sort order legislation of NKRI is a philosophical problem in ontological aspect. Uncertainty indicates the presence of the philosophical problems that the epistemological aspects in the formation of legislation not yet any definite mean and methods, raw, and standards in order to produce the type of legislation that is good. Giving rise to philosophical problems in axiological aspects is there is uncertainty of legal guarantees for the protection of the rights and obligations of all the people of Indonesia in the realm where the MPR Decree in the sort order for the legislation based on five basic principles (Pancasila).

The Juridical problem, according to Matthias Klatt which could not be determined "what law" is right or *legal indeterminacy.* The cause of this juridical problems arise, it can be due to uncertainty or *vagueness* of meaning, the meaning ambiguous or ambiguity, no consistency or inconsistency, or a variety of concepts which basically indicates disagreement[2]. Law No. 12/2011 does not regulate the substance of the MPR Decree. The provisions of Article 10 through Article 14 on the substance of the realm of the formation of legislation, it only regulates the substance of the Act, Government Regulation a Substitute to Law, Government Regulation, Presidential Regulation, and Local regulations. This indicates that the setting is not consistent (inconsistency) of the existence of the MPR Decree in Law No. 12/2011 eventually leading juridical problem.

Consequences of the principle of supremacy of the constitution are the existence of a special court to ensure conformity of the rule of law that a lower legal regulations that are in it, so the opinion of Kelsen. However, to date in Indonesia there is no rule of law (vacuum of norm) regarding the testing mechanism the MPR Decree. Article 9 of Law No. 12/2011 only set of testing legislation limited to the Law against the Republic of Indonesia 1945 Constitution and the laws and regulations under the Act to the Act. So there arose a problem theoretically because Law No. 12/2011 does not regulate testing mechanism against the Constitution the Republic of Indonesia the MPR Decree 1945[3]. Testing the MPR Decree is not the area of authority of the Constitutional Court (MK) is only authorized for a limited manner (one) to test laws against the Constitution of NKRI. While the hierarchical law the MPR Decree is under the Constitution the Republic of Indonesia 1945 and the law above. Twice already the MPR Decree in judicial review; twice is The Keeper of the Constitution states

[1] Pramudya, *Law is interest*, (Salatiga: Sanggar Mitra Sabda, 2007) p. 99, 100, 104.
[2] Matthias Klatt, *Making The Law Explicit : The Normativity of Legal Argumentation,* (Oregon: Oxford and Portland, 2008), p. 262 - 264.
[3] Dian Agung Wicaksono, *Implications Re-Existence of the MPR Decree In the hierarchy of legislation to guarantee on Legal Certainty Fair in Indonesia,* Journal of Constitution, Volume 10 No. 1, (Jakarta: Registrar's Office and the General Secretariat The Constitutional Court of the Republic of Indonesia, 2013), p. 151 – 154.

that the request cannot be accepted (Constitutional Court Decision No. 24/PUU-XI/p2013 and 75/PUU-XII/2014).

Therefore the result was the emergence of sociological problems. States have an obligation to implement legal development in a planned, integrated, and sustainable. People need a formation technique of legislation for sure, raw, and standards. But the reality of the existence of the MPR Decree in the procedures of legislation sequence in force (The Positive Law/*ius constitutum* the establishment of regulatory legislation) is not to provide legal certainty for the people of Indonesia.

The issues that will be studied are: "How the constitutionality of the existence of the MPR Decree in Article 7 Paragraph (1) Item b Law No. 12/2011 on the establishment of laws and regulations?"

2. Methodology

2.1. Research Types

This type of research is Research legal/normative by finding, collecting, and analyzing the material law, both primary and secondary. In a narrow sense, juridical / normative only logically systematic view of the overall device is the norm, while in the broad sense and looking for the effect of social background of the community. Juridical/Normative in the broad sense is quite natural that the definition of "normative" is defined as "that should / should / which should" (Including normative / should have been legally living or aspired by the people/nation Indonesia based on the study of philosophical, sociological, and historical) as said Sudarto[1]. This study uses the notion of juridical / normative in its broadest sense includes the background of philosophical, juridical, theoretical, and sociological.

2.2. Research approach

Based on the formulation of the problem and the type of the study, the research approach that has been used is the juridical and historical (as contemplated Soekanto and Sri Pamudji)[2] the provisions of Article 7 Paragraph (1) Item b Law No. 12/2011 which put the MPR Decree in the types and hierarchy of laws and regulations for the creation of laws and regulations.

2.3. Legal Materials Research

This normative legal research uses two kinds of law to obtain the substance of the study materials, namely primary legal materials *(primary sources or authorities)*[3] consisting of laws and regulations and secondary legal materials *(secondary sources or non-authorities)*[4]. Primary legal materials include the Republic of Indonesia Constitution 1945 and Law No. 12/2011 and its draft legislation (Bill) and academic texts (NA). The secondary law covering literature, journals, papers, magazines jurisprudence, encyclopedias, and the opinion of the experts who have scientific payloads relating to the constitutionality of the MPR Decree in Article 7 Paragraph (1) Item b Law No. 12/2011 regarding the establishment of laws and regulations.

2.4. Collecting Technique of the Legal Materials Research

The technique of collecting of the legal materials normative juridical research is literature, then analyzed to solve legal problems. In addition, the materials libraries are also needed as a source of ideas to explore the thoughts or ideas to formulate a new theoretical framework.

Researchers have carried out these steps to obtain the materials necessary law, both primary and secondary. Of legal materials obtained are then researchers used a card system (card system) to record quotes, effort, and comments are needed.

2.5. Research Analysis Technique

The legal analysis is an examination and assessment (by) jurisprudence *(rechtswetenschap, the science of law)* [5]. Appropriate approach to the study, the analysis is done legally and historically furnished with content analysis, mainly conducted on primary legal materials. Content analysis is done based on the principle of logical consistency between legal principles relating to problems studied. It is well to determine whether there is a deviation from the principles in question.

According to type of research, content and article relevant principles are interpreted with an authentic

[1] Barda Nawawi Arief, *Integralistik Criminalistics (Integrative Thinking in Criminal Law),* The paper "Congress of Indonesian Legal Studies", Semarang: Sociological Association of Indonesian Law and the Law Department and Society FH UNDIP, date 19 and 20 October 2012.
[2] Soerjono Soekanto and Sri Mamudji, *The Normative Legal Research: A Brief Overview*, (Jakarta: Rajawali, 1985), p. 15.
[3] Morris L. Cohen, *Legal Research in a Nutshel,* (ST Paul: West Publishing Co., 1978), p.1.
[4] *Ibid.,* p. 2.
[5] Bagir Manan, *Relationship Between Central and Regional According to the principle of decentralization by 1945*, (Bandung: Padjadjaran University, 1990), p.15.

and historical method[1]. The use of authentic method is to interpret the provisions of Article 7 Paragraph (1) Item b Law No. 12/2011 regarding the establishment of laws and regulations. The historical method used to interpret the events of the preparation of these provisions for the purposes of the formulator.

3. Results and Discussion

The constitutionality of the MPR Decree in Article 7 Paragraph (1) Item b Law No. 12/2011 regarding "The type and hierarchy of Laws and Regulations in the context of The Establishment of Laws and Regulations 'of NKRI today, has the subject matter and the touchstone of constitutionality as follows. That Law No. 10/2004 does not mention the MPR Decree as a legal product. While some of the MPR Decree is still valid and has permanent legal force. Therefore, the Act No. 12/2011 put it back in the hierarchy of laws and regulations under the Constitution the Republic of Indonesia 1945 and above law under Article 7 Paragraph (1) of Law No. 12/2011.

The elaboration of MPR Decree re-entry in the hierarchy of laws and regulations has the consequence that the MPR Decree has again recognized the existence (presence) as a formal legal source and became one of the references in addition to the Constitution the Republic of Indonesia in 1945 in the establishment of any level of laws and regulations thereunder, namely Law/Government Regulation in Lieu of Law, Government Regulation Presidential Order, Provincial Regulation and Local Regulations of Regency/City. Thus, this study constitutional issue is "whether the existence of the MPR in Article 7 Paragraph (1) Item b Law No. 12/2011 regarding the type and hierarchy of legislation in the formation of legislation in Indonesia according to the provisions of the Constitution the Republic of Indonesia in 1945? "

Because the issue of constitutionality is the existence (position / existence); not the substance MPR Decree in the hierarchy (e.g., violating human rights or human rights), the touchstone of constitutionality can be found through the analysis of the state organization in the constitution, namely how the position of the MPR which is influenced by changes in the paradigm of the Constitution the Republic of Indonesia 1945 from the supremacy of institutions (People's Consultative Assembly) to the supremacy of the constitution, according to Mochamad Ali Safa'at[2].

Stone on the constitutionality of "analysis of the state organization in the Constitution the Republic of Indonesia 1945 to a paradigm shift from the supremacy of People's Consultative Assembly be supremacy of the constitution" means the provisions of Article 1 Paragraph (2) the Republic of Indonesia 1945 Constitution. Before the change, reads "Sovereignty is vested in the people and performed entirely by People's Consultative Assembly". After the amendment, the provision is changed to "Sovereignty belongs to the people and carried out according to the Constitution".

Holistic understanding of changes in the terms "popular sovereignty" in Article 1 Paragraph (2) the Republic of Indonesia Constitution of 1945 as a touchstone of constitutionality in this study, by keeping the meaning, purpose, and goals *(original intent)* Article 1 Paragraph (2) of the Constitution of NKRI, Writers do through the description of the situation psychotherapy *(geistlichenhintergrund)* sound change events such provision. In essence, the framers of the change in the provisions of Article 1 Paragraph (2) the Republic of Indonesia 1945 Constitution agreed on the people's sovereignty must be respected; democracy must be developed, and to the mechanism of checks and balances must be established. This had repercussions on the idea that sovereignty is not only run by People's Consultative Assembly, but also by other state agencies, or even by the people directly through the general election system (General Election). They therefore agree to the formula: "Sovereignty is in the hands of the people and carried out according to the constitution".

In accordance with the subject matter and the constitutionality touchstone, it is the formulation of the problem: "How is the constitutionality of MPR Decree in Article 7 Paragraph (1) Item b Law No. 12/2011?"

> "How do the existence of MPR Decree in the hierarchy of legislation to the formation of legislation as the provisions of Article 7 Paragraph (1) Item b Law No. 12/2011 on the value of the constitution on the organization of the country experiencing a paradigm shift from the supremacy of People's Consultative Assembly be constitutional supremacy as the provisions of Article 1 Paragraph (2) the Republic of Indonesia Constitution in 1945?"

Law No. 12/2011 was established to replace Law No. 10/2004. One change is the addition of the substance of MPR Decree as one type of regulation legislation and placed on top of the hierarchy under the Constitution Act 1945 the Republic of Indonesia. Elucidation of Article 7 Paragraph (1) Item b Law No. 12/2011 states that what is meant to the MPR Decree is MPRS Decree and MPR Decree as referred to in Article 2 and

[1] Yudha Bhakti Ardiwisastra, *Interpretation and Law Construction*, (Bandung: Alumni, 2000) p. 11; Bambang Sutiyoso, *Legal discovery methods: Effort to Realize Definitely Law and Justice,* (Yogyakarta: UII Press, 2012), p. 113 – 117, 120.

[2] Muchamad Ali Safa'at, on Workshop Study on the Status of the MPR Decree Post-Determination Act No. 10 of 2011"The position of the MPR decree System in Indonesia Legislation", Papers, Malang: Assessment Center for Constitutional Committee and the Regional Autonomy Development Center faculty of Law, Brawijaya University, 10 August 2012. It is also contained in https://www.mpr.go.id/files/pdf/2011/11/14/eksistensi-ketetapan-mpr-pasca-uu-no-12-tahun-2011-1321247847.pdf, accessed on 29 November 2014.

Article 4 MPR Decree No. I/People's Consultative Assembly/ 2003.

Thus not all MPR Decree has ever seen, and then to be in force by this law, but the extent of the MPR Decree are still applicable under Article 2 and Article 4 MPR Decree No. I/People's Consultative Assembly/2003Indeed, although Law No. MPR Decree 10/2004 does not include the type and hierarchy of legislation (as described before), but still have binding legal force by MPR Decree No. I/People's Consultative Assembly / 2003 "recognized" under the provisions of Article 1 of the Transitional Provisions and Supplementary Rules the Republic of Indonesia 1945 Constitution.

The existence of MPR Decree in the types and hierarchy of regulatory legislation, in terms of explanation of Law No. 12/2011 was, it gave birth to legal issues in the form of a conflict between the provisions of Article 4 MPR Decree No. I/People's Consultative Assembly/2003 to the Article 7 (1) of Law No. 12/2011. The provisions of Article 4 MPR Decree No. I/People's Consultative Assembly/2003 state that some of the MPR Decree remains valid until to the formation of the law. In another side, Article 7 Paragraph (1) of Law No. 12/2011 put MPR Decree above the law in terms of legal hierarchy has consequences that legislation law must not contradict to the MPR Decree; consequently the product on Law states that the provision cannot be higher are not applicable. This provision is certainly contrary to Article 4 of MPR Decree No. I/People's Consultative Assembly/2003 which states that the MPR Decree would been invalidated if it is set in the Act. But if you use the logic of Law No. 12/2011 which puts MPR Decree above the law, then that should be used is the provision of Article 4 MPR Decree No. I/People's Consultative Assembly/2003 in which it confirms the substance of Article 7 Paragraph (1) Item b Law No. 12/2011.

The contradiction was also brought consequences to the issue of the possibility of testing MPR Decree. The entry of MPR Decree as a kind of legal products under the Constitution the Republic of Indonesia 1945 raises the question of what if any provision of MPR Decree considered contrary to the Constitution the Republic of Indonesia 1945, when People's Consultative Assembly no longer has the authority to establish MPR Decree which revoke or change it. The Constitutional Court has the authority to test MPR Decree, specifically for MPR Decree referred to in Article 4 of MPR Decree No. I/People's Consultative Assembly/2003, due to the provisions of article that has been equalized MPR Decree associated with the Act. While the MPR Decree specified in Article 2 MPR Decree No. I/People's Consultative Assembly/2003, the Constitutional Court does not have the authority to test for the provisions of Article 2 itself does not allow any change or repeal to the Act. The MPR Decrees in Article 2 MPR Decree No. I / People's Consultative Assembly / 2003 can be positioned as part of the constitution widely.

The existence of MPR Decree in the hierarchy of regulatory legislation has implications that MPR Decree (which is still in force; *in fact* produced by the highest institution) could automatically become the norm of law or regulations make reference to the rules below. Meanwhile, at the level of implementation of the 1945 amendment to the Constitution the Republic of Indonesia has brought changes, both the elimination and the establishment of state institutions. Position each state institution dependent on the duties and powers granted by the Constitution the Republic of Indonesia 1945. As for the impact of the change itself that is against People's Consultative Assembly as the highest state institution to the shift particularly evident in the position, duties, and responsibilities. MPR after the Republic of Indonesia 1945 amendment to the Constitution no longer be a state agency that holds and implement fully the sovereignty of the people. People's Consultative Assembly position aligned to the other state institutions; no longer the term "highest state institutions"

Thus, MPR Decree before the Republic of Indonesia 1945 amendment of the Constitution is the rule *(regeling)* and has a (level) position is above the law. After the amendment of the Constitution the Republic of Indonesia 1945, the position of MPR Decree no longer the basic rules and are *beschikking.* In fact there MPR Decree is equivalent to the Act referred to in Article 4 MPR Decree No. 1 / People's Consultative Assembly / 2003. So that the legality and functionality MPR Decree in the regulatory system of laws and regulations in Indonesia, of course is also changing.

Re-imposition of MPR Decree to the legal position is above the law, so that legality should be viewed as a policy direction to policy makers in the formation of legislation, certainly raises the polemic within the constitutional system of NKRI. Herein lies the urgency of synchronization (compatibility) between the presence of MPR Decree in the hierarchy of legislation for the establishment of legislation as the provisions of Article 7 Paragraph (1) Item b Law No.12 / 2011 with the position of People's Consultative Assembly after the 1945 amendment to the Constitution the Republic of Indonesia "parallel "to the other state agencies. One of the fundamental changes in the Republic of Indonesia Constitution of 1945 is the change in Chapter I of the form and sovereignty, in particular Article 1 Paragraph (2) which is the touchstone of constitutionality existence MPR Decree in Article 7 Paragraph (1) Item b Law No. These 12/2011. A change in Article 1 Paragraph (2) has changed the structure of state power as the implementation of the principle of popular sovereignty. The amendment brings the consequences of changing the institutional structure of the state and the authority of state institutions.

Changes in the provisions of Article 1 Paragraph (2) has a background as mentioned I Dewa Gde

Palguna[1] when delivering the final response fraction at the time of the discussion of rule changes MPR became supremacy of the constitution in the Third Amendment to the Constitution the Republic of Indonesia 1945 as follows. All factions agreed that the sovereignty of the people must be respected; democracy must be developed, and to the mechanism of checks and balances must be established. This had repercussions on the idea that sovereignty is not only run by People's Consultative Assembly, but also by other state agencies, or even by the people directly through General Election. Therefore approved the formulation: "Sovereignty is in the hands of the people and done according to the Constitution". Thus, the people's sovereignty is not only done by the Assembly, but also by all state agencies and by the people themselves, as stipulated in the Constitution.

Article 1 Paragraph (2) the Republic of Indonesia 1945 Constitution states: "Sovereignty belongs to the people and carried out according to the Constitution". Results of the Third Amendment to the Constitution of NKRI have the original formula: "Sovereignty is in the hands of the people and carried out entirely by the Assembly". The consequence of this amendment, which the People's Consultative Assembly is, now no longer has an exclusive position as the sole perpetrator or the implementing agency Sovereignty of the people.

People's Consultative Assembly is now no longer has an exclusive position as the sole executing agency principals or sovereignty of the people. People's Consultative Assembly is no longer fully carried out the people's sovereignty. In addition to the People's Consultative Assembly there are other state institutions as actors or implementers sovereignty of the people. For example, the President is elected directly by the people are also perpetrators or executors sovereignty of the people. Similarly, in certain cases, such as certain material changes of the Constitution the Republic of Indonesia 1945, prior to the change by the institutional procedures through People's Consultative Assembly, it can also be determined once held a referendum to ask the people first agreement with respect to the change plan. With the organization of this referendum, People's Consultative Assembly also means that it can no longer refer to as the executor sovereignty of the people with the authority that is absolute.

Ordening subject or where *locus of sovereignty* is no longer listed explicitly, because it is no longer single, and moreover can be understood by reading other articles with regard to the implementation of the people's sovereignty. Did not understand the Constitution should not just focus on one article only? On the other side, which also needs to be stressed in the article above is that the sovereignty of the people was carried out by the Constitution or under the provisions of the constitution. In practice, the sovereignty of the people could not be implemented in accordance with the Constitution. Therefore, here confirmed the principle was espoused *'constitutional democracy'* which basically nothing other than the principle of a democratic state based on the law as other remains of the same currency with the principles of a democratic constitutional state *(democratische rechtsstaat)* equally the Republic of Indonesia Constitution adopted in 1945, according Asshiddiqie [2].

Changes wording of Article 1 Paragraph (2) the Republic of Indonesia Constitution 1945 which indicates a paradigm shift from the supremacy of the Constitution in 1945 the Republic of Indonesia institutions (People's Consultative Assembly) are the supremacy of the constitution is the people's sovereignty. Starting from the idea of the sovereignty of the countries listed in the Republic of Indonesia Constitution in 1945 that looked at the speech of the Founding Fathers during the first session of BPUPKI. On May 29, 1945 Yamin already alluded to in his speech in front of the members BPUPKI.[3]

In the time trial there are various formulas that go into the script compiling results. In the discussion of Article 1 Paragraph (2) it seems clear that the formulation of the text prior to the 1945 changes establish sovereignty of the people is fully implemented by the Assembly as the highest state officials. Assembly is regarded as the embodiment of the people who hold sovereign state.

Paragraph (2) on the script before the amendment which states that sovereignty is in the hands of the people together to the paragraph (2) of Article 1 of the Constitution Temporary (Provisional Constitution) in 1950, but it does not exist in the Constitution of the Republic of Indonesia (KRIS) in 1949. If in the 1945 sovereignty was carried out by the Assembly, the Provisional Constitution of 1950 sovereignty was implemented by the Government together to the House of Representatives (DPR), whereas in the Constitution of 1949 RIS sovereignty was implemented by the Government together the House of Representatives and the Senate[4].

Certainly the sovereignty of the people is fundamental in modern constitutional and democratic. When the 1945 changes took place, the concept of sovereignty of the people get much of a response from BP MPR. That process resulted in a series of changes to the section regarding the concept of sovereignty of the people.

The idea sovereignty of the people by Asshiddiqie includes the idea of political and economic

[1] The Constitutional Court of the Republic of Indonesia. *Comprehensive script Amendment of the Constitution Republic of Indonesia 1945: Background, Process and Results Discussion 1999-2002.* Book I. (Jakarta: Secretariat General and Registrar of the Constitutional Court, 2010), p. 386.

[2] Jimly Asshiddiqie, *Consolidated manuscript Act of 1945 After the Fourth Amendment,* (Jakarta: Study Center of Constitutional Law, Faculty of Law, University of Indonesia, 2002), p. 2, 3.

[3] J.C.T. Simorangkir and B. Mang Reng Say, *Act of 1945*, (Jakarta: Jambatan, 1971), p.24

[4] *Ibid*.

democracy. The idea is one of the concepts first developed in the framework of preparation for Indonesia's independence. The concept of sovereignty of the people has become an intellectual polemic between freedom fighters since the 1930s, long before modern concepts such as state law *(rechtsstaat)* and human rights, debated the purpose of drafting the Constitution the Republic of Indonesia 1945[1].

The Concept of *rechtsstaat*, democracy, and sovereignty of the people can be said to be derived from the modern concept adopted into thinking Indonesian state through interaction to the similar idea developed earlier in the thinking of the practice in western countries.[2] Popular sovereignty is a concept of the supreme power in the country. The concept of power, according to Jack N. Nagel covers the scope of power (scope of power) and power range (domain of power). Scope of sovereignty (the domain of sovereignty) concerns about the activity or activities covered in the function of sovereignty, whereas sovereignty related to the subject and the holders of sovereignty (sovereign)[3]. Scope of sovereignty includes two important things: (1) who holds the highest authority in the country and (2) what is controlled by the highest authority.

The Republic of Indonesia 1945 Constitution change results firmly adhere to the principle sovereignty of the people *(volkssouvereiniteit*). As described before, the joint country is mentioned in Article 1 Paragraph (2): "Sovereignty belongs to the people and carried out according to the Constitution." In the script before the 1945 changes, the article reads, "Sovereignty is in the hands of the people and carried out entirely by the Assembly". Doctrine sovereignty of the people adopted in the preamble and body of the Constitution of 1945 is the Republic of Indonesia sovereignty which is generally interpreted as the ultimate authority to determine all the powers that exist in the country (*competence de la competence*).

Events change Article 1 Paragraph (2) of the 1945 the Republic of Indonesia Constitution, at least bring five basic consequences. First, the assertion that the principle of democracy that a form of sovereignty of the people in its implementation should follow the rule of law culminating in the supremacy of the constitution. Secondly, MPR will no longer hold power as fully implementing the sovereignty of the people, so that in itself is no longer the highest state institution. Third, sovereignty of the people implemented by the organs of the constitution as determined by the Constitution, so that the organs can no longer be distinguished hierarchically (at least can be said to be equal), but are differentiated according to the functions and powers granted by the Constitution the Republic of Indonesia 1945. Fourth, change the authority of the state institutions, particularly MPR. Fifth, a change in the relationship between the state institutions that more reflective the principle of mutual monitoring and offset.

Before the change the Republic of Indonesia Constitution of 1945, MPR is fully implementing sovereignty of the people so that other state agencies a mandate from MPR. To run these powers, Article 3 the Republic of Indonesia Constitution 1945 (Before the Amendment) authorizes the MPR set Constitution and State Policy Guidelines. To run the authority of legal products produced by MPR is Constitution and MPR Decree. A high state institution to execute its mandate is to implement the MPR Decree and be responsible to MPR.

With the changing the implementation of the principle of popular sovereignty in the Constitution the Republic of Indonesia in 1945 resulted in changes in the position and authority of MPR. Since all state institutions to get power from the Republic of Indonesia Constitution of 1945, the MPR no longer has the authority to form MPR Decree. MPR functions as the constituent institutions (authorized to change and determine the Constitution) and the function "sort" the joint session of the two parliamentary institutions, namely House of Representatives and the Regional Representative Council (DPD). Therefore, the provisions of Article 3 the Republic of Indonesia 1945 Constitution changed to "The People's Consultative Assembly authorized to change and establish the Constitution".

The consequences of the supremacy of the constitution and the hierarchy of legislation in a legal system, according to Asshiddiqie, that the constitutional changes would require revision of legislation within the legal system and the implementation by the authorities. Similarly, the 1945 amendment to the Constitution the Republic of Indonesia pretty basic and covers almost all the provisions contained inside it, to be followed by changes in legislation thereunder and implementation by the competent organ. The provisions of legislation that has existed which is based on certain provisions of the Constitution the Republic of Indonesia 1945 before the change shall be reviewed for compliance with the provisions of the Constitution changes result the Republic of Indonesia 1945.[4]

The Republic of Indonesia constitutional changes in 1945 and changes in the underlying legislation must be

[1]Jimly Asshiddiqie, *The idea of Sovereignty of the People in the Constitution and Implementation in Indonesia: Shifting Balance between Individualism and Collectivism in the Policy Political Democracy and Economic Democracy the Three Period, 1945 - 1980's,* Dissertation (Jakarta: UI, 1994), p.5

[2] *Ibid*, p. 6.

[3] *Ibid*, p. 13, 14.

[4] Jimly Asshiddiqie & the Legal Experts, *The Constitution and the constitutional Indonesia of Contemporary,* (Jakarta: The Biografi Institue, 2007), p.28.

followed by according institutional changes paradigms and new provisions, as well as changes in consciousness and culture of law enforcement and legislation. This becomes very important because the old legislation has established a culture of institutions, legal culture, and the bureaucracy that is not easily removed and replaced[1].

Constitutionally, the position of MPR Decree when viewed from the institution the author is MPR. After NKRI Constitutional changes, the state agency MPR Decree maker is no longer the highest state institution which is above other institutions. Position MPR is level with institutions DPR, DPD, The President and other high state institutions. One of the principles of the legislation that the Regulation Legislation made by higher authorities will have a higher position anyway MPR Decree is still valid is a product of the Assembly at the time was the highest state institutions, automatically issued a legal product has a higher position as well and also is *Regeling* because they were authorized by the constitution, when compared with the laws made by the Parliament and the President which is an agency under MPR.

It was certainly different from the MPR Decree set by MPR after the amendment to the Constitution the Republic of Indonesia 1945. Going forward, MPR Decree is level with the law and only in the form of *beschikking*[2]. So it should MPR Decree now is not seated on the types and hierarchy of legislation for the creation of legislation. But MPR Decree remains in force; still have the constitutional power under Article 1 Additional Rules and the Transitional Provisions of the Constitution the Republic of Indonesia 1945. MPR Decree can still be a formal legal source.

Thus, the constitutionality the existence of the MPR Decree in Article 7 Paragraph (1) Item b Law No. 12/2011 is unconstitutional. The existence of the MPR Decree the types and hierarchy of legislation as in Article 7 Paragraph (1) Item b Law No. 12/2011 was incompatible with the constitutional values Regarding the organization of the State is experiencing a paradigm shift from the supremacy of the Assembly be constitutional supremacy which seated all state institutions are equal as the provisions of Article 1 Paragraph (2) Constitution the Republic of Indonesia 1945.

The existence of the MPR Decree in Article 7 Paragraph (1) Item b Law No. 12/2011 should be placed on the transitional provisions of Law regarding the establishment of this legislation. The MPR Decree was intended, namely the provisions of Article 2 and Article 4 MPR Decree No.1/MPR/2003 the review of the matter and the legal status of the MPR Decree /S Year 1960 up to 2002 has remained a source of formal law. The issuance of the MPR Decree No. 1/MPR/2003 was a result of changes in the institutional structure of the country, resulting in changes of positions, functions, duties, and powers of state institutions. Transitional provisions have substance transitional norms to address the possibility of a legal vacuum due to the transition of normative the old provisions to new provisions[3]. So, contains adaptation old rules to the new regulations to avoid legal problems arise.

Before the constitutional changes the Republic of Indonesia 1945, MPR is the highest state body and authorities set State Policy Guidelines so that the rising the MPR Decree that is *regeling*. But, after the amendment to the Constitution the Republic of Indonesia 1945, MPR is equivalent to other high state institutions and is not authorized to determine of State Policy Guidelines, so can only publish the MPR Decree that is *beschikking*.

4. Conclusion

The constitutionality of the existence of the MPR Decree in Article 7 Paragraph (1) Item b Law No. 12/2011 on the Establishment of Laws and Regulations is unconstitutional. The existence of the MPR Decree in the types and hierarchy of legislation as Article 7 Paragraph (1) Item b Law No. 12/2011 it was incompatible with the value of the constitution on the organization of the country experiencing a paradigm shift from the supremacy of the Assembly be constitutional supremacy which seated all state institutions are equal as the provisions of Article 1 Paragraph (2) the Republic of Indonesia Constitution in 1945 that "Sovereignty belongs to the people and implemented according to the Constitution".

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[1] *Ibid*., p. 29.
[2] *Ibid.*, p. 38.
[3] Jimly Asshiddiqie, ***Concerning Law in Indonesia,*** (Jakarta: The Secretariat General of The Constitutional Court of the Republic of Indonesia, 2006), p.187

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