

Regulating constitutional complaint cases is the authority of the constitutional court

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Abstract

This research aims to determine the constitutional rights of citizens through constitutional complaints based on the authority of the Constitutional Court from the perspective of Constitutional Law. Types of normative juridical research with a statutory, conceptual, and case approach. The data sources used are primary, secondary and tertiary legal materials. The research results show that constitutional complaints as the authority of the Constitutional Court have become an urgent need to be enforced in the Unitary State of the Republic of Indonesia. The authority for constitutional complaints to the Constitutional Court is eliminated, the legal implication of which is to create protection for the human rights of Indonesian citizens from actions by government officials or individuals who injure citizens' human rights and recognition of the Constitution. The Court as an institution has the authority to submit constitutional complaints to the Constitutional Court. Authorised institution. Guardian of the Constitution. The Constitutional Court protects the constitutional rights of citizens if their constitutional rights are violated by the provisions of the law so that the law is then declared to be contrary to the Constitution. The possibility of violations of citizens' constitutional rights does not only occur through normative provisions in law. There are many ways and opportunities for citizens' constitutional rights violations, whether by the authorities or other parties. This is where we learn the importance of the Constitutional Complaints mechanism at the Constitutional Court.

Keywords: authority; constitutional complaint; the Constitutional Court

Introduction

Applying the constitutional inquiry mechanism in the constitutional justice system is part of providing maximum protection for citizens' constitutional rights. This protection is a



condition that cannot be eliminated in every legal (democratic) state. Indonesia also wants to realise the life of a democratic state and, at the same time, a rule of law, as emphasised by Article 1, paragraphs (2) and (3) of the 1945 Constitution (Palguna, 2010). Constitutional complaints embody the values of constitutionalism in the Pancasila legal state, complementing checks and balances, the basis for protecting human rights, and aiming to realise good governance (Alfiyah & Riyanto, 2019). Based on the authority of the Constitutional Court, if there is a violation of the human rights of citizens guaranteed in the constitution and the violation is contained in the provisions of laws and regulations, it can be straightened out through one of its powers, namely the authority of the Constitutional Court.

Usually, a constitutional complaint is made when all methods have been taken to obtain justice for their constitutional rights. So, it can be concluded that the Constitutional Court is the last place to seek justice and complain that the constitutional rights regulated in the 1945 Constitution of the Republic of Indonesia have been violated by a policy made by the government or public officials. In Indonesia, this constitutional complaint system has not been legally regulated. However, there are several cases tried by the Constitutional Court which fall into the realm of constitutional complaint. One is case number 16/PUU-I/2003, which Main bin Rinan and friends proposed. In this case, it is clear from the substance of the application submitted through the judicial review mechanism that it contains a constitutional complaint. This can be seen from the main case filed regarding the review of Article 67 of Law Number 14 of 1985 concerning the Supreme Court regarding the review of the Supreme Court decision, which is contrary to Article 28 D paragraph (1) of the 1945 Constitution concerning Law No. the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law.

Implementing Indonesia's Constitutional Question and Constitutional Complaint mechanisms is necessary for progressive and sustainable legal development. Anwar Usman, as Chief Justice of the Constitutional Court, explained that Constitutional Questions and Constitutional Complaints are some of the powers possessed by the Constitutional Court in various countries in the world whose trials are filed by judges or other parties in concrete cases (Adnyani et al., 2021).

Therefore, Constitutional Questions and Constitutional Complaints are submitted precisely because there are concrete cases that need to be understood so that they do not conflict with the constitution so that citizens as holders of people's sovereignty according to Article 1 number (2) of the 1945 Constitution of the Republic of Indonesia can be realised in a real way. Therefore, applying the Constitutional Question and Constitutional Complaint in Indonesia is a concrete effort to respect and protect the constitutional rights of citizens to the fullest.

Judging from the empirical facts, several complaints or complaint letters from public members, both individually and collectively, have entered the Constitutional Court. However, these various issues have not yet entered the scope of the current authority of the Constitutional Court. As a result, the space for reviewing the constitutionality of laws or constitutional review in Indonesia still needs to be narrower. It only covers tests of abstract norms and has yet to accommodate testing of concrete norms. This makes the life of the Indonesian people fulfil the principle of "justice delayed", which is another form of injustice (justice delayed is justice denied). Based on the background above, it is interesting to study the authority of the Constitutional Court in terms of the need to strengthen the role of Constitutional Questions and Constitutional Complaints as a form of protecting citizens' constitutional rights.

Method

This article uses a normative legal research typology (Marzuki, 2010). A process to find the rule of law (Sunggono, 2009), legal principles and legal doctrines in order to answer the

legal issues faced in order to achieve legal goals that reflect the values of justice. Analyse the legal norms that have been set by the authorised official (Salim & Nurbani, 2013). The normative legal research method is needed to present a legal argument. In legal research, it is called *rechtsonderzoek* in Dutch (Marzuki, 2001). Legal research is research conducted to find solutions to legal problems that arise to describe what should be regarding the issues raised (Susanti & Efendi, 2013).

This legal research was conducted to answer legal issues regarding the authority of the Constitutional Court. It is interesting to study the need to strengthen its role with constitutional complaints to protect citizens' constitutional rights. This study uses normative legal methods through statutory regulations and comparative studies. The statutory regulation approach is carried out to examine the protection of constitutional rights and the authority of the Constitutional Court. This study uses secondary data, which includes primary, secondary, and tertiary legal materials. The secondary legal materials used are laws and regulations, jurisprudence, agreements, and legal materials originating from the several countries studied. Secondary legal materials include books, scientific journals, and previous expert research. Tertiary legal materials include legal dictionaries, credible online media, and others.

Content analysis techniques are used from secondary data obtained through literature study techniques to get the right conclusions. To answer these legal problems, this research uses legal arguments. Research using legal arguments is research whose main characteristic is examining the application of the rule of law accompanied by legal arguments/considerations made by law enforcers and the interpretations underlying the enforcement [Abrianto et al., 2020]. Thus, this legal research will describe the legal ratio of policy implementation related to the authority of the Constitutional Court against Constitutional Lawsuits as a form of protection of citizens' constitutional rights. Through this research it is also hoped that it will become an *ius constituendum* in safeguarding the constitutional rights of Indonesian citizens.

In this legal research, the approaches used are statutory, conceptual approaches, and conceptual approaches (Adnyani, 2021). The statutory regulation approach is carried out by examining all statutory regulations and other regulations related to the legal issues handled so that in this study, the ratio of legislation, ontological basis and philosophical basis of related regulations can be identified (Suprpto, 2010). In this legal research, laws and regulations related to the authority of the Constitutional Court concerning Constitutional Complaints are examined as a form of protecting citizens' constitutional rights.

The conceptual approach is an approach that departs from the views and doctrines developed in the science of law to analyse legal issues (Mulyadi, 2012). In this study, a conceptual approach is used to the authority of the Constitutional Court regarding Constitutional Complaints as a form of protecting citizens' constitutional rights (Marzuki, 2017).

Results and Discussion

The Urgency of Protecting Constitutional Rights Through Constitutional Complaint

The protection of constitutional rights is a feature of a constitutional state. This is in accordance with the view of A.V. Dicey that the elements of a constitutional state include the fulfillment of the constitutional rights of citizens (Asmono, 2011). Article 1 point 3 of the 1945 Constitution of the Republic of Indonesia states that Indonesia is a country based on law. Indonesia as a rule of law adheres to the ideology of democracy based on the constitution. Thus, the limitation of state power can be seen from the constitutional rights of citizens determined by the constitution. In Indonesia, the adoption of constitutional rights has been regulated in Chapter XA of the 1945 Constitution of the Republic of Indonesia which legitimizes the protection of rights inherent in human dignity and worth from birth. On the other hand, constitutional rights must go hand in hand with the state's constitutional obligations. So that

the state's constitutional obligations contained in the 1945 Constitution of the Republic of Indonesia cannot be separated from the state's obligations.

State organs are still violating efforts to protect constitutional rights which have become the state's obligation. If we look closely at the data released by the Directorate General of Law and Human Rights (Taniady & Furqoni, 2022). In Indonesia, there is actually a mechanism for complaints of violations of constitutional rights, namely through a constitutional complaint to the Constitutional Court. However, the constitutional complaint mechanism is limited in nature. If a law violates constitutional rights, a judicial review can be carried out to the Constitutional Court. So it can be said that the petition submitted to the Constitutional Court is more focused on the law (judicial review). If examined further, efforts to violate constitutional rights often originate from state organs (executive, legislative and judicial), resulting in constitutional rights violations continuing without any party stopping them (Purnamasari, 2017).

This has indirectly violated the stipulation of the Indonesian state as a legal state based on democracy and has also violated the ideals of the state contained in the Preamble to the 1945 Constitution of the Republic of Indonesia, which, in essence, protects the entire nation and all of Indonesia's bloodshed. Therefore, to protect the constitutional rights of Indonesian citizens, it is necessary to carry out a constitutional complaint. In Mahfud MD's view, a constitutional complaint is an attempt to bring a case to the Constitutional Court due to violations of constitutional rights that do not have legal instruments or no longer have legal settlement channels (Setiawan, 2017). A constitutional complaint can also be interpreted as a citizen's complaint because there is treatment that violates constitutional rights, which in this case is carried out by the executive, legislature and judiciary. The existence of a constitutional complaint is a repressive action as well as a final action taken by the community when all legal efforts have been made to protect their constitutional rights [Hulwanullah, 2019]. Applying a constitutional complaint is also in line with the democratischerechtsstaat and guarantees the restoration of constitutional rights contained in the constitution.

The Urgency of Implementation and Expansion of the Authority of the Constitutional Court Against Constitutional Complaints as an Effort to Protect Citizens' Rights

Issues that often inspire the development of the principle of the rule of law based on Pancasila are the limitation of power and the protection of human rights. This issue has a core objective, namely to uphold social justice for all Indonesian people so that the desired ideals must always lead to people's justice (Zoelva, 2012). However, in the law enforcement process, obstacles are often encountered in the form of limited law enforcement at the Constitutional Court.

Upholding and protecting constitutional rights has been devoted to the function of the Constitutional Court as guardian of the substantive *marwah* of the 1945 Constitution of the Republic of Indonesia. So that if there are legal issues related to constitutional violations that result in the violation of the constitutional rights of everyone in Indonesia, then that is where the Constitutional Court must correct and resolve the problem that happened. However, in reality not all cases that can be filed by the Constitutional Court are like Constitutional Complaints. This has led to the rejection by the Constitutional Court of the authority to adjudicate which it does not have, as a result, applications are often not accepted even though the people really need the justice they must receive. However, this is where a legal breakthrough is needed to treat this dissatisfaction with progressive and responsive law enforcement measures in fulfilling substantive justice.

According to the progressive legal theory put forward by Prof. Satjipto, law is an institution that aims to bring people to justice in life, prosperity and happiness (Rahardjo, 2004). Progressive law has two main shafts in law, namely rules and behavior (Rahardjo, 2004). In addition, progressive law is based on two main assumptions, along with their main points and discussion (Rahardjo, 2005): a. "The law is for humans, not vice versa" The law exists

not for itself, but for something wider. When there is a legal problem, it is the law that should be reviewed and corrected, not people. b. "Law is not an absolute and final institution, because law is always in a continuous process" Law is an institution that develops and always perfects itself towards perfection. The quality of legal perfection can be reflected through the factors of welfare, justice, concern for the people, and others. This is the essence of law which is always in the process of becoming (law is a process of law in the making).

From the main points above, the idea of implementing Constitutional Complaint in Indonesia is not a mere figment, but has become a major urgency in fulfilling citizens' constitutional rights in an increasingly complex and varied period in terms of legal issues that arise in today's society. Now this need has become a logical need that must be accommodated and the need for the development of a progressive, responsive and sustainable constitutional life.

In addition, there is another urgency to fulfill it if it is reviewed based on responsive legal theory. This is so that the existence of the state can better meet the constitutional needs of citizens who are growing rapidly according to the times. We need to know that the responsive law put forward by Nonet and Selznick positions the law as a response to social provisions and people's aspirations (Tanya et al., 2006). This type of law relies on accommodation to accept social change in order to achieve justice and public emancipation.

In the view of Nonet and Selznick (Nonet et al., 2017), responsive law is law that is ready to adopt a new paradigm and leave the old paradigm. Law must be able to interact with other entities with the main goal of adopting various interests in society. It can be concluded that responsive law is no longer based on juridical considerations but has started to try to look at problems from various points of view to find substantive values of justice.

Regarding reforming this law, many letters of complaint from members of the public (both collectively and individually) have been submitted to the Constitutional Court (Perkara Pengujian KUHP, 2006, 2007 & 2009). Therefore, expanding the authority of the Constitutional Court is necessary for judges in carrying out their duties so that they can see and consider the constitutional needs of citizens, and can resolve complaints and complaints about their constitutional rights which are ignored by the state simply because there is no place for this authority. Legal Implications of Adopting a Constitutional Complaint in Indonesia

The legal implications that have the greatest impact are related to the duties and powers of the Constitutional Court. The Constitutional Court should have constitutional complaint authority, because the position of the Constitutional Court will deviate from the purpose of its establishment if it sticks to constitutional review. Because every product of state institutions outside the legislature, actions of public officials and final decisions of general courts that violate the constitutional rights of citizens will not be followed up by the Constitutional Court. Isn't the purpose of establishing a Constitutional Court not solely to protect citizens from arbitrary actions by the state which are always embodied in legal products (legislation), but basically as guardians and protectors of the constitution. So that any violation of the constitution, whether in the form of laws and regulations or in the form of actions and policies of public officials, can be requested for settlement to the Constitutional Court.

On the other hand, legal remedies for constitutional complaints through judicial review are too procedural and do not directly impact constitutional violations. A person who feels that the actions of a public official have violated his rights must first file an annulment of the relevant laws and regulations before obtaining justification that his rights have indeed been violated by the actions of a public official and a general court decision that is final.

Yet, according to the author, violations of constitutional rights must be dealt with immediately without cancelling the relevant laws and regulations first. Of course, by using the constitution as a touchstone. After all, not all constitutional violations stem from constitutional rights violations since the law's promulgation. It could be that a law is following the

Constitution, but the actions of public officials in carrying out the intent of the law violate the constitutional rights of the people. Thus, the need for an instrument to protect constitutional rights in the form of a constitutional complaint must depart from four awareness. First, awareness of the existence of acts of violation of constitutional rights committed by state apparatus. Second, awareness of violations of constitutional rights resulting from the issuance of general court decisions. Third, the awareness that not regulating or issuing laws and regulations would violate constitutional rights. Fourth, recognition of the Constitutional Court as the protector of the constitution. With this awareness, a constitutional complaint mechanism is definitely and absolutely necessary. The authority of the Constitutional Court to decide on constitutional complaints is currently still constrained because this authority has not been expressly stated in the 1945 Constitution. However, given the importance of protecting citizens' constitutional rights, the function of the Constitutional Court as a constitutional supervisory body is deemed necessary to have constitutional complaint authority. So far, one of the powers of the Constitutional Court has been to review laws against the 1945 Constitution (Judicial review), which means it is limited to violations of citizens' constitutional rights in the form of laws.

Conclusion

In fact, in Indonesia the protection of constitutional rights has been implemented, but in a limited nature which only focuses on laws and regulations that violate constitutional rights (judicial review). Therefore, the application of a constitutional complaint becomes an urgency that must be implemented. Constitutional complaints are the final step in protecting constitutional rights. The Constitutional Complaint is an attempt to make a constitutional complaint to the Constitutional Court regarding the criminalization of citizens' constitutional rights so that it is deemed necessary to defend these rights. So that this complaint will be a solution to create a democratic state based on law. Suppose the constitutional complaint authority to the Constitutional Court is adopted. In that case, the legal implication is the creation of the protection of the human rights of Indonesian citizens from the actions of government officials or individuals who violate the human rights of citizens and the recognition of the Constitutional Court as the guardian of the constitution.

Expansion and Application of Constitutional Complaint in Indonesia is a necessity for progressive and sustainable legal development. Referring to the explanation of law enforcement that is progressive and responsive in fulfilling Substantive Justice and Empirical Facts of Claims for Constitutional Rights Related to Constitutional Lawsuit Cases, it is necessary to expand the Duties of the Authority of the Constitutional Court which must be formulated in Article 24 C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the Constitutional Court Law and the Supreme Court Law are expected to provide protection for the rights of citizens as well as an effort to uphold a just law.

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