

The Future of Constitutional Complaint in Indonesia: An Examination of Its Legal Certainty

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ABSTRACT: To date, there is no trial mechanism for Indonesian citizens to claim their rights through the constitutional complaint, even if the Constitutional Court has existed since 2003. Consequently, there has been a mechanism for upholding and promoting constitutional rights, and it has been regarded to improve Indonesian democracy. Adhere to this view, in democratic states like Indonesia and Germany, constitutional rights are often ignored by the state, even though these rights are essential in the rule of law. This paper aimed to revisit the range of a constitutional complaint following its legal certainty wield to the Indonesian Constitutional Court. This paper used juridical research by examining legal principles, legal systematics, legal synchronization, legal history, legal theory, and using a comparative law approach. This paper showed that as the constitutional complaint different from judicial review, the adoption of this mechanism should be an alternative instead of an ultimate mechanism under the constitutional rights doctrine. To ensure legal certainty to a constitutional complaint, a legal basis was needed by regulating and applying it for actual implementation in society. Meanwhile, the Constitutional Court in adjudicating a constitutional complaint could be realized through the amendment of the 1945 Constitution.

KEYWORDS: Constitutional Complaint, Constitutional Court, Indonesian Constitution.



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I. INTRODUCTION

Historically, Indonesia had adopted a *rechtsstaat* concept or a government based on the law as both mentioned by referring to legal scholars and the constitutional definition.¹ A *rechtsstaat* was originally applied in the Civil Law, which later spread in modern Indonesia through the Dutch's legal colonization.² One of *rechtsstaat*'s significant elements deals with protecting human rights manifested by the government in examining actions against constitutional rights. Such a kind of constitutional rights violation is not a recent problem. However, the inadequacy of the mechanism to uphold and promote constitutional rights through the court has been recently accommodated in Indonesia after the constitutional amendment from 1999 to 2002.³ If the government violates constitutional rights against citizens, the Constitutional Court can promote constitutional rights, which in particular, power typically includes the constitutional complaint. The Former Constitutional Chief Justice Mahfud MD argued that the constitutional complaint is the lawsuit filed to the constitutional court for claiming the violations of constitutional rights.⁴ However, the Indonesian Constitutional Court lacks this procedure as part of its judicial power.⁵ Even a constitutional complaint is closely related to protecting the constitutional rights violated by a public institution's policies.

As the constitutional complaint's absence yields to the Constitutional Court, some judicial decisions are increasingly important in the current legal discourse. The Constitutional Court made such judicial decisions in the decision was No. 16/PUU-I/2003 on the review of Article 68 of the Supreme

¹ Sulaiman Sulaiman, "*Rekonseptualisasi Hukum Indonesia*" (2017) 12:2 *Pandecta Research Law Journal* 98–110.

² This concept includes the protection of human rights, state's arrangement power, law-based government, and the administrative court. Oemar Seno Adji, *Seminar Ketatanegaraan Undang-Undang Dasar 1945* (Jakarta: Seruling Masa, 1966) at 24.

³ Muhammad Bahrul Ulum & Nilna Aliyan Hamida, "*Revisiting Liberal Democracy and Asian Values in Contemporary Indonesia*" (2018) 4:1 *Constitutional Review* 111–130 at 123.

⁴ Moh. Mahfud MD, *Demokrasi dan Konstitusi di Indonesia: Studi Tentang Interaksi Politik dan Kehidupan Ketatanegaraan* (Jakarta: Rineka Cipta, 2003).

⁵ *Ibid.*

Court Law No. 14 of 1985 in which the petitioners asked for reconsidering the Supreme Court decision. This petition was rejected by the Constitutional Court because the petition filed was a constitutional complaint case for which that the Constitutional Court does not have such power.⁶ On the other hand, the Constitutional Court considered a constitutional complaint,⁷ through its decision No. 102/PUU-VII/2009 on the review of the Presidential Election Law No. 42 of 2008 dealing with the permanent voters' list.⁸ It was deemed to breach petitioners' constitutional rights in the 2009 Presidential Election.⁹ The complaint was filed because of the dissatisfaction with the General Election Commission that ignored unregistered voters in the permanent voters' list.¹⁰ The Constitutional Court implicitly agreed on the constitutional complaint by regulating certain norms in providing an alternative for unregistered voters to remain participating in the election through citizenship cards or passports.¹¹

This paper contained further recommendations about this issue. It mainly dealt with the challenges of law enforcement due to the possibility of the Constitutional Court's power for the constitutional complaint following the distinction or limitation of authority granted to the Administrative Court and the Constitutional Court. It was essential for further examination in avoiding the power overlap and ensuring legal uncertainty. The other analysis was about the number of judges needed due to additional court cases for future directions after adopting the constitutional complaint. The accumulation of cases that decrease the judges' panel concentration should be avoided after an adjustment of judges.

⁶ Hamdan Zoelva, "Constitutional Complaint dan Constitutional Question dan Perlindungan Hak-hak Konstitusional Warga Negara" (2012) *Jurnal Media Hukum* 19:1 at 160.

⁷ I Dewa Gede Palguna, *Pengaduan Konstitusional (Constitutional Complaint) Upaya Hukum Terhadap Pelanggaran Hak-Hak Konstitusional Warga Negara* (Jakarta: Sinar Grafika, 2013).

⁸ Muhammad Bahrul Ulum & Dizar Al Farizi, "Implementasi dan Implikasi Putusan MK Terhadap Hak Konstitusional Warga Negara Indonesia" (2009) 6:3 *Jurnal Konstitusi* at 93.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid* at 95.

This paper aimed to examine the constitutional complaint's scope, and its legal certainty granted to the Constitutional Court. This paper has three primary issues. First, it discussed to what extent the scope of a constitutional complaint. Second, it analyzed to what extent the Constitutional Court's legal certainty related to examining constitutional complaint cases. Third, to what extent the Constitutional Court's position and power granted for a constitutional complaint in Indonesia.

II. METHODS

This paper was juridical research by examining legal principles, legal systematics, legal synchronization, legal history, legal theory, and using a comparative law approach.¹² The data used in this paper was secondary data, mostly from books and journal articles.¹³ Besides, this paper descriptively presented qualitative data to explain the main issues. The comprehensive study started from the philosophical concept followed by a juridical description of the lack of regulatory instruments in adopting the constitutional complaint.

III. THE SCOPE OF THE CONSTITUTIONAL COMPLAINT

At the outset, it is necessary to outline the scope of a constitutional complaint. The scope is of a divider and a differentiator between the various understandings about a constitutional complaint. This discussion is intended to avoid misunderstandings and mistakes in the future. In the constitutional complaint concept, every erroneous government measure, which potentially violates constitutional rights can be reported to the court. The constitutional complaint emphasizes the government's actions as a subject, not the government's laws or regulations. These subjects are government officials, both individual and state institutions, to undertake their responsibilities and functions.

¹² Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 2007).

¹³ *Ibid.*

A constitutional complaint is different from a lawsuit to the Administrative Court. The Administrative Court allows people disadvantaged or aggrieved by the government's actions to challenge before the court. The lawsuit's object filled to the Administrative Court is a government's actions in the actual form or *beschikking*. Then, it is necessary to overview the distinction between constitutional complaint and judicial review as the preliminary discussion. Because both of these mechanisms are closely similar and often equated in practice. On the other hand, it is not so familiar in the Indonesian society about the constitutional complaint. Consequently, many citizens who want to defend their constitutional rights do not respond to it through the legal mechanism.

The constitutional complaint is often linked to constitutional rights as causal relations under the constitutional doctrine. Constitutional rights are the rights guaranteed by the constitution.¹⁴ Meanwhile, a constitutional complaint is a lawsuit filed by an individual or by a citizen to the court against the negligence of a government action taken by an institution or public authority, which violates the concerned's fundamental rights.¹⁵ It appears that a constitutional complaint is more likely to lead to a complaint about the violation of citizens' constitutional rights. Therefore, a constitutional complaint is different from the existence of a judicial review, which has become the Constitutional Court's authority. Judicial Review is a mechanism to examine a law or legislation against the 1945 Constitution. It is different in scope from a constitutional complaint. In the constitutional complaint, the scope is the constitutional rights violated by the government's actions that should not have been carried out. The violation of constitutional rights is an essential issue to be resolved. It requires an authorized judiciary to adjudicate the case.

Recently, the cases of violation of constitutional rights have been filed through a judicial review mechanism containing a constitutional complaint. One of them is the case filed by Main bin Rinan through No. 16/PUU-

¹⁴ I Dewa Gede Palguna, *supra* note 7 at 39.

¹⁵ *Ibid* at 35.

I/2003.¹⁶ In this case, the complaint was filed because of the absence of a constitutional complaint in Indonesia. Judicial review is an alternative for citizens who feel their constitutional rights have been aggrieved. The mechanism for applying a constitutional complaint through a judicial review is crucial, giving citizens legal protection to defend their constitutional rights violated by the government. The scope of constitutional complaint still cannot be ascertained because it has not been regulated in Indonesia. We can compare it to several countries that have implemented this constitutional complaint's regulations to understand their scope. The German Constitutional Court is one of the courts that applies the constitutional complaint mechanism to its jurisdictions.

It is crucial to examine the prohibition of slaughtering animals sued by the Muslims in German according to their freedom of religion and worship under their beliefs.¹⁷ The prohibition of the slaughter of sacrificial animals was deemed not to violate the constitution.¹⁸ As a consequence, it cannot be examined through the German Constitutional Court. However, this prohibition violated religious freedom. Germany's constitutional complaint is outlined in Article 93(1), (4a), and 4b of Grundgesets. Based on Article 23(1) Part II of the German Basic Law, a request for a constitutional complaint must be covered by a minimum of three points. First, the lawsuit must clearly state the policies or decisions in the form of court decisions, administrative procedures, laws, and other policies deemed detrimental, accompanied by the decision number, government regulation number, and its enforced date until the time it is affected.¹⁹ Second, the lawsuit must clearly explain the constitutional rights that the enactment of regulation or decision has violated?²⁰ Third, the lawsuit must clearly explain how the

¹⁶ Heru Setiawan, "Mempertimbangkan Constitutional Complaint Sebagai Kewenangan Mahkamah Konstitusi" (2018) *Lex Jurnalica* 4:1 at 12.

¹⁷ Vito Devanta Anjas Krisdhanar, "Menggagas Constitutional Complaint Dalam Memproteksi Hak Konstitusional Masyarakat Mengenai Kehidupan dan Kebebasan Beragama di Indonesia" (2016) 7:3 *Jurnal Konstitusi* 185–208 at 188.

¹⁸ *Ibid.*

¹⁹ Arsyad Sanusi, *Tebaran Pemikiran Hukum dan Konstitusi* (Jakarta: Milestone, 2011) at 838

²⁰ *Ibid.*

regulation has or can provide constitutional impairment that the constitution has guaranteed.²¹

The other pattern is a constitutional complaint which applied in South Korea. The South Korean Constitutional Court's authority to adjudicate constitutional complaint cases is outlined in Article 68(1) and (2) of the Korea Constitutional Court Act.²² The examination of the request for a constitutional complaint was carried out without hearing the parties' statements. If the South Korean Constitutional Court grants this request for constitutional complaint, every state institution and the local governments are bound by the decision.²³ From the example, the two countries above (Germany and South Korea) have previously regulated and implemented the constitutional complaint mechanism in their country, which refers to constructing the constitutional complaint mechanism in Indonesia.

As in German practice, there is a precise regulation in the Basic Law of 1949, wielding the German Constitutional Court (Bundesverfassungsgericht)²⁴ to adjudicate constitutional complaint cases. According to this Basic Law, it is necessary to explain what constitutional rights are being violated and how this government action can bring out the constitutional loss that the constitution has guaranteed.²⁵ Indonesia's consideration to adopt such a mechanism is possible by amending the laws regarding the constitutional complaint. A clear explanation of what constitutional rights are violated and how the violations can occur will help prevent the abuse of the constitutional complaint in the future.

This provision was also implemented in the constitutional complaint in South Korea. A constitutional complaint can be filed by the individual or the party who has the authority or legal standing to file it in their Constitutional Court.²⁶ However, this lawsuit must be preceded by the judicial review process. If the court rejected the judicial review's motion, then the case can

²¹ *Ibid.*

²² *Ibid* at 840.

²³ I Dewa Gede Palguna, *supra* note 7 at 473-474.

²⁴ Arsyad Sanusi, *supra* note 19 at 838.

²⁵ *Ibid.*

²⁶ I Dewa Gede Palguna, *supra* note 7 at 463-464.

only be examined through the constitutional complaint.²⁷ If this mechanism were applied In Indonesia, it could reduce the abuse of a constitutional complaint. The party who wants to use a constitutional complaint needs to propose a judicial review to clear the legal standing. These countries have clearly stated the scope of a constitutional complaint in their court system, which differentiates it from judicial review. Learn from these two countries. Citizens' constitutional rights need more attention from the state because of their different scope from judicial reviews. Therefore, a constitutional complaint has a different scope from a judicial review. A constitutional complaint has focused on citizens' constitutional rights that have been violated due to government actions. Accordingly, to determine this constitutional complaint's scope, we need to learn from other countries because Indonesia's constitutional complaint has not been regulated yet.

IV. LEGAL CERTAINTY OF THE CONSTITUTIONAL COMPLAINT IN INDONESIA

In discussing the constitutional complaint, it cannot be detached from the legal certainty. Legal certainty becomes increasingly essential to uphold and promote constitutional rights due to Article 1(2) of the 1945 Constitution. It states that sovereignty lies in the hand of the people and is implemented according to the constitution. This article emphasizes constitutional democracy in Indonesia. Thus, in maintaining a legal certainty, it is necessary first to understand the principle of legal certainty. According to Van Apeldoorn, "legal certainty can also mean the things that can be determined by law in concrete things."²⁸ Meanwhile, according to Maria S.W. Sumardjono, legal certainty requires a set of laws and regulations that operationally supports its implementation. Empirically, the existence of these laws and regulations needs to be implemented consistently."²⁹

²⁷ *Ibid.*

²⁸ Van Apeldoorn, *Pengantar Ilmu Hukum* (Jakarta: Pradnya Paramita, 1990) at 24-25.

²⁹ Maria S.W. Sumardjono, "Kepastian Hukum dalam Pendaftaran Tanah dan Manfaatnya Bagi Bisnis Perbankan dan Properti" Jakarta, 6 Agustus 1997 at 1, cited in Muhammad Insan C. Pratama, *Kepastian Hukum dalam Production Sharing Contract* (FH UII, Yogyakarta, 2009) at 14.

From these two definitions, legal certainty can be manifested if laws regulate it. It can be an interesting issue to discuss because legal certainty is key to ensuring human rights. Following the constitutional mandate in the 1945 Constitution, it has been the government's responsibility to protect and become citizens' human rights. Legal certainty can then become one of the instruments for the government to start undertaking these constitutional mandates. From the legal perspective, violations of human rights are deemed to violate constitutional rights. Constitutional Justice Arief Hidayat agreed that constitutional rights were inseparable from human rights because they are guaranteed in the constitution.³⁰ The definition of the violation has been explained in Article 1(6) of Human Rights Law No. 39 of 1999. It states that the breach is the actions of a person or group (including state officials), whether intentional or unintentional or negligence unlawfully reduce, obstruct, limit, and/or deprive a person or group of people whose human rights guaranteed by this law, and do not get, or it is feared that there will be no fair and correct legal settlement, due to the legal mechanism.

It is undeniable that a constitutional complaint contributes to promoting democracy despite the mechanism to restore constitutional rights that the government previously impeded. According to the uncertainty of Indonesia's constitutional complaint, it can indirectly violate Indonesian citizens' human rights. Citizens who get unfair treatment or feel aggrieved by government officials' negligence do not have the right or a place to reveal their complaint. This right will only emerge and be born if there is a law that regulates it. Hence, a constitutional complaint must be legally declared in the Indonesian Constitution. Also, an institution is needed for citizens who wish to file a constitutional complaint. This institution refers to the state organ, which can examine the constitution, namely the Constitutional Court. Thus, the Constitutional Court has the power to handle a constitutional complaint. This discussion about the legal certainty of the constitutional complaint can be explained. First, legal certainty exists if there is legislation or positive law in Indonesia which regulates it. Legal certainty will arise if there is a

³⁰ Maria Rosari, *MK: Hak Konstitusional Warga Negara Terkait HAM*, Antara News, online < <https://www.antaranews.com/berita/578271/mk-hak-konstitusional-warga-negara-terkait-ham>>.

regulation regarding a constitutional complaint in the Constitutional Court Law. So it is necessary to examine the existence of rules regarding this constitutional complaint in the 1945 Constitution and the Constitutional Court Law.

According to Article 24C(1) of the 1945 Constitution, the Constitutional Court's power is limited and briefly formulated to examine laws against the constitution. This article only describes the general terms of the Constitutional Court's power but not a constitutional complaint. Reciprocally, in the Constitutional Court Law No. 24 of 2003, Article 10(1) of the Constitutional Court Law describes the Constitutional Court's power. However, there is no authority to try this constitutional complaint mechanism. In fact, before enacting the third amendment of Constitutional Court Law, there had been a motion to extend the Constitutional Court's power in adjudicating a constitutional complaint. This motion was stated early in Article 10A(1) in the Constitutional Court Bill's initial draft. On the other hand, the head of the Working Committee (Panja) of the Constitutional Court Bill, Adies Kadir, admitted that this motion was included in the Problem Inventory List (DIM).³¹ The related provision on the constitutional complaint was removed from the draft Constitutional Court Bill before it was passed, along with other regulations. It was considered to have provided much democratic line for citizens to complain when their constitutional rights have been violated, such as to the Administrative Court and the Indonesian Ombudsman.

In practice, even if there were no regulations regarding the Constitutional Court's power in receiving a constitutional complaint, there have been many cases of a constitutional complaint in Indonesia. For those cases, the issue of constitutional complaint has an urgency at recent. The citizens who want to complain about their losses due to the government's actions can perceive whether they report this case and fulfill their rights. It is necessary to discuss the constitutional complaint in Indonesia. The first case is an examination of Article 67 of the Supreme Court Law Number 14 of 1985 regarding the

³¹ Rofiq Hidayat, *RUU MK Dihilangkan dan Alasan Penghapusan Konstitusional Komplain*, Hukum Online: <<https://www.hukumonline.com/berita/baca/lt5f4ded279bec6/ruu-mk-disahkan-dan-alasan-penghapusan-konstitusional-komplain/>>.

Supreme Court Reconsideration decision's review contradicting Article 28D(1) of the 1945 Constitution. This case registered in the constitutional court as Main bin Rinan and his partners.³²

The parties filed the petition in an attempt to void the Supreme Court's decision regarding decision No. 179 PK/PDT/1998 because this decision was considered to infringe their constitutional rights, outlined in Article 28 D(1) of the 1945 Constitution. The Constitutional Court finally rejected the petition under the ground of no regulation on Indonesia's constitutional complaint. According to this first case, the Constitutional Court was fully obedient to the Constitutional Court Law, which did not regulate a constitutional complaint. The second case about the KPU arranged the permanent voters' list, which was considered negligent and detrimental to the applicant's rights in the 2009 presidential election. The petitioners, Refly Harun and Maheswara, appeal to Presidential Election Law's judicial review against the 1945 Constitution. On the completion, the Constitutional Court wisely decided to accept this petition so that voters who were not registered in the permanent voters' list can participate in the Presidential Election by showing their identity card or passport.

These two cases show a significant difference in the constitutional complaint. On the one hand, when a petitioner filed a constitutional complaint against the Constitution, the Constitutional Court immediately reject the case for the lacking of authority to be resolved. Meanwhile, when it comes to KPU negligence cases that harm society on a larger scale, the Constitutional Court immediately granted this constitutional complaint. Through these cases, it appears that the Constitutional Court is still inconsistent in accepting and rejecting a constitutional complaint. Hence, there is no legal certainty to the settlement. The appropriate way to the Constitutional Court is to maintain and apply the principle of legal certainty. As previously discussed, legal certainty will emerge if an arrangement is contained in Indonesian law and implemented in society. Therefore, in resolving cases of a constitutional complaint, which are also constitutional

³² Heru Setiawan, *supra* note 16 at 12.

rights of Indonesian citizens, it should be put under the authority to try the Constitutional Court.

V. THE FUTURE DIRECTION OF A CONSTITUTIONAL COMPLAINT IN INDONESIA

The Constitutional Court does not yet have the authority to examine cases of a constitutional complaint in Indonesia, both in the constitution and in the Constitutional Court act. Rather, the Constitutional Court is only authorized to handle cases to examine the law against the constitution, settle the disputes over the state institutions whose authorized in the constitution, decide the dissolution of political parties, and decide the disputes over the results of the general elections.

According to the constitution, the Constitutional Court also can make decisions on the House of Representatives' contention regarding alleged violations by the President or Vice President. These provisions are stated in Article 24C of the 1945 Constitution. Article 10 of the Constitutional Court Law extends the above constitutional article with the additional definition of Constitutional Court's first and final decision regarding President and/or Vice President impeachment.³³ These powers are described as the five constitutional powers granted to the Constitutional Court. These limited authorities show that the Constitutional Court is still not being the constitution's guardian progressively and needs to expand its powers through the constitution. Thus, the Constitutional Court is the only institution that can accomplish the universal constitutional rights of citizens. The Constitutional Complaint's authority has been proposed in the Revision of the Law on the Constitutional Court, namely Article 10A. However, it was canceled because it was suspected that it would cause a cumulation of constitutional complaint cases to the Constitutional Court.

³³ Muhammad Bahrul Ulum, "Mekanisme Pemakzulan Presiden dan/atau Wakil Presiden Menurut UUD 1945 (Antara Realitas Politik dan Penegakan Konstitusi)" (2010) 7:4 Jurnal Konstitusi 131–158 at 146.

Palguna explained that two forms of constitutional rights protection could be pursued through the Constitutional Court: judicial review and constitutional complaint. In constitutionality testing or judicial review, the law that being the object is the legislatures. In contrast, in a constitutional complaint, the object is the acts or negligences of government or public officials. In addition, in examining the laws' constitutionality, the issues that examined whether the norms or lawmaking process against the constitution and constitutional rights. In the case of a constitutional complaint, it discussed whether public officials' action has resulted from the violation of constitutional rights.³⁴

According to such power related to the protection of constitutional rights, Palguna stated that the only way to protect its constitutional rights in Indonesia was to examine laws against the constitution.³⁵ It implies that citizens can submit a complaint to the state when there are norms in the law that are considered contrary to the constitutional norms. They cannot complain about any mistakes or negligence of officials or the government's actions that lead to the violation of their constitutional rights. It also agreed by Firmansyah Arifin as the Head of the National Law Reform Consortium (KRHN) that there are frequent violations of the constitution. However, citizens who are violated do not have access to report.³⁶

The rationality of the 1945 Constitution requires that citizens who feel their constitutional rights are violated by law have the right to apply or sue the Constitutional Court. It is convenient with Article 1 and Article 29 of the Constitutional Court Act, which regulates the existence of laws related to petition submissions by petitioners. In this case, citizens feel that their constitutional rights have been violated. To protect constitutional rights, this argument is inadequate since the constitutional innovation emitted by the dictum of Article 24C(1) of the 1945 Constitution only protects

³⁴ I Dewa Gede Palguna, *supra* note 7 at 111.

³⁵ Herma Yanti, "Gagasan Constitutional Complaint Sebagai Kewenangan Baru Mahkamah Konstitusi dalam Perlindungan Hak Konstitusional" (2018) *Wajah Hukum* 2:2 at 188.

³⁶ HukumOnline, *Menggagas Constitutional Complaint Lewat Kasus Ahmadiyah*. Online: <<https://www.hukumonline.com/berita/baca/hol19269/menggagas-constitutional-complaint-lewat-kasus-ahmadiyah-/>>.

constitutional rights from the probability of violations caused by the law. It shows that the Constitutional Court's limitative power is only to adjudicate violations of the law against citizens' constitutional rights.

Meanwhile, the violations of the rights guaranteed by the 1945 Constitution are often caused by various factors such as regulations and concrete government actions. The rule under the legislature can be formally examined at the Supreme Court. In contrast, the government or state official's concrete steps can be examined in the Administrative Court. However, the two judiciary institutions' authority became overlapping power, including the Constitutional Court's judicial review. This overlapping power becomes an obstacle to examining the government's constitutional violations that do not depend on a single judicial institution. The 1945 Constitution has not assigned all public authorities' actions (legislative, executive, and judicial) as a legal object that the Constitutional Court can examine.³⁷

The Constitutional Court was established to ensure the constitution as the highest law to be adequately enforced. Therefore, the Constitutional Court is usually referred to as the guardian of the constitution. In conceiving its function as the guardian of the constitution, Ahmad Syahrizal argue that the Constitutional Court's authority is in judicial review of the law and is obliged to protect and ensure human rights through the manifestation of the constitutional principles. The functions and authorities of the Constitutional Court does not only place the importance of the interpretive principles of the 1945 Constitution but also takes the necessary steps for the realization of human rights following the mandate of the constitution.³⁸ The other reasonable argument refers to the nature of the constitutional complaint as a part of the constitutional interpretation related to constitutional rights, which are the constitution's contents. Thus, there is no reason for any other state institutions other than the Constitutional Court to examine a

³⁷ Fatkhurohman, et al., *Memahami Keberadaan Mahkamah Konstitusi di Indonesia* (Bandung: Citra Aditya Bakti, 2010) at 71.

³⁸ Ahmad Syahrizal, "Urgensi Proteksi Hak Konstitusi oleh MKRI" (2008) *Jurnal Konstitusi* 5:1 at 67.

constitutional complaint.³⁹ Accordingly, law related to constitutional complaint does not have a legal basis.

Indonesian scholars like Khairul Fahmi explained that Indonesia needs a judicial institution with a special authority to accept citizen complaints, especially for cases that are no longer the authority of existing judicial institutions such as the Supreme Court and judicial institutions under the Supreme Court. He gave an example where the state institutions lost in court, the court decisions were not carried out. Therefore, citizens must be given access to reclaim the petition to strengthen citizen rights that state administrators may neglect. Hence, the final target of the constitutional complaint is to fulfill and embodying human rights.⁴⁰ It becomes one of the legal opinions that legislators can consider in overcoming the vacuum of the constitutional complaint's norm.

Indonesia needs to immediately adopt a constitutional complaint as the Constitutional Court's new authority because many public claims regarding humanity issues that the court cannot settle. If this mechanism did not exist, the advocacy efforts of non-governmental organizations (NGOs) and other civil society movements would only be a discourse without settlement from the government or the courts. However, enhancing the constitutional complaint authority into Constitutional Court's jurisdictions is a complicated task due to the limitations of the Constitutional Court's authority granted by the constitution, especially Article 24C of the 1945 Constitution. The main problem is to amend the Constitutional Court's Authority, and we must amend the constitution first.

The constitutional complaint that is without clear restrictions results in the judiciary's dualism in an administrative settlement. The dualism can be avoided by limiting the judiciary's object. If the objects are administration recovery related to the administrative case, they can be brought to the Administrative Court. While the constitutional complaint will only adjudicate constitutional rights issues that have been violated due to the

³⁹ Gugun El Guyanie, *“Urgensi Pengujian Constitutional Complaint oleh Mahkamah Konstitusi Republik Indonesia”* (2013) In Right 3:1 at 192-193.

⁴⁰ Mahkamah Konstitusi, *Menimbang Pengaduan Konstitusional di Tangan MK*, Online: <<https://www.mkri.id/index.php?page=web.Berita&id=11641>>.

enactment of the administrative officials' decision. The number of cases that the Constitutional Court examined in 2020 was 139 cases,⁴¹ where 89 cases were decided by the court.⁴²

Through this additional authority of constitutional complaint, it indeed will be increasing the cases to the Constitutional Court. The possibility that many issues of a constitutional complaint brought to the Constitutional Court can be resolved by adding its judges. The additional member of judges is an adjustment to the expansion of the authority of the Constitutional Court. Therefore, there are no more problems to enact the constitutional complaint as a new authority of the Indonesian Constitutional Court.

VI. CONCLUSION

In ensuring the constitutional complaint to have legal certainty in Indonesia, the examination through juridical, historical and comparative legal analysis becomes inevitable. The existing regulations in Indonesia do not regulate whether the Constitutional Court can handle a constitutional complaint. It results in inconsistencies in the Constitutional Court's decisions on filing the cases of a constitutional complaint. Consequently, the Constitutional Court's power should include a constitutional complaint by taking into account many public complaints of related cases. In the end, the amendment of the 1945 Constitution should consider this inclusion as the constitutional guarantee for constitutional complaint in Indonesia. On the other hand, regarding this absence of constitutional complaint in the Constitutional Court, legislators should regulate it in the Constitutional Court Law to ensure this legal certainty.

⁴¹ Mahkamah Konstitusi, *Rekapitulasi Perkara Pengujian Undang-Undang*, Online: <<https://www.mkri.id/index.php?page=web.RekapPUU>>.

⁴² *Ibid.*

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