

# **Strengthening Constitutional Complaint Authority: Enhancing Citizens' Constitutional Rights Protection in Indonesia**

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## **Abstract**

Constitutional complaint serves as a vital self-defense mechanism for citizens in safeguarding their constitutional rights against the actions of state authorities. The role of the Constitutional Court in upholding the constitution and protecting citizens' rights is of paramount importance. However, certain challenges have arisen due to the absence of a mechanism to address state administrators' actions that violate citizens' constitutional rights, the lack of a defined framework for constitutional complaints within the Constitutional Court's jurisdiction, and the limited application of the constitutional complaint law in Indonesia. Consequently, this article examines the urgency of expanding the Constitutional Court's authority to hear constitutional complaints as an important legal reform in Indonesia. Employing normative and conceptual study methods, as well as a statute approach, this

paper explores the concept of constitutional complaints as a means to strengthen citizens' constitutional rights protection. The ultimate goal is to guide the Constitutional Court towards a more explicit and effective constitutional complaint mechanism during its review of laws, thereby providing optimal safeguards for citizens' constitutional rights.

## Keywords

*Constitutional Complaint, Protection of Constitutional Rights, Law Reform*

## Introduction

Indonesia, the 78th country to adopt the concept of an independent Constitutional Court, followed in the footsteps of Austria (1920), Italy (1947), and Germany (1945). The establishment of the Constitutional Court came after the amendment of the Constitution of the Republic of Indonesia in 1945, representing a significant stride towards a stronger democracy. By creating a separate institution dedicated to upholding the dignity of the 1945 Constitution, which stands as the highest norm in the country, Indonesia paved the way for a more robust democratic system.<sup>1</sup>

The Constitutional Court's authority, as stipulated in Article 24C paragraph (1) of the 1945 Constitution, empowers it to adjudicate at the first and final instance, with its decisions being conclusive, in matters related to testing laws against the Basic Law, settling disputes over the authority of state

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<sup>1</sup> The Constitutional Court of Indonesia was established on August 13, 2003, as mandated by the 1945 Constitution's third amendment. Its creation aimed to strengthen the country's judicial system and safeguard constitutional supremacy. The Court began its operations on August 15, 2003, in Jakarta. Its primary mission is to uphold the constitution's integrity, settle constitutional disputes, and review laws' compatibility with the constitution. In its early years, the Constitutional Court faced challenges in establishing its credibility and authority. However, over time, it gained prominence and demonstrated its significance in safeguarding citizens' constitutional rights. The Court played a vital role in ensuring the democratic process and the rule of law in the country. *See also* Stefanus Hendrianto, *Law and Politics of Constitutional Courts: Indonesia and The Search for Judicial Heroes*. (London: Routledge, 2018); Fence M. Wantu, Novendri M. Nggilu, and Mellisa Towadi. "Indonesian Constitutional Interpretation: Constitutional Court Versus the People's Consultative Assembly." *Journal of Legal, Ethical and Regulatory Issues* 24, No. 6 (2021): 1-11; Simon Butt. "The Indonesian Constitutional Court: Reconfiguring Decentralization for Better or Worse?." *Asian Journal of Comparative Law* 14, No. 1 (2019): 147-174; Simon Butt, Melissa Crouch, and Rosalind Dixon. "The First Decade of Indonesia's Constitutional Court." *Australian Journal of Asian Law* 16, No. 2 (2016): 1113-119.

institutions granted by the Basic Law, dissolving political parties, and resolving election disputes. Furthermore, Article 24C paragraph (2) adds that the Constitutional Court also holds the responsibility to render a decision on alleged violations by the President and/or Vice President, as per the Constitution, based on the opinion of the House of Representatives.<sup>2</sup>

As an institution parallel to the People's Consultative Assembly, House of Representatives, Regional Representative Council, President, Supreme Court, and Judicial Commission, the Constitutional Court firmly occupies a position of high authority within the state's institutional structure. Its presence and powers have reinforced the idea that the Constitutional Court plays a crucial role in safeguarding the integrity of Indonesia's democratic system.

The presence of the Constitutional Court is crucial in upholding the principles of the rule of law and democracy, as emphasized in Article 1, paragraphs (2) and (3) of the 1945 Constitution. One of the vital characteristics of these principles is ensuring the guaranteed fulfillment of constitutional rights for citizens. To achieve this, a mechanism must be provided as a legal remedy in cases where constitutional rights are violated, and this is where the role of the constitutional judiciary comes into play.<sup>3</sup>

However, the current legal remedies available, such as the examination of the 1945 Constitution of the Republic of Indonesia, are not sufficient in addressing violations of constitutional rights. These violations may not always stem from legal norms conflicting with the 1945 Constitution but can also occur due to the actions or omissions of state institutions or public officials. For instance, consider the case of someone arrested for taking garden wood for household needs, mistakenly treated as an illegal logging suspect due to a misinterpretation by law enforcement in the field. Such an instance reflects the injustice caused when a public institution's misinterpretation of the law results in the infringement of citizens' constitutional rights.<sup>4</sup>

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<sup>2</sup> See also Saldi Isra, "Titik Singgung Wewenang Mahkamah Agung dengan Mahkamah Konstitusi." *Jurnal Hukum dan Peradilan* 4, No. 1 (2015): 17-30; Aninditya Eka Bintari, "Mahkamah Konstitusi sebagai Negative Legislator dalam Penegakan Hukum Tata Negara." *Pandecta Research Law Journal* 8, No. 1 (2013): 83-91; Sugiono Margi, and Maulida Khazanah. "Kedudukan Mahkamah Konstitusi dalam Kelembagaan Negara." *Jurnal Rechten: Riset Hukum dan Hak Asasi Manusia* 1, No. 3 (2019): 25-34.

<sup>3</sup> Herlambang P. Wiratraman, "Constitutional Court and Democracy in Indonesia, by Simon Butt." *Bijdragen tot de taal-, land-en volkenkunde/Journal of the Humanities and Social Sciences of Southeast Asia* 174, No. 1 (2018): 84-87; Simon Butt, *The Constitutional Court and Democracy in Indonesia*. (Leiden: Brill, 2015); Marcus Mietzner, "Political conflict resolution and democratic consolidation in Indonesia: The role of the constitutional court." *Journal of East Asian Studies* 10, No. 3 (2010): 397-424.

<sup>4</sup> Vino Devanta Anjas Krisdanar, "Menggagas Constitutional Complaint dalam Memproteksi Hak Konstitusional Masyarakat Mengenai Kehidupan dan Kebebasan Beragama di Indonesia." *Jurnal Konstitusi* 7, No. 3 (2010): 185-208.

Another example is the case of the Joint Decree (hereinafter as SKB) on Ahmadiyya, which presents challenges in terms of legal prosecution. The nature of SKB makes it difficult to subject to judicial review before the Constitutional Court (MK) since the Court is authorized only to test laws against the Constitution. Similarly, the Supreme Court lacks the authority to examine SKB since it does not fall under the category of laws and regulations subject to the Supreme Court's review, as indicated by Law No. 12 of 2011 that outlines the hierarchy of laws and regulations. Attempting to sue SKB in the State Administrative Court (PTUN) may not be appropriate either, as the substance contained in the SKB consists of arrangements, not determinations, due to its general content.<sup>5</sup>

Thus, while the existence of the Constitutional Court is vital in preserving the rule of law and democracy, there remain challenges in providing adequate legal remedies for cases involving violations of constitutional rights that arise from the actions or decisions of state institutions or public officials, as demonstrated by the examples cited.<sup>6</sup>

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<sup>5</sup> See Ismatu Ropi. *Religion and Regulation in Indonesia* (New York: Springer Link, 2017); Melissa Crouch, "Judicial Review and Religious Freedom: The Case of Indonesian Ahmadis." *The Sydney Law Review* 34, No. 3 (2012): 545-572. It is further explained that the ambiguity surrounding the freedom of religion in Indonesia refers to the uncertainty and debates regarding the interpretation and implementation of this right in the country. Although the freedom of religion is guaranteed by the Indonesian Constitution, the 1945 Constitution, in practice, there are still differing views and conflicts concerning the boundaries and scope of this right. This ambiguity has been further highlighted by specific rulings from the Constitutional Court, which influence the position and understanding of religious freedom. As the constitutional watchdog, the Constitutional Court has the authority to test laws and regulations deemed incompatible with the constitution, including those related to religious freedom. Post such rulings, the position of religious freedom may change or be reinforced, depending on the interpretations and policies adopted by the government and relevant parties. Often, Constitutional Court decisions can lead to controversies and impact the social and political dynamics in Indonesia. To address this ambiguity, efforts towards inclusive and fair harmonization of religious freedom are essential. Enhancing dialogue and participation of all stakeholders, including civil society and religious groups, is crucial to achieving a shared understanding and maintaining a balance between religious freedom and other rights in Indonesia's diverse cultural and religious context. See also Muhammad Syafi'ie, "Ambiguitas Hak Kebebasan Beragama di Indonesia dan Posisinya Pasca Putusan Mahkamah Konstitusi." *Jurnal Konstitusi* 8, No. 5 (2011): 675-706; Bani Syarif Maula, "Perlindungan Hukum Atas Hak-Hak Kelompok Agama Minoritas di Indonesia." *Mahkamah: Jurnal Kajian Hukum Islam* 5, No. 2 (2020): 248-269; Faiq Tobroni, "Keterlibatan Negara dalam Mengawal Kebebasan Beragama/Berkeyakinan (Komentar Akademik atas Judicial Review UU No. 1/PNPS/1965)." *Jurnal Konstitusi* 7, No. 6 (2010): 97-118; Bambang Ali Kusumo, and Abdul Kadir Jaelani. "Mengagas Constitutional Complaint dalam Konstitusi Indonesia dan Politik Hukum Islam." *Wacana Hukum* 24, No. 1 (2018): 1-18.

<sup>6</sup> Heru Setiawan, "Mempertimbangkan Constitutional Complaint Sebagai Kewenangan Mahkamah Konstitusi." *Jurnal Lex Jurnalica* 14, No. 1 (2017): 11-23.

Despite the Constitutional Court's frequent hearings on violations of the constitution, there remains a significant concern among justice seekers—the absence of a function within the Constitutional Court to accommodate and address constitutional complaints. These complaints, also known as personal grievances, are an extraordinary means for every citizen to defend their constitutional rights. The constitutional grievance mechanism allows individuals or groups to express their disapproval or rejection of how the government treats them, particularly when they feel that their constitutional rights are being violated. The importance of the constitutional complaint lies in its ability to ensure that the state's administration, including lawmaking, governing processes, and court decisions, does not infringe upon constitutional rights. However, the current issue revolves around the lack of a judicial mechanism to resolve such cases.

The Constitutional Court's powers and obligations, as stated in the 1945 Constitution, are currently limited to four powers and one obligation. As a result, it does not include the provision to handle constitutional complaints, leaving justice seekers without a dedicated avenue to address violations of their constitutional rights.<sup>7</sup> To uphold the principles of justice and safeguard citizens' rights, it becomes imperative to address this problem. Finding a solution to incorporate the handling of constitutional complaints within the Constitutional Court's mandate and determining the appropriate process for citizens to voice their grievances are essential steps in ensuring a more robust and accessible system for defending constitutional rights.<sup>8</sup> This will further reinforce the Constitutional Court's role as a key institution in upholding democracy and the rule of law in Indonesia.

This research is prompted by several pressing issues, which underscore the importance of addressing the following concerns:

1. The absence of any regulation or legal provision pertaining to the addition of the authority of Constitutional Complaint in the Constitutional Court of the Republic of Indonesia.
2. The lack of a mechanism to address actions or decisions by state administrators that violate the constitutional rights of citizens.

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<sup>7</sup> Pan Mohamad Faiz, and Josua Satria Collins. "Penambahan Kewenangan Constitutional Question di Mahkamah Konstitusi sebagai Upaya untuk Melindungi Hak-Hak Konstitusional Warga Negara (Expanding the Authority of Constitutional Question in the Constitutional Court as an Effort for Protecting Citizens' Constitutional Rights)." *Jurnal Konstitusi* 15, No. 4 (2018): 688-709.

<sup>8</sup> Supriardoyo Simanjutak, Ridho Alfaiz, and Melisa Ambarita. "Urgensi Perluasan Kewenangan MK terhadap Constitutional Question dan Constitutional Complaint sebagai Wujud Perlindungan Hak Konstitusional Warga Negara." *Legislatif* 4, No. 2 (2021): 297-304.

3. The possibility of misinterpretation and misapplication of laws by judges throughout the judicial process, from the first instance to the last.
4. The need for a well-defined formulation of constitutional complaint arrangements within the Constitutional Court's authority and the feasibility of implementing constitutional complaint laws in Indonesia.

These issues highlight significant gaps in the existing legal framework and mechanisms for safeguarding citizens' constitutional rights. Addressing these concerns through research and proposing potential solutions will contribute to strengthening the rule of law, protecting individual rights, and enhancing the effectiveness of the constitutional justice system in Indonesia.

## Method

This article employs a qualitative descriptive method with a normative jurisprudence approach to analyze the issues by drawing connections to previous cases, relevant laws, regulations, and related legal precedents. The information is gathered from diverse sources, including both print and online media, and supplemented by insights from prior studies. By adopting this approach, the article aims to provide a comprehensive and well-informed examination of the subject matter, offering valuable insights into the challenges and potential solutions regarding the incorporation of the Constitutional Complaint in the Constitutional Court of the Republic of Indonesia.

## The Urgency of Increasing the Constitutional Complaint Authority of the Constitutional Court: An Indonesian Law Reform

The concept of a constitutional complaint refers to a form of citizen complaint lodged with the constitutional court when the state, including the government, people's representative institutions, and the Supreme Court, enacts policies or takes actions that contradict the constitution and infringe upon the rights of citizens. Constitutional complaints are typically pursued as a last resort, only after exhausting all legal remedies available through other state institutions.<sup>9</sup>

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<sup>9</sup> Constitutional complaint in Indonesia refers to a legal mechanism that allows citizens to challenge the constitutionality of laws, government actions, or decisions that allegedly violate their constitutional rights. It provides an avenue for individuals to seek redress when they believe their rights have been infringed upon by state institutions, public officials, or

In various countries, the authority to handle constitutional complaints lies within the purview of the Constitutional Court. However, in Indonesia, the 1945 Constitution does not explicitly grant such authority to the Constitutional Court. During the consideration of constitutional amendments in 1945, the proposal to include constitutional complaints as part of the Constitutional Court's authority was rejected. One reason for this rejection was to prevent an accumulation of cases in the Constitutional Court, as it was designated as a criminal prosecutor according to the 1945 Constitution.

This historical context has contributed to the current stance, where the Constitutional Court's jurisprudence is not supplemented with constitutional complaints. Instead, the Court primarily focuses on handling numerous cases, particularly those related to disputes over regional elections. There are concerns that adding constitutional complaint authority might further burden the Court and could impact the quality of its decisions, which has been perceived to decline in recent times. As a result, the urgent need for the current regulation of constitutional complaint authority is questioned. Instead, there is a call to prioritize restoring public trust in the Court's functioning. Once public trust is reestablished and the circumstances permit, the option of introducing constitutional complaints within the Court's jurisdiction can be revisited. Nevertheless, it is worth noting that there are certain cases that remain unresolved due to not falling within the jurisdiction of existing judicial institutions, creating a gap in addressing constitutional violations.

In the similar context, it is also emphasized that the constitutional complaint serves as a vital avenue for citizens to assert their rights, and it presents an opportunity for the Constitutional Court to break through existing deadlocks. To address issues that may not explicitly fall within its authority, the Constitutional Court must be willing to make legal breakthroughs and assert its jurisdiction. The legal review mechanism takes two forms: concrete

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other entities exercising state power. The concept of constitutional complaint was introduced in 2002 as part of the 3rd Amendment to the 1945 Constitution of Indonesia. This amendment granted the Constitutional Court the authority to hear and decide on cases brought forth through the constitutional complaint mechanism. To file a constitutional complaint, the applicant must have exhausted all available legal remedies through other state institutions before turning to the Constitutional Court. The Court's decision on a constitutional complaint is final and binding, and it may lead to the annulment of laws, regulations, or actions deemed unconstitutional. *See also* Tanto Lailam, and Nita Andrianti. "Legal Policy of Constitutional Complaints in Judicial Review: A Comparison of Germany, Austria, Hungary, and Indonesia." *Bestuur* 11, No. 1 (2023): 75-94; Standy Wico, et al. "The Future of Constitutional Complaint in Indonesia: An Examination of Its Legal Certainty." *Indonesian Journal of Law and Society* 2, No. 1 (2021): 59-78; Agsel Awanisa, Yusdianto Yusdianto, and Siti Khoiriah. "The Position of Constitutional Complaint in the Constitutional Court of the Republic of Indonesia." *Pancasila and Law Review* 2, No. 1 (2021): 61-78.

examination, which involves evaluating specific laws or regulations in particular cases (constitutional questions), and abstract examination, known as judicial review.

The concept of constitutional complaint has emerged due to the inability of other state institutions, particularly courts and governments, to resolve certain issues effectively. Citizens may resort to constitutional complaints when they feel that their cases are not being justly addressed in regular courts. However, the Constitutional Court's current authority is limited to testing laws against the Basic Law, leading to a division of review authority between the Constitutional Court and the Supreme Court. This division should also apply to constitutional complaint matters. When the subject matter involves government policies violating citizens' rights guaranteed by law or entails unlawful acts, it may be adjudicated through the general court, ultimately leading to the Supreme Court.<sup>10</sup>

Throughout its existence until mid-2010, the Constitutional Court of the Republic of Indonesia has received numerous applications that were essentially constitutional complaints, related to the review of laws. However, due to the absence of explicit authority for constitutional complaints in the 1945 Constitution, the Constitutional Court lacked the mandate to adjudicate them.

According to Sulardi, the inclusion of constitutional complaint authority in the Constitutional Court does not require constitutional amendments or revisions to the Constitutional Court Law. It can be achieved through constitutional conventions without the need for formal legal changes. As an institution of judicial power, the Constitutional Court is entrusted with making decisions based on the principles of certainty, justice, and expediency, which are the philosophical purposes of the law.<sup>11</sup>

Constitutional judges can utilize these three purposes of law to process cases and reach fair decisions. The Constitutional Court is even allowed to engage in *ultra petita*, meaning it can decide beyond what was initially requested by the applicant. This requires judges to be courageous in their decision-making process. For example, Judge Sarpin's decision to determine Budi Gunawan as a suspect in a pretrial hearing, even though the determination of suspects was not originally part of the pretrial lawsuit procedure according to the Criminal

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<sup>10</sup> Rahmat Muhajir Nugroho, "Urgensi Pengaturan Perkara Constitutional Complaint dalam Kewenangan Mahkamah Konstitusi." *Jurnal Ilmu Hukum Novelty* 7, No. 1 (2015): 11-24.

<sup>11</sup> Sulardi Sulardi, and Fitria Esfandiari. "Kewenangan MPR dan Wacana Perubahan Terbatas Konstitusi." *Jurnal Majelis* 12, No. 1 (2019): 163-198; Sulardi Sulardi. "Mewujudkan Cheks And Balances dalam Penyusunan Undang Undang." *Masalah-Masalah Hukum* 42, No. 2 (2013): 282-291.



Procedure Code, was initially controversial but later gained respect as a judicial ruling.<sup>12</sup>

In practice, the Constitutional Court has encountered various constitutional issues related to the implementation of laws, government policies violating citizens' constitutional rights, conflicting general judicial decisions, alleged irregularities in law enforcement, and government negligence in preparing the Permanent Voter List for the Presidential Election. Many of these cases involve substantial elements of constitutional complaints. Therefore, the authority to address constitutional complaints should be further strengthened and formalized in law, especially in the explanatory part of the Constitutional Court Law. This would contribute to the Court's effectiveness in addressing constitutional issues and protecting citizens' rights.<sup>13</sup>

## The Concept of Constitutional Complaint as a Form of Protection of Citizens' Constitutional Rights

The application of a new concept, such as the constitutional complaint, necessitates careful adaptation to the existing legal system. This crucial step is taken to prevent any potential instability that might arise from the implementation of the concept without proper synchronization with the original legal framework in Indonesia.

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<sup>12</sup> On Tuesday (February 17, 2015), the Civil Society Coalition filed a complaint against Judge Sarpin to the Judicial Commission (KY). The complaint alleged that Sarpin violated Article 8 and Article 10 of the Code of Ethics and Code of Conduct for Judges when he made a decision in a pretrial case involving Commissioner General Budi Gunawan. In his ruling, Sarpin declared that the suspect status assigned to Budi by the Corruption Eradication Commission (KPK) was legally invalid, and that the KPK lacked the authority to investigate the case. Consequently, the KPK handed over the case to the Attorney General's Office, which in turn delegated it to the National Police. Subsequently, the Constitutional Court amended Article 77 of the Criminal Procedure Code to include the determination of suspects, searches, and seizures as objects of pretrial review. This case sparked debate and criticism within civil society and legal circles regarding the interpretation and application of the pretrial mechanism in Indonesia's legal system. *See also* Yusi Amdani, "Implikasi Penafsiran Undang-Undang oleh Hakim Praperadilan dalam Perkara Tindak Pidana Korupsi." *Mimbar Hukum* 27, No. 3 (2015): 459-471; Ismail Rumadan, "Membangun Hubungan Harmonis dalam Pelaksanaan Fungsi Pengawasan Hakim oleh Mahkamah Agung dan Komisi Yudisial dalam Rangka Menegakkan Kehormatan, Keluhuran dan Martabat Hakim." *Jurnal Hukum dan Peradilan* 5, No. 2 (2016): 209-226.

<sup>13</sup> Hamdan Zoelva, "Constitutional Complaint dan Constitutional Question dan Perlindungan Hak-Hak Konstitusional Warga Negara." *Jurnal Media Hukum* 19, No. 1 (2012): 152-165.

Before incorporating the concept of constitutional complaint, a synchronization process is essential. This process involves aligning the new concept with the existing legal system already established within the realm of Indonesian law. By doing so, any potential conflicts or disruptions can be mitigated, ensuring a smooth integration of the constitutional complaint mechanism. The legal system of Indonesia already encompasses various institutions and mechanisms that play distinct roles in the administration of justice. Therefore, introducing the concept of constitutional complaint must be done in a way that complements and enhances the overall effectiveness of the existing system. Proper synchronization will allow for a seamless implementation of the constitutional complaint and contribute to the preservation of the rule of law and protection of citizens' constitutional rights.

The first aspect to consider is the legal action taken by the government in Indonesia. By examining government actions, we can determine the types of case positions that fall under the category of "*resolvable through constitutional complaints*." As a state of law, Indonesia obliges the government to adhere to written laws, known as legal norms, while carrying out actions or policies.

Legal norms can be classified into two categories: general and individual legal norms. Constitutional complaint efforts can be directed towards special applicable legal norms, as the nature of constitutional complaints allows certain individuals or groups to make such complaints. On the other hand, when it comes to general legal norms, the complaint process is well-defined. Complaints related to lower-level regulations are taken to the Supreme Court, while those concerning higher-level legislation are brought before the Constitutional Court. The testing of general legal norms must be based on the hierarchy of legislation since their formation is determined by the legislative hierarchy.

By understanding the distinctions between general and special applicable legal norms and the hierarchy of legislation, it becomes possible to discern the scope and applicability of constitutional complaints in the context of government legal actions in Indonesia. This knowledge is crucial in determining which cases can be addressed through the constitutional complaint mechanism and contributes to upholding the rule of law and safeguarding citizens' rights in the country.<sup>14</sup>

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<sup>14</sup> I. Dewa Gede Palguna, "Constitutional Complaint and the Protection of Citizens the Constitutional Rights." *Constitutional Review* 3, No. 1 (2017): 1-23; M. Lutfi Chakim, "A Comparative Perspective on Constitutional Complaint: Discussing Models, Procedures, and Decisions." *Constitutional Review* 5, No. 1 (2019): 96-133; Rifandy Ritonga, "Analisis Pengujian Pengaduan Konstitusional (Constitutional Complaint) pada Mahkamah Kostitusi Indonesia sebagai Salah Satu Upaya Perlindungan Hak-Hak Warga Negara." *Keadilan Progresif* 7, No. 1 (2016): 1-16; Abdul Hakim Siagian, "Constitutional

The next aspect of synchronization regarding the application of constitutional complaints to the legal system in Indonesia pertains to legal products that have previously been submitted to the Supreme Court. In such cases, the Supreme Court's examination of the legal product does not necessarily involve testing it against the 1945 Constitution. Consequently, the Supreme Court's decision might not explicitly address the potential violation of constitutional rights.

Here, the constitutional complaint plays a crucial role in assessing whether the Supreme Court's decision indeed infringes upon the constitutional rights of the citizens. By allowing citizens to file constitutional complaints, the Constitutional Court can review the compatibility of the Supreme Court's decisions with the provisions of the 1945 Constitution. This mechanism ensures that any potential violations of constitutional rights are appropriately addressed, even if they were not explicitly considered during the previous examination at the Supreme Court.

In this way, the constitutional complaint mechanism serves as an important safeguard to protect citizens' rights and guarantees that the legal system maintains adherence to the constitution. By providing citizens with a recourse to assess the constitutionality of decisions that have already undergone Supreme Court examination, the constitutional complaint reinforces the rule of law and ensures the consistent protection of citizens' constitutional rights in Indonesia.

The incorporation of constitutional complaints in the legal system of Indonesia ensures that every legal product, whether issued by the executive, legislature, or judiciary, can undergo constitutional testing, thereby safeguarding the constitutional rights of the community. Before the implementation of the constitutional complaint mechanism, only legislative legal products in the form of laws could be constitutionally tested against the 1945 Constitution through the process of judicial review filed with the Constitutional Court.

However, executive products (*decisions*) and judicial products (*court decisions*) lacked a specific avenue for constitutionality tests. With the introduction of the constitutional complaint mechanism, citizens now have the opportunity to challenge the constitutionality of executive and judicial products. This mechanism empowers individuals and groups to bring their cases to the Constitutional Court, ensuring that decisions and actions taken by the executive and judiciary are in compliance with the provisions of the 1945 Constitution. By extending the scope of constitutional testing to all legal

products and providing a constitutional complaint avenue, the legal system reinforces its commitment to protect citizens' constitutional rights. This enhancement in the system contributes to a more robust framework of justice and upholds the rule of law in Indonesia.

The procedure for submitting an application to the Constitutional Court to be resolved through constitutional complaint should be straightforward and not excessively complex. It is important to keep it similar to filing an application in the Constitutional Court as stipulated in Law No. 24 of 2003 concerning the Constitutional Court. However, a crucial consideration is that applicants should not be required to be accompanied by a lawyer or legal representative. Every citizen has the right to defend their constitutional rights directly before the panel of judges of the Constitutional Court. This approach fosters citizen education and enhances their understanding of the constitution, as it allows for direct interaction with the judicial process. The constitution is a reflection of the people's voice and is meant to be accessible to everyone without the need for special legal expertise.

The files that meet the formal requirements and reach the research stage regarding the case should be considered valid submissions. To facilitate this process, optimal socialization efforts from the Constitutional Court should be undertaken to educate applicants on the procedural stages and requirements for their case to be entered and resolved through the constitutional complaint mechanism. While the mechanism does not require a lawyer or legal representative, it does not diminish the role of lawyers in advocating for citizens seeking justice. Lawyers can play a role before a case is submitted through the constitutional complaint mechanism, especially during the preliminary stages when the case is still undergoing legal efforts before reaching the authorized institution.

In the context of constitutional complaints, the priority is to uphold the essence of the constitution itself, which is created by and for the people in general. While lawyers play a vital role in other legal matters, the constitutional complaint mechanism should allow citizens direct access to justice, ensuring that the constitution serves its purpose as a tool for citizen protection and empowerment. The categories and procedures for constitutional complaints should be clearly outlined and communicated to applicants before their cases are examined by the Constitutional Court, ensuring a fair and transparent process.<sup>15</sup>

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<sup>15</sup> Okky Alifka Nurmagulita, *Constitutional Complaint sebagai Perlindungan Hak Konstitusional Warga Negara dalam Kewenangan Mahkamah Konstitusi Republik Indonesia. Thesis.* (Yogyakarta: UIN Sunan Kalijaga Yogyakarta, 2019); Muhammad Siddiq Armia, "Ultra Petita and the Threat to Constitutional Justice: The Indonesian Experience." *Intellectual Discourse* 26, No. 2 (2018): 903-930; Paulina M. Latuheru, et al.

Regarding the examination conducted by the Constitutional Judges, they use the 1945 Constitution as the test tool, employing textual or constitutional interpretations. However, the nature of the decision rendered by the Constitutional Judges continues to be a subject of debate. One perspective, represented by Laica Marzuki, advocates for the Constitutional Court's decision to be akin to a lawsuit declaration, specifically termed "*null and void an objectum litis*." This means that the ruling is derived directly from the application, and its judgment may involve declaring the legal product "*void or invalid*" while also providing a "*recommendation or fatwa*."

In this context, decisions in the form of recommendations or fatwas are considered more appropriate to avoid the appearance of the Constitutional Court wielding direct judicial power over legal product cases resolved through the constitutional complaint mechanism. By issuing recommendations or fatwas, the Constitutional Court can provide guidance and offer its expertise on the matter without imposing a binding judicial decision. This approach allows for a more collaborative process, fostering a constructive dialogue between the Constitutional Court and the authorities responsible for issuing the legal products in question.<sup>16</sup>

Therefore, in addition to declaring legal products as "*void or invalid*," the Constitutional Court's decisions may also encompass recommendations or fatwas, which should be conveyed to the relevant authorities responsible for those products. This approach ensures that the Constitutional Court plays a vital role in interpreting the constitution and safeguarding citizens' rights while maintaining a collaborative and constructive relationship with other branches of the government.

To adopt a constitutional complaint mechanism, the Constitutional Court of the Republic of Indonesia must carefully consider several requirements:

1. *Strengthening the Organizational Structure*

The Constitutional Court should prioritize enhancing its organizational structure, particularly by increasing the number of trained and experienced constitutional researchers and clerks. These professionals play a crucial role in supporting the Court's examination of cases and decision-making processes. Adequate expertise and resources are essential to ensure efficient and effective handling of constitutional complaint cases.

2. *Authority for Preliminary Examinations*

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"Urgensi Constitutional Question dan Constitutional Complaint, Arti Penting Pemberian Kewenangan Tersebut Oleh Mahkamah Konstitusi." *Jurnal Indonesia Sosial Teknologi* 3, No. 2 (2022): 351-357.

<sup>16</sup> Krisdhanar, "Menggagas Constitutional Complaint dalam Memproteksi Hak Konstitusional Masyarakat Mengenai Kehidupan dan Kebebasan Beragama di Indonesia."

The Constitutional Court should be granted the authority to conduct preliminary examinations through panel judges, rather than leaving this responsibility solely to registrants or administrative employees. This screening mechanism aims to assess whether a case should proceed for further examination in court or be dismissed immediately. Such an approach ensures that only relevant and eligible cases are considered, streamlining the court's workload and focusing on constitutionally significant issues.

### 3. *Clear Limits on Eligible Cases*

To maintain a well-structured constitutional complaint mechanism, clear limitations must be established on which cases can be tested by the Constitutional Court. These limitations may include the following:

- a. **Filing Party**  
Only individuals who have directly suffered a loss of constitutional rights should be allowed to file a constitutional complaint. This requirement ensures that the mechanism is used for genuine grievances related to constitutional violations.
- b. **Exhaustion of Legal Remedies**  
Applicants should be allowed to submit a constitutional complaint only after they have exhausted all available legal remedies through other state institutions. This requirement ensures that the constitutional complaint serves as a last resort when other avenues for redress have been exhausted.
- c. **Time Limit**  
The Constitutional Court should set a reasonable time limit for accepting constitutional complaint cases after a court decision, act, or action by a public official or state institution that violates the applicant's constitutional rights. This time limit aims to ensure timely and efficient processing of cases.

By fulfilling these requirements, the Constitutional Court can establish a robust and effective constitutional complaint mechanism, empowering citizens to protect their constitutional rights while maintaining the integrity and efficiency of the judicial process.

Furthermore, it is highlighted that one of the essential functions of the Constitutional Court is to serve as the protector of citizens' constitutional rights. This role is directly related to the material content of the constitution, which aims to ensure the guarantee of citizens' constitutional rights. By granting the Constitutional Court of the Republic of Indonesia the authority of Constitutional Complaints, along with potential alternative additions and applications, there is a strong hope that this mechanism can effectively realize

the ideals of the rule of law and provide maximum protection for citizens' constitutional rights.

The introduction of the Constitutional Complaint mechanism equips citizens with a powerful tool to challenge actions or decisions by the government, legislature, or judiciary that may violate their constitutional rights. This mechanism reinforces the principle of accountability and ensures that all branches of government act in accordance with the constitution. By having recourse to the Constitutional Court, citizens can seek justice and redress when their constitutional rights are infringed upon, further strengthening the democratic fabric of the nation.<sup>17</sup>

Through the implementation of Constitutional Complaints, the Constitutional Court's role as the guardian of the constitution is reinforced, fostering public trust and confidence in the judiciary. The mechanism empowers individuals to actively participate in the protection of their rights and the preservation of the rule of law, ultimately contributing to a just and equitable society. In this way, the Constitutional Court's expanded authority can play a pivotal role in upholding the principles of justice and equality enshrined in the constitution, ultimately benefiting all citizens of Indonesia.

## Conclusion

Finally, the study concluded and highlighted that constitutional complaints are crucial self-defense mechanisms for citizens to safeguard their constitutional rights against state power through court proceedings. A designated constitutional court, like the Constitutional Court of the Republic of Indonesia, plays a central role by having the authority to decide on constitutional complaint cases, overseeing and protecting constitutional rights. The absence of such authority has led to inadmissible cases where citizens' rights are violated due to state actions. Urgently, the Constitutional Court should incorporate the constitutional complaint mechanism within its authority, even if not explicitly stated in the constitution, through clarifications in the Constitutional Court Law. This expansion would enhance the Court's role in addressing constitutional complaints and ensuring maximum protection for citizens' rights. Legislators should actively reformulate and grant the Constitutional Court this authority, allowing a more focused consideration of cases. Establishing procedural regulations to

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<sup>17</sup> Benito Asdhie, and Eza Ista. "Kewenangan Mahkamah Konstitusi dalam Perlindungan Hak Konstitusional Warga Negara Melalui Konstitusional Complaint." *De Lega Lata: Jurnal Ilmu Hukum* 4, No. 2 (2019): 160-174.

accommodate constitutional complaints will strengthen justice and fairness in Indonesia's legal system and provide citizens with a vital avenue to defend their constitutional rights.

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