

## **COMPLAINT AUTHORITY FOR CONSTITUTIONAL COMPLAINT BY INDONESIA'S CONSTITUTIONAL COURT**

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### **Abstract**

*Constitutional Court will be able to provide protection for constitutional rights which will produce institutions that are able to provide answers to reforms. The presence of the Constitutional Court third amendment to the 1945 Constitution of the Republic of Indonesia, which became the basis of Article 24C. The legitimacy of the Constitutional Court in a limited way is formulated, namely: to begin, to investigate legislation that violates the constitution, to adjudicate disputes over the power of state institutions vested with constitutional authority, and to adjudicate the dissolution of political parties and settlement, the four general election disputes. In the modern state administration discourse, it currently requires the Constitutional Court to expand the scope of its authority in relation to Constitutional Complaints or commonly referred to as Constitutional Complaints. The necessity of one of these powers can be seen in the number of state institutions that violate the constitutional rights of citizens through the actions of these institutions. However, the channel for this complaint still does not exist, only that currently exists in providing protection for the right of Constitutional Complaints to be protected through judicial review of the basic constitution as regulated in the constitution.*

**Keywords: Authority; Constitutional; Complaint;**

## **1. INTRODUCTION**

The beginning of the amendments of the Indonesian constitution, start from 1999 to 2002, were aiming to put Indonesian state administration system in a better direction. There were several aspects of improvement, for example in terms of legislative power, a comprehensive executive, and the judiciary authority, became the central point within the state.<sup>1</sup> In addition, the Supreme Court (MA) and the judicial organizations below it in the general judiciary system, such as religious courts, military courts, and state administrative courts, and the birth of new legal institution, the Constitutional Court, as a guardian of human rights, which eventually developed.

The mechanism for upholding the constitutional rights of citizens is through complaints to the Constitutional Court, or referred to as “Constitutional complaint”.<sup>2</sup> The existence of this is a constitutional development that is important in a democratic rule of law states. It provides the protection that can be done, in the form of constitutional

<sup>1</sup> Asshiddiqie, Jimly. (2005) *Konstitusi Dan Konstitusionalisme*. Jakarta: Konpress.

<sup>2</sup> Palguna, I Gede. (2000) “Menabur Benih Konstitusional Complaining.” In *Pengaduan Konstitusional Upaya Hukum Terhadap Pelanggaran Hak-Hak Konstitusional Warga Negara.*,

rights to citizens. The legal order is becoming increasingly complicated, so it is necessary to emphasize human rights as a basis in providing protection to Indonesian who need protection.<sup>3</sup>

It is a freely occurs that all level of government to commit violations and omissions acts that are the result of a public official's choice and result in the violation of an individual's rights without any legal recourse. Examples of complaints or lawsuits can be filed by individuals (citizens) to the constitutional court, because of the violation of basic rights caused by acts or omissions committed by an institution or public authority. The initial basis for the birth of the Constitutional Court, namely Article 24 of the 1945 Constitution and Article 10 of Law Number 24 of 2003, is only limited to issues that are based on the normative level and which are unable to enter into the spirit of a state of law that always provides protection for the rights of the injured. able to be present as a mediator in the protection of rights before the reform and before the amendments were not systematic and even more dominant in the executive branch in every settlement that was only political.

Indonesia is one of the 78 countries that uses one of the ways to protect human rights within the scope of constitutional protection. Whereas, in the state process, the presence of the Constitutional Court as a protector in the midst of many violations of human rights due to aggressive and inhumane state actions should be prioritized.<sup>4</sup> A number of examples of human rights breaches, including the Trisakti incident, the most infamous incidence of human rights violation in Indonesia, involving the killing of Trisakti University students on 12 May 1998, and the death of Munir. Munir is a human rights activity who handled cases of human rights violations; he died on an Indonesian Garuda plane on September 7, 2004; the case of the murder of female activist Marsinah on May 4, 1993; and numerous other cases of human rights violations including murder, torture, slavery, and rape; among others.<sup>5</sup>

When examining the general authority of the constitutional suit as one of the tools for the protection of human rights, which is a principle in a state of law, One of the powers granted to the Constitutional Court of the Republic of Indonesia by the 1945 Constitution of the Republic of Indonesia is judicial review.<sup>6</sup> As used in this document, the term "constitutional complaint" refers to a legal remedy in the form of a complaint or lawsuit brought by an individual citizen who believes his constitutional rights have been infringed by an act of omission against a public institution or official.<sup>7</sup>

<sup>3</sup> MD, Mahfud. (2006) "Demokrasi Dan Konstitusi Di Indonesai." *Jurnalhukum.blogspot*

<sup>4</sup> Das Basu Durga, 2007 "Human Rights in Constitutionl Complain Ke Dalam UUD 1945 : Menuju Konstitusi Yang Lebih Demokratis," *Jurnal Konstitusi* 4, no. 4.

<sup>5</sup> Sugawara, Etsuko, and Hiroshi Nikaido. (2014) "Kasus Pelanggaran HAM Di Indonesia Yang Mera-jalela." *Antimicrobial Agents and Chemotherapy* 58, no. 12: 7250–7257.

<sup>6</sup> Zoelva, H. (2012)., Constitutional Complaint Constitutional Question and Protection of Citizen's Constitutional Rights'. *Jurnal Media Hukum*, 19, 152-65..

<sup>7</sup> Palguna, I., & Gede, D. (2017). Constitutional Complaint and the Protection of Citizens the Consti-tutional Rights. *Const. Rev.*, 3, 1.

The constitutional complaint guarantees that in the processes of determining the administration of the state, as well as in the making of legislation, the processes of state administration and judicial decisions do not violate constitutional rights. The facts show that many cases are submitted to the Indonesian Constitutional Court that are indicated to violate constitutional rights, while all existing legal remedies that have been taken by the complainant cannot be accepted (*Niet Onvankelijk Verklaard*) or withdrawn by the complainant before the judicial process is carried out.<sup>8</sup> The fact that Indonesia doesn't have a way for people to complain about the constitution doesn't make it seem like Indonesia is a modern democratic legal state, which is what the state is supposed to be. Since there is no escape.

The growing need for the Indonesian for the Constitutional Complaint mechanism is very much needed in order to reduce the potential for human rights violations due to state actions. According to the Center for Constitutional Studies (PUSaKo) of the Faculty of Law at Andalas University's 2015 Mala-Constitutional Barometer, that executive institutions committed 214 irregularities in 2015. In January of 2015, there were as many as 40 non-compliance institutions. The legislative bodies, specifically the DPD and the DPR, also committed constitutional infractions. There were forty institutions of breaches in 2015.<sup>9</sup> As long as there has not been a test specifically stipulating the protection in question, there will not be a true legal state that emphasizes rights over procedural interests. As a legal state that is developing in a more advanced direction, it is proper for Indonesia to apply what is called a "constitutional complaint" in providing protection for human rights, which is what it is in the administration of a state of law. Where this feature is a process of becoming law as the supreme commander in a country.

## 2. DISCUSSION

Protection of human rights in a modern legal state is a must and must be done by all legal states that declare themselves as part of a state of law.<sup>10</sup> If Indonesia is consistent with a democratic country system, constitutional complaint is the most important option in providing protection against actions by the authorities that will violate their because it can guarantee the constitutional rights of citizens.<sup>11</sup> A constitutional complaint is a process of constitutional protection that was not previously recognized in positive law in Indonesia. Legally, people who live in a constitutional system can file constitutional complaints to try to keep their constitutional rights safe. In this case, the Constitutional Court has the power to decide the cases, if it is reviewed in the presence of a constitutional

<sup>8</sup> Kusumo, B. A., & Jaelani, A. K. (2018). Mengagas Constitutional Complaint Dalam Konstitusi Indonesia Dan Politik Hukum Islam. *Wacana Hukum*, 24(1), 1-18

<sup>9</sup> <https://nasional.tempo.co/read/741015/pemerintah-pelanggar-konstitusi-terbanyak-ini-temuannya/full&view=ok> acces by February 2022

<sup>10</sup> Safrin Salam, S. H., Nurwita Ismail, S. H., Faharudin, S. H., Nuragifah, S. H., Silambi, E. D., SH, M., ... & MH, C. (2020). *Perkembangan Filsafat Hukum Kontemporer*. Zifatama Jawara.

<sup>11</sup> Salam, S. (2019). Rekonstruksi Paradigma Filsafat Ilmu: Studi Kritis Terhadap Ilmu Hukum Sebagai Ilmu. *Ekspose: Jurnal Penelitian Hukum Dan Pendidikan*, 18(2), 885-896.

complaint in order to provide certainty that no rights have been violated by the exercise of state power, either through the mechanism of laws made which are currently in the possession of the Constitutional Court, or actions in the form of administration and a decision made by the Constitutional Court, What has been made so far is still a problem in the protection of these rights. Apart from that, there are also rights that have been violated as a result of a court decision, which until now has been deadlocked in the judicial process.

At the state level, Indonesia itself has not been clearly constitutionally able to exercise the authority of the Court. The Constitutional Court (MK) is an institution of judicial power other than the Supreme Court that specifically handles constitutional courts or political courts.<sup>12</sup> However, there are several cases that fall into the category of being heard at the Constitutional Court at the level of constitutional complaints. For example, regarding case number 16/PUU-I/2003, which was submitted by the petitioners, the Constitutional Court rejected it because it was not included in the compensation for the duties of the Constitutional Court as an interpreter who was legally given the existing authority. In the decision of the Constitutional Court, it was refused related to the case because the categorization of this case was included in the Constitutional Complaint, in which the judiciary in Indonesia has not been recognized and has not been regulated regarding this matter.

In addition to the tests carried out on the Constitutional Court as mentioned above, the Joint Decree (SKP) of Three Ministers is an example of how there is no other way that must be carried out, namely the protection of the addition of duties to the unfortunate Constitutional Court. As already mentioned in the case above, the case was rejected because it does not fall under the authority of the Constitutional Court. From the above case, it seems that we must understand that there is a void in the legal mechanism through constitutional complaints. The protection of human rights in a modern legal state is a must and must be carried out by all legal states that declare themselves as part of a state of law. If Indonesia is consistent with a democratic country, constitutional complaint is the most important option for providing protection against actions by the authorities that will injure their rights. A constitutional complaint is a process of constitutional protection that was not previously recognized in positive law in Indonesia. If you try to go further into the presence of a constitutional complaint in order to provide certainty that no rights have been violated by the exercise of state power, either through the mechanism of laws made which are currently in the possession of the Constitutional Court, or actions in the form of administration and a decision made by the Constitutional Court, what has been made so far is still a problem in the protection of these rights. A constitutional complaint under the previous jurisdiction should be filed only in cases of

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<sup>12</sup> Mahfud, M. (2009). Rambu Pembatas dan Perluasan Kewenangan Mahkamah Konstitusi. *Jurnal Hukum Ius Quia Iustum*, 16(4), 441-462.

personal injury caused by the application of unconstitutional norms.<sup>13</sup> Apart from that, there are also rights that have been violated as a result of a court decision, which until now has been deadlocked in the judicial process.

Indonesia is unmistakably a country that regards the law as supreme. This is mentioned in the Republic of Indonesia's 1945 Constitution, which proclaims that Indonesia is a state of law as a critical subject that must be accomplished. As a form of protection of human rights, the concept of constitutional complaint was born, which is a development that has become a need for constitutional development. As a concept of the rule of law, it is the one who is present as an enforcer of human rights in upholding the rule of law in the protection of human rights.

The narrow assignment of tasks to the Constitutional Court in maintaining the Constitution has been a weak point so far. This development is still very far behind from other countries that do know what constitutional protection is that becomes the spirit of the state, but if this is maintained by only referring to a worse order, then the rule of law will not develop where knowledge is always evolving according to the needs of society.

### **1. The existence of a constitutional complaint to strengthen the concept of the rule of law**

Existence as a state of law is a must in Indonesia in order to protect others from actions that harm them, especially poor people who feel who are subject to from arbitrary actions. The law is the most likely option to be applied as a solution to avoid arbitrariness. It will harm others. If examined from the theory of the rule of law, a review related to the importance of constitutional complaints by using the approach of the two legal directions that exist in the world of state law in modern-style law, we are currently introduced to two prestigious legal systems, the Rule of Law or *Rechtsstaat*. The basic requirements for the rule of law developed in continental Europe with the character Frederick Julius Stahl are as follows:

- a. Respect to human rights, which is a must in providing protection from the rule of law, because the rule of law stands for what is contained in it, which must be implemented.
- b. The most effective way to ensure that it is not authoritarian is that the separation of powers does not rely on one power, which will affect the protection of human rights.
- c. Regulation-based government (*Wetmatigheid Van Bestuur*) is one solution to keep the government under control in setting limits.
- d. Administrative justice in disputes that will allow the authorities to do so.

The rule of law is an important thing to implement as the safest step to provide protection for all citizens who have been given protection by the Constitution in a country. The existence of the constitution must be kept pure as a country from deviations that will occur by the authorities who have an important role in the rule of law. In

<sup>13</sup> Gárdos-Orosz, F. (2012). The Hungarian constitutional court in transition—from *actio popularis* to constitutional complaint. *Acta Juridica Hungarica*, 53(4), 302-315.

addition to the state as stated above, there are several other legal state systems that are also oriented towards the protection of human rights as the estuary of the rule of law. Citing the opinion of AV Dicey, one of the legal experts from the Anglo-Saxon State gave his opinion regarding several points that provide an overview:

- a. Placement of the highest law or, in other words, the rule of law as a first step so that it can be called a state of law; whereby placing the law as the highest supremacy, all will be subject to the law and not to power to become supremacy.
- b. Equality before the law is the starting point between the people and the rulers. They must be equal before the law.
- c. Keeping the court as a guardian of rights in a state of law so that it is maintained like the Constitutional Court, which always maintains this fourth point, is something that must be used as a reference in the protection of people who have rights that have the potential to be abused by the state through existing institutions.

In order to provide protection as a state of law was born, the Constitutional Court, which is present as a guardian of the constitution, ensures that there will be no deviation of rights made by institutions that have applications for strengthening as a state of law, which greatly affects the central role of judicial institutions such as the Constitutional Court. The existence of the Constitutional Court must be the forerunner in the provision of human rights protection.

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The potential is certainly very large to violate the constitutional rights of citizens, especially those carried out by institutions such as the legislature through laws rather than by public officials, and the final decision of the general court allows violations of the constitutional rights of citizens which cannot be processed by the court. Constitution If you are able to trace back the birth of the Constitutional Court as a translation of the existence of human rights which are expressly regulated by the rule of law, the provision of constitutional complaints as protection of human rights that are touched by the rule of law needs to be emphasized in the law. That the Constitutional Court is present as a constitutional guardian.

So far, what has happened is often repeated in terms of actions that do not have legal channels that can be taken in providing protection for human rights. It is undeniable that this will become even more so if the authorities do not exist as an answer to the problem of rights violations. Protection of human rights in a modern legal state is a must that must be carried out by all countries of law that claim to be part of a state of

law. If Indonesia is consistent with a democratic country, constitutional complaint is the most important option for providing protection against actions by the authorities that will injure their rights. Since its inception until mid-2010, the Constitutional Court in handling constitutional review cases has received quite a number of applications for judicial review, which are substantially constitutional complaints. However, because the Constitutional Court does not have the authority in terms of constitutional complaints, many of the petitions were declared “unacceptable” (niet ontvankelijk verklaard) on the grounds that the Constitutional Court was not authorized to try them, even though in substance, it can be seen that there are constitutional rights of citizens who have been violated.<sup>14</sup> So far, what has happened is often repeated in terms of actions that do not have legal channels that can be taken in providing protection for human rights. It is undeniable that this will become even more so if the authorities do not exist as an answer to the problem of rights violations. Protection of human rights in a modern legal state is a must that must be carried out by all countries of law that claim to be part of a state of law. If Indonesia is consistent with a democratic country, constitutional complaint is the most important option for providing protection against actions by the authorities that will injure their rights. Since its inception until mid-2010, the Constitutional Court in handling constitutional review cases has received quite a number of applications for judicial review, which are substantially constitutional complaints. However, because the Constitutional Court does not have the authority in terms of constitutional complaints, many of the petitions were declared “unacceptable” (niet ontvankelijk verklaard) on the grounds that the Constitutional Court was not authorized to try them, even though in substance, it can be seen that there are constitutional rights of citizens who have been violated.

There should be a legal route in the complaint regarding the rights of citizens who have been violated, the task of which should be given to the Constitutional Court, which is the guardian of the 1945 Constitution of the Republic of Indonesia as the highest law, which becomes the mecca in every action or deed carried out by state officials. The protection of human rights in a modern legal state is a must and must be carried out by all legal states that declare themselves as part of a state of law. If Indonesia is consistent with the system of a democratic country, constitutional complaints are the most important option in providing protection against actions by the authorities who will violate them because they can guarantee the constitutional rights of citizens. Even based on data from the Registrar of the Constitutional Court, from 2004 to the first quarter of 2010 there were at least 106 letters or applications that could be categorized as a form of constitutional complaint.<sup>15</sup> A constitutional complaint is wrong in the process of constitutional protection, which has not previously been recognized in positive law

<sup>14</sup> Subiyanto, A. E. (2016). Perlindungan Hak Konstitusional Melalui Pengaduan Konstitusional. *Jurnal Konstitusi*, 8(5), 707-732.

<sup>15</sup> Data dari Kepaniteraan Mahkamah Konstitusi RI sampai dengan Juli Tahun 2010.

in Indonesia.<sup>16</sup> If you try to go further into the presence of a constitutional complaint in order to provide certainty that no rights have been violated by the exercise of state power, either through the mechanism of laws made which are currently in the possession of the Constitutional Court, or actions in the form of administration and a decision made by the Constitutional Court, What has been made so far is still a problem in the protection of these rights. Apart from that, there are also rights that have been violated due to court decisions that until now have been deadlocked in the judicial process. If in accordance with the spirit that has existed so far, the rights that must be protected by involving the Constitutional Court in the provision of constitutional complaints will experience improvements in the rule of law.<sup>17</sup>

## **2. In Indonesia, the Constitutional Court needs to make a complaint about the Constitutional Rights of the People.**

Deviations from an action taken by policy owners in making decisions, the process channel for fulfilling the mechanism for the official's action does not yet exist.<sup>18</sup> It becomes important to view the granting of this authority to the Constitutional Court as a development towards a better state of law and developing constitutional complaint.

The initial basis of its birth and the authority that the Constitutional Court has limitations, namely referring to Article 24 of the 1945 Constitution. Of the three powers above, which before the reform and before the amendments were not systematic, the executive was even more dominant in every settlement. Apart from that, it was not found to be related to the authority of the Constitutional Court. Protection of human rights in a modern legal state is a must and must be done by all legal states that declare themselves as part of a state of law.

If Indonesia is consistent with a democratic country, constitutional complaint is the most important option in providing protection against actions by the authorities that will injure their rights. Constitutional complaint is wrong in the process of constitutional protection which has not previously been recognized in the positive law in Indonesia.<sup>19</sup> If you try to go further into the presence of a constitutional complaint in order to provide certainty that no rights have been violated by the exercise of state power, either through the mechanism of laws made which are currently in the possession of the Constitutional Court, or actions in the form of administration and a decision made by the Constitutional Court, What has been made so far is still a problem in the protection

<sup>16</sup> Allan Fatchan Gani Wardhana, "Peran Mahkamah Konstitusi Dalam Perlindungan Hak Asasi Manusia Bagi Warga Negara Penganut/Penghayat Kepercayaan Dan Gagasan Constitutional Complaint," *Angewandte Chemie International Edition*, 6(11), 951-952. (2018): 10-27.

<sup>17</sup> Siregar, A. R. M. (2018). Kewenangan Mahkamah Konstitusi Dalam Pengujian Undang-Undang Terhadap Undang-Undang Dasar Tahun 1945. *Jurnal Hukum Responsif*, 5(5), 100-108.

<sup>18</sup> Ülvan, N. C. (2012). Constitutional Complaint and Individual Complaint in Turkey. *Ankara Bar Review*, 6(2), 179-186.

<sup>19</sup> Latuheru, P. M., Perdana, F. W., Irwan, I., Setiawan, B., & Sidartha, D. B. (2022). Urgensi Constitutional Question dan Constitutional Complaint, Arti Penting Pemberian Kewenangan Tersebut Oleh Mahkamah Konstitusi. *Jurnal Indonesia Sosial Teknologi*, 3(2), 351-357.

of these rights. Apart from that, there are also rights that have been violated as a result of a court decision, which until now has been deadlocked in the judicial process.<sup>20</sup>

Regarding the meaning of “constitutional complaint” or “constitutional complaint”, it is something that is rarely heard in Indonesia. Although it is not something new, because there is no legal instrument that can accommodate it, so that constitutional complaints or constitutional complaints are rarely heard in this country. Several experts have provided an understanding of the constitutional complaint, including.

The protection of human rights in a modern legal state is a must and must be carried out by all legal states that declare themselves as part of a state of law. If Indonesia is consistent with a democratic country, constitutional complaint is the most important option for providing protection against actions by the authorities that will injure their rights. A constitutional complaint is wrong in the process of constitutional protection, which has not previously been recognized in positive law in Indonesia.<sup>21</sup> If you try to navigate further, there will be a constitutional complaint in order to provide certainty that no rights have been violated by the exercise of state power, whether it be through the mechanism of laws made which are currently owned by the Constitutional Court, as well as actions in the form of administration and a decision made by the Constitutional Court. What has been made so far is still a problem in the protection of these rights. Apart from that, there are also rights that have been violated due to a court decision, which until now has been deadlocked in the judicial process. This is in the context of providing protection against actions or acts committed by public officials, where the existence of a constitutional complaint is related to the protection of the constitutional rights of citizens who are violated. public institutions by policies or legal actions. There are three ideas to make constitutional complaint a new authority of the Constitutional Court. The first is carried out by the Consultative Assembly of the Republic of Indonesia (MPR RI) by amending the 1945 Constitution of the Republic of Indonesia. Its is because the Constitutional Court’s power is limited by Article 24C paragraph (1) of the 1945 Constitution, and so revisions to the 1945 Constitution are required to expand this authority. Second, the formation of laws (DPR and the President) is carried out through amendments to the Constitutional Court Law, by expanding the scope of judicial review of the laws already owned by the constitutional court to include constitutional review. Third, it is carried out by the Constitutional Court itself using the constitutional interpretation method to interpret the constitution.<sup>22</sup> The most suitable of the three

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<sup>20</sup> Abdurrahman Wahid, “Membangun Demokrasi,” *Lex Journalica* 3, no. 1 (2005): 85.

<sup>21</sup> Simamora, J. (2015). Comparison of constitutional court authority between Indonesia and South Korea. *Jurnal Dinamika Hukum*, 15(3), 331-338.

<sup>22</sup> Faiz, P. M. (2016). A Prospect and Challenges for Adopting Constitutional Complaint and Constitutional Question in the Indonesian Constitutional Court. *Const. Rev.*, 2, 103.

suggestions is to change the 1945 Constitution in order to establish a robust foundation for the Constitutional Court's adjudication of breaches of people's constitutional rights.<sup>23</sup>

Understanding the opinion that has been reached that absolute power will give absolute arbitrariness is certain. Other institutions that have the authority to give birth to something that gives birth to deviations from other institutions. Lord Acton's concept, which is based on the opinion above, will certainly be carried out by the competent authority. Such a very large authority will have the potential to violate the rights guaranteed in the constitution. In the exercise of state power, this is very weak, which requires the need to emphasize the protection of citizens. This imbalance must be rectified by giving a large portion of complaints so that these rights are not violated.<sup>24</sup> In both cases, people who have direct decisions made by state officials will lose their rights because of what they did or didn't do.

Although related to this protection, it has been seen that the law related to constitutional protection is still large, but this action still deviates from the rules that have been stated in the law as a legal instrument. With the problems faced in providing protection for the role of the state as a tactical step The need for the protection of human rights in a modern legal state is a must that must be done by all legal states that declare themselves as part of a state of law.<sup>25</sup> If Indonesia is consistent with a democratic country, constitutional complaint is the most important option in providing protection against actions by the authorities that will injure their rights.<sup>26</sup> A constitutional complaint is a process of constitutional protection that was not previously recognized in positive law in Indonesia. If you try to go further into the presence of a constitutional complaint in order to provide certainty that no rights have been violated by the exercise of state power, either through the mechanism of laws made which are currently in the possession of the Constitutional Court, or actions in the form of administration and a decision made by the Constitutional Court, What has been done so far is still a problem in the protection of these rights.<sup>27</sup> Apart from that, there are also rights that have been violated as a result of a court decision, which until now has been deadlocked in the judicial process, making it really need some kind of constitutional submission mechanism.

### 3. CONCLUSION

<sup>23</sup> Yanti, H. (2018). Gagasan constitutional Complaint Sebagai kewenangan Baru Mahkamah Konstitusi dalam Perlindungan Hak Konstitusional. *Wajah Hukum*, 2(2), 185-198.

<sup>24</sup> Sulistyoto Seti Utami M. Muchtar Riva'i, Uki Masduki, Berlianingsih Kusumawati, "Legal Framework For The Establishment Of A Local-Owned Banking Enterprise: Study In Batu City," *Jurnal IUS Kajian Hukum dan Keadilan* 9, no. 1 (2021): 96-111.

<sup>25</sup> Chakim, M. L. (2019). A Comparative Perspective on Constitutional Complaint: Discussing Models, Procedures, and Decisions. *Const. Rev.*, 5, 96.

<sup>26</sup> Ashari, S. H. (2016). Implikasi Putusan Mahkamah Konstitusi Nomor 14/puu-xi/2013 Tentang Pemilihan Umum secara Serentak. *Jurnal IUS Kajian Hukum dan Keadilan*, 4(1).

<sup>27</sup> Soehalim, J. A. (2020). Pengembangan Kewenangan Mahkamah Konstitusi Dalam Penerapan Pengadilan Konstitusional di Indonesia. *Lex Administratum*, 8(1).

Indonesia is one of the legal countries that positions the law as the supreme commander who provides protection for human rights. The rule of law, in the rule of law, is the first step so that it can be called a state of law, whereby placing the law as the supreme supremacy, all will be subject to the law, not to the rule of law. Power becomes supremacy. Ordinary people and rulers must be treated equally in the eyes of the law. Human rights are protected by the law and judicial decisions. This fourth point is something that must be used as a reference in the protection of people who have rights that have the potential to be abused by the state through existing institutions.

The protection of human rights in a modern legal state is a must and must be carried out by all legal states that declare themselves as part of a state of law. If Indonesia is consistent with a democratic country, constitutional complaint is the most important option for providing protection against actions by the authorities that will injure their rights. A constitutional complaint is a process of constitutional protection that was not previously recognized in positive law in Indonesia. If you try to go further into the presence of a constitutional complaint in order to provide certainty that no rights have been violated by the exercise of state power, either through the mechanism of laws made which are currently in the possession of the Constitutional Court, or actions in the form of administration and a decision made by the Constitutional Court, what has been made so far is still a problem in the protection of these rights. Apart from that, there are also rights that have been violated as a result of court decisions, which until now have been deadlocked in the judicial process that upholds human rights. Based on some of the findings above, there is a void related to the mechanism of constitutional complaints in the Constitutional Court. If this is related to the rule of law, there is no common ground because when we talk about the rule of law, we will talk about legal mechanisms and the protection of human rights, so it is necessary for the Constitutional Court to have authority regarding constitutional complaints

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