

The Absence of Constitutional Complaints in the Authority of the Constitutional Court Regarding the Protection of Public Benefit Rights in Indonesia

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Abstract: The majority of constitutional complaints that enter the Constitutional Court are constitutional, but because they are not meant to be the authority of legal examination of the 1945 UUD, the Court often rejects them and allows them to take place "justiced delayed". This journal will dig deeper into some of the differences of previous research, namely the impact of the absence of a Constitutional Complaint on the protection of citizens' rights. This research is a library study, using secondary data sources. The research typology used in this study is explanatory. In this study, the study will focus on the theoretical and practical studies related to the impact of the absence of constitutional complaint legal mechanisms in Indonesia. While the data analysis methods used are qualitative, they are more focused on trying to interpret a particular situation. The absence of a legal effort against the constitutional complaint that is within the jurisdiction of the Constitutional Court would diminish Indonesia's legitimacy as a modern democratic state of law because of the absence in the public of legal efforts to question the treatment of the ruling authority that allegedly violates a person's constitutional rights.

Keywords: Absence of constitutional complaints, Impact, Protection of rights

Abstract: Banyaknya persoalan pengaduan konstitusional yang masuk ke Mahkamah Konstitusi merupakan pengaduan konstitusional, namun karena tidak dimaknai sebagai kewenangan menguji undang-undang terhadap UUD 1945, maka seringkali Mahkamah menolaknya dan membiarkan hal tersebut "ditunda secara wajar", karena tidak adanya pengaduan konstitusional dapat meningkatkan risiko pelanggaran konstitusi yang dilakukan oleh penyelenggaran negara tidak terdeteksi atau tidak ditindaklanjuti secara hukum. Sehingga hak konstitusional warga negara akan terancam apabila terjadi pelanggaran terhadap hak konstitusional warga negara yang sama sekali tidak ada upaya untuk menyelesaikan permasalahan tersebut. Jurnal ini akan menggali lebih jauh terkait dampak tidak adanya Constitutional Complaint terhadap perlindungan hak warga negara. Penelitian ini merupakan studi kepustakaan, dengan menggunakan sumber data sekunder. Tipologi penelitian yang digunakan dalam penelitian ini adalah eksplanatori. Dalam penelitian ini, kajian akan ditujukan pada kajian teoritis dan praktis terkait dampak tidak adanya mekanisme hukum pengaduan konstitusional di Indonesia. Sedangkan metode analisis data yang digunakan adalah kualitatif yang lebih fokus pada upaya menafsirkan situasi tertentu. Tidak adanya upaya hukum terhadap pengaduan konstitusional yang menjadi kewenangan Mahkamah Konstitusi akan mengurangi legitimasi Indonesia sebagai negara hukum demokrasi modern karena tidak adanya upaya hukum bagi masyarakat untuk mempertanyakan perlakuan penguasa yang terindikasi melanggar hak konstitusional seseorang.

Kata Kunci: Tidak adanya pengaduan konstitusional, Dampak, Perlindungan hak

Introduction

The identity of a State which is said to be a modern democratic state of law, the existence of constitutional complaints is a legal endeavor that aims to protect human values and positions which are elements that must be maintained by the State in accordance with what is guaranteed by the State constitution and must not be violated by the arbitrariness of the authority of the ruler. This ensures that in the process of determining policies, actions or decisions in the administration of the state does not violate the constitutional rights of citizens.¹

In general, constitutional complaints are part of constitutional review in the primary role of the Constitutional Court in general. However, this is different from the Constitutional Court of the Republic of Indonesia which does not have the authority to resolve constitutional complaints.² In the decision of the Indonesian Constitutional Court stated that regarding applications³ in terms of the issue of constitutional rights of a person who has been violated, legal efforts cannot be carried out by the Constitutional Court because in accordance with the 1945 Constitution the Constitutional Court does not have the authority to resolve violations of constitutional rights (constitutional complaint).⁴

The number of constitutional complaints that go to the Court of Constitutional significance is a constitutional complaint, but because it is not interpreted as a necessity to test the law against the 1945 Constitution the Court often rejects and allows it to be "justiced pending".⁵ This is one of several impacts of the absence of constitutional complaints from the authority of the Constitutional Court of the Republic of Indonesia, which indirectly can cause public distrust of the state legal system and state institutions as well as weaken the function of the Constitutional Court as the guardian and the protect of the constitutional because citizens who feel their constitutional rights are deprived do not get protection rights and cannot be tried.

Guaranteed protection of constitutional rights in the absence of constitutional complaints, this can increase the risk of constitutional violations committed by state officials that go undetected or not followed up legally. So that the constitutional rights of citizens will be threatened if there is a violation of the constitutional rights of citizens who have no effort to solve the problem at all which is an element that lags behind the authority of the Constitutional Court of the Republic of Indonesia.⁷

Based on several cases that are indicated to fall into the realm of constitutional complaints are applications for testing articles 134, 136 bis, and 137 of the Criminal Code for insults against the president in the Criminal Code submitted by Eggi Sujana and Padapotan Lubis, as well as testing PK restrictions in the Criminal Procedure Code submitted by Antasari Azhar. Application for examination of article 10 paragraph (1) of Law No. 24 of 2003 filed by Zico Leonardo Simanjuntak regarding the dismissal of judge Aswanto in the middle of his term.⁸⁹

The discussion of constitutional complaints has long been echoed even when the Constitutional Court held a Focus Group Discussion in 2008 with the theme "The Urgency of Constitutional Complaints for Citizens" which recommended proposing amendments to the 1945 Constitution with the aim that the Constitutional Court could deal with constitutional complaint issues. Then the Constitutional Court again held an international seminar in 2011 with the theme "Constitutional Complaint; Urgency and Implementation in Indonesia" which was attended by experts and legal practitioners from within and outside the country to discuss the experience and challenges of

¹ Achmad Edi Subiyanto, "Perlindungan Hak Konstitusional Melalui Pengaduan Konstitusional," *Jurnal Konstitusi* 8, no. 5 (2016): 707, <https://doi.org/10.31078/jk854>.

² Hawa Hidayatul Hikmiyah, "Efforts to Form Sakinah Families for User Clients Drug Rehabilitation Houses in East Java," *NUSANTARA: Journal Of Law Studies* 2, no. 2 (26 Desember 2023): 137–46.

³ I.D.G PALGUNA, "Yang Terlepas Dari Kewenangan Mahkamah Konstitusi Ri : Pengaduan Konstitusional (Constitutional Complaint)," *Lex Jurnalica* 3, no. 3 (2006): 128–36.

⁴ "Putusan Mahkamah Konstitusi No 103/PUU-XX/2022 Tentang Uji Materi UU No. 7 Tahun 2020 tentang perubahan ketiga atas UU No. 24 Tahun 2003 tentang Mahkamah Konstitusi," 2022, 45–46.

⁵ Suparno Suparno, "Dismissal Of Civil Servants Those Who Commit Office Crimes Based On The Court Ruling Which Has Permanent Legal Force," *NUSANTARA: Journal Of Law Studies* 2, no. 2 (26 Desember 2023): 127–36.

⁶ PUTUSAN MAHKAMAH KONSTITUSI, "Putusan Mahkamah Konstitusi No 103/PUU-XX/2022," 2022.

⁷ Febri Handayani dan Lysa Angrayni, "Implementasi Perlindungan Hak Konstitusional Warga Negara oleh Mahkamah Konstitusi Menurut Sistem Ketatanegaraan di Indonesia," *Riau Law Journal* 3, no. 1 (2019): 44, <https://doi.org/10.30652/rj.v3i1.6252>.

⁸ JANEDJRI M GAFFAR, "Constitutional Complaint dan Pengujian UU," *Sindonews.com* (Semarang, 2015).

⁹ PUTUSAN MAHKAMAH KONSTITUSI, "Putusan Mahkamah Konstitusi No 103/PUU-XX/2022."

constitutional complaints in various countries. And in 2020 again the Constitutional Court held an FCD related to "The Urgency of Constitutional Complaints for the promotion and protection of constitutional rights of citizens in Indonesia" with the aim of reviewing the need to increase the authority of the Constitutional Court in handling constitutional complaints. The same topic of discussion is often carried out by the Constitutional Court of the Republic of Indonesia, does this indicate that the absence of constitutional complaints is needed considering that many cases of constitutional complaints are received by the Constitutional Court but do not get a judicial process from citizens who feel their constitutional rights are violated.¹⁰

The third amendment to Law No. 4 of 2003 concerning the Constitutional Court¹¹ before it was passed into law, there is a norm article that is abolished in the Law¹², namely related to constitutional complaints originally contained in article 10 A paragraph (1) "In the event that the Constitutional Court exercises the authority to examine laws against the Constitution of the Republic of Indonesia Year 1945, the Court is authorized to examine constitutional complaint applications filed by citizens related to decisions or actions of public officials in the event of committing unconstitutional acts in carrying out laws." And article 10 A paragraph (2) "A constitutional complaint as referred to in paragraph (1) cannot be filed if: a. it contains a conflict of interest with the court and/or constitutional judge: and/or b. a court decision that has permanent legal force." The article was previously included in a draft constitutional law proposed by the Constitutional Court. However, after the bill was passed, the norm of articles related to constitutional complaints was removed from the law.¹³

Literature Review

Several academic theoretical studies of constitutional complaint through diverse perspectives. Among them are related to initiating a Constitutional Complaint in Indonesia which can accommodate the opportunity for every individual to challenge provisions,¹⁴ policies or legal products that violate the constitutional rights of citizens. Initiating the application of constitutional¹⁵ complaints in the Constitutional Court needs to be developed or proposed to become the authority of the Constitutional Court because in addition to the guardian of the constitution, the Constitutional Court is also the guardian of the constitutional rights of citizens, but the idea can only be done by changing the constitution so that the authority can become the authority of the Constitutional Court.¹⁶

The expansion of the authority of the Constitutional Court in terms of constitutional complaints in Indonesia is a measure of the protection of the value and position of each individual guaranteed by the constitution in the constitutional system whose authority lies with the Mahkamah Konstitusi whose practice is oriented to the practice of German Federal constitutional complaints by authority The test of the constitutionality of the law is carried out centrally, in which case special courts are established for the purpose.¹⁷ Based on the explanation above in this journal, we will further explore some of the things that make it different from previous research, namely by looking at how the impact of the absence of constitutional complaints on the protection of citizens' rights?

Method

This research is a library research study by applying secondary data sources by collecting data sourced from pus taka materials, primary legal materials such as constitutional provisions, laws, legal provisions related to

¹⁰ Wasito Wiwik Budi, "Mahfud: Ada Dorongan Memperluas Kewenangan MK," *mkri.id*, 2008.

¹¹ Asmono Ari, "Constitutional Complaint; Urgency and Implementation in Indonesia," *Yuridika* 26, no. 3 (2011).

¹² Sri Pujiati, "MK Gelar FGD Urgensi Pengaduan Konstitusional Bagi Warga Negara," *mkri.id*, 2008.

¹³ Rofiq Hidayat, "Cerita Penghapusan Pasal Pengaduan Konstitusional dalam RUU MK," *bukum online.com*, September 2020.

¹⁴ Henderi Kusmidi, "Family Support Obligations From A Hadith Perspective," *NUSANTARA: Journal Of Law Studies* 2, no. 2 (25 Desember 2023): 118–26.

¹⁵ Qurrata Ayuni, "Menggaga Constitutional Complaint di Indonesia," *Pusat Penelitian dan Pengkajian Mahkamah Konstitusi Republik Indonesia*, 2010, 1-, https://doi.org/10.1007/978-3-319-31739-7_107-1.

¹⁶ Muhammad Fauzy Ramadhan, "Menggagas Penerapan Constitutional Complaint di Mahkamah Konstitusi," *Padjajaran Law Research & Debate Society* 6 (2018): 1–14.

¹⁷ Jose Andre Sochalim, "PENGEMBANGAN KEWENANGAN MAHKAMAH KONSTITUSI DALAM PENERAPAN PENGADUAN KONSTITUSIONAL DI INDONESIA," *Lex Administratum* VIII, no. 1 (2020).

this research, while secondary legal materials such as writing that have a relationship with the essence. Research such as journals, theses, dissertations, articles and other scientific papers.

The typology of studies used in this study is explanatory. In this study, the review will be aimed at theoretical and practical studies related to the impact of the absence of a constitutional complaint legal remedy mechanism in Indonesia and how legal politics eliminate the norm of constitutional complaint articles from the Third Amendment to the Constitutional Court Law No. 4 of 2003. While the method of data analysis used is qualitative which is more focused on efforts to interpret certain situations.

Results and Discussion

Legal Politics of Abolition of Norms for Constitutional Complaint Articles in the Draft Law of the Constitutional Court

Not all countries that have constitutions can be said to have constitutional governments, and not all constitutions are democratic. There are four general objectives of democratic constitutions: First, facilitate decision-making to conform laws to applicable services to advance the interests of dynamic citizens in economic and political conditions. The absence of constitutional complaints in the Indonesian constitution does not guarantee the basic rights of citizens who feel their rights have been violated¹⁸ protected or even not guaranteed by the constitution, in other words the basic human rights contained in the constitution are only limited to written recognition. Given the large number of constitutional complaint cases that go to the Constitutional Court, but in the absence of legal remedies that should be the authority of the Constitutional Court, not many of these problems do not find solutions that are in accordance with the case, the basic rights that should be guaranteed are only limited to written recognition which is very contrary to the rule of law that is very contrary to the rule of law that It should be.

Second, democratic constitutions seek to ensure majority power, not minority power, it is possible that the people's representatives must have a tendency to be negligent if the interests of the people's representatives with the interests of the majority are not completely the same, in the event that constitutional arrangements have the important task of preventing delegation of authority from becoming a grant of power. The policy of the people's representatives who cross the fence of constitutional law in terms of improper dismissal of judges is one of the political phenomena that concerns the need for constitutional complaint legal remedies (constitutional complaint) to become the authority of the Constitutional Court to ensure and protect the basic rights of every individual.

Third, democratic constitutions address classical constitutionalist concerns about the protection of individual and minority rights. The Constitutional Court based on its role as an interpreter of the constitution as well as the guardian of constitutional rights has the authority as stated in the 1945 Constitution, but because of the absence of a constitutional complaint which is one of the efforts to provide protection of the constitutional rights of citizens as a forum for citizens who feel their constitutional rights are violated or ignored in the administration of the state.

Fourth, democratic constitutions address dynamic issues involving the stability and fluidity of the constitutional regime itself. Drafters of constitutions must recognize that the constitutions they draft need to be adapted to new circumstances, ideas or information. Given that constitutional complaint legal remedies have long been echoed, this is a consideration in expanding the authority of constitutional complaints to become the authority of the Constitutional Court to realize a democratic constitution in Indonesia as a proper state of law.

The new Constitutional Court draft law contains the normal clause of constitutional complaints in article 10 paragraph (1) "In the event that the Constitutional Court exercises the authority to examine laws against the 1945 Constitution of the Republic of Indonesia, the Court is authorized to examine requests for constitutional complaints filed by citizens related to decisions or actions of public officials in regard to actions. It is unconstitutional to implement the law." and (2) "A constitutional complaint referred to in paragraph (1) cannot be filed if: a. it contains a conflict of interest with the constitutional court and/or judge; and/or b. a court decision

¹⁸ Itok Dwi Kurniawan, "The Urgency Of Providing Restitutions For Victims Of Sexual Violence," *NUSANTARA: Journal Of Law Studies* 2, no. 2 (24 Desember 2023): 112–17.

that has permanent legal force". After the bill was passed into law, the article was abolished after a tough dialogue and discussion between the committee and the government.

There are at least three points that are considered for the elimination of constitutional complaint norms: First, constitutional complaints are complaints proposed by citizens when there are legal articles that harm their constitutional rights, both regulations, policies, actions and even decisions of public officials who are indicated to take constitutional actions in carrying out laws that cause the constitutional rights of a citizen to be violated are not the duty of the guardian of the constitution to ensure the rights of citizens are protected, Indonesia is a country that has a constitution but has no legal remedies to protect the rights of citizens with its constitutional complaints. does not rule out the possibility of either regulations, policies or actions of public officials who implement a regulation in accordance with their interests, then if it can violate a person's constitutional rights by what way to go to get protection, there is no legal umbrella that handles the matter, the decision of case No. 103/UU-XX/2022 is one of the article tests related to the norms of article 10 of the Constitutional Court Law in its petition requesting that the legal test can be also interpreted as a legal test related to constitutional complaints related to the case of dismissal of MK Aswanto judges carried out by the DPR which passed through the fence of constitutional law also gave reasons that were not in accordance with applicable rules, in the Constitutional Court decision admitted that the action was the domain of constitutional complaint issues but because the Constitutional Court did not have the authority of constitutional complaints the Constitutional Court rejected the application, Then in what way can be taken with legal issues to get protection, justice and legal certainty, which constitutionally guarantees this right.¹⁹

Second, in terms of building a legal remedy mechanism, constitutional complaints require new facilities and infrastructure, various scientific articles that have been written by legal experts and several considerations of Constitutional Court rulings Suggesting that the need for constitutional complaints is a necessity that cannot be delayed considering the number of cases indicated to fall into the realm of constitutional complaints that are justice delayed and did not get litigation. The thing that needs to be considered if it increases the authority of constitutional complaints to the Constitutional Court submitted by Bagir Manan is with the ²⁰ democratic structure i Indonesia which must be confirmed by affirming the principle of legitimacy of power, and if it establishes the rule of law, then the constellation is based fulfillment of human rights, which means that the authority of the Constitutional Court in implementing legal remedies for constitutional complaints serves in the protection of human rights as a whole.²¹

Third, neither the DPR nor the government wants the Constitutional Court as the guardian institution of the constitution to be a wastebasket, and there are also democratic channels for constitutional complaints such as PTUN and Ombudsman RI. The PTUN functional receives, examines, resolves and decides state administrative disputes at the Jakarta State Administrative Court, considering that TUN disputes are disputes arising in the field of state administration between persons or civil law entities and state administrative agencies or officials both at the central and regional levels as a result of the issuance of a state administrative decision in contrast to the constitutional complaint of a person who seeks protection of rights related to his rights that are violated both from actions, policy decisions from public officials, will certainly cause ambiguity if constitutional complaint issues are submitted to the PTUN which is not the duty and authority of the institution.

Impact of No Constitutional Complaint Legal Mechanism in Indonesia

The most important function of the constitution is not only to guarantee the protection of the rights guaranteed by the Constitution but also to realize ideal values such as independence, freedom, welfare and prosperity. The constitutional doctrine of the rule of law asserts that the constitution is the supreme law and that fundamental rights and constitutional rights can only be protected if state power is pegged by the constitution. Prof. Prajudi Atmosudirjo's idea of constitutional government must meet several criteria, such as: First, there is a separation or division of state powers, Second has a representative body which is a representative body of the

¹⁹ Muhammad Romli Shofwan, "Advocacy Of Civil Issues And Strengthening Legal Literacy For Religious Extension Workers Through Preventive And Conflict Resolutions Approach," *NUSANTARA: Journal Of Law Studies* 2, no. 2 (24 Desember 2023): 99–111.

²⁰ "Putusan Mahkamah Konstitusi Nomor 001/PUU IV/2006" (t.t.).

²¹ Sri Pujiarti, "MK Gelar FGD Urgensi Pengaduan Konstitusional Bagi Warga Negara," *mkri.id*, 16 November 2020.

people, Third, there is a procedural stability, Fourth, Government accountability, Fifth, transparency. Referring to the 1945 Constitution, Indonesia adheres to and has a strong foundation in upholding the doctrine of constitutionalism such as; consensus on the purpose of the state based on the state philosophy of Pancasila based on the 1945 Constitution, limitation of government power (article 1 paragraphs 2 and 3 of the Constitution, consensus on constitutional structure and procedures.²²

The constitution is the highest law in a country based on constitutional democracy. Furthermore, the constitutional authority is to conduct a Constitutional Review related to the product of legislation as a legal instrument that has the highest position in the political system under the 1945 Constitution. The Constitutional Court of the Republic of Indonesia has 4 authorities and 1 obligation where the decision is final and there is no legal remedy whatsoever. The authority of the Constitutional Court in general can be divided into the main authority and additional authority. The main authorities are (1) judicial review of the constitutionality of laws against the Constitution, (2) deciding authority disputes between state institutions, (3) deciding complaints made by the people against violations of their constitutional rights or called constitutional²³ complaints.

While the authority outside is assessor or additional which can vary from one country to another. Unlike the Constitutional Court of the Republic of Indonesia where the 1945 Constitution does not accommodate constitutional complaints as the authority of the Constitutional Court. In a modern democratic legal state,^{24,25} constitutional complaint is a legal remedy to maintain human dignity and dignity that cannot be violated to be safe as guaranteed by the constitution.

In short, a constitutional complaint is a constitutional complaint filed before the court (Constitutional Court) because of an act of a public official or legal product of a public official that has led to the deprivation of the constitutional rights of the citizen concerned. Generally, constitutional complaints can only be accepted (²⁶admissible) if all available legal remedies for the settlement of the matter have been exhausted. Substantively constitutional complaint is part of constitutional review because the issue is the constitutionality of an act or the constitutionality of the law.²⁷

The absence of a constitutional complaint has a significant impact on the constitutional system in Indonesia, as for some of the impacts arising from the absence of a constitutional complaint are as follows;

1. Non-optimal protection of constitutional rights of citizens

Part of the protection of the constitutional rights of citizens is the protection of fundamental rights guaranteed by the constitution which according to the 1945 Constitution guarantees these rights either explicitly or implicitly. As a state of law, Indonesia must protect the rights of every citizen. In addition to the rights stipulated in the Constitution, rights arising from state obligations and citizen obligations are also constitutional rights that must be protected.^{28,29}

Regarding the treatment or actions taken by state officials that cause the constitutional rights of citizens to be violated, due to the absence of constitutional complaint legal remedies, the resolution of the problem does not have an applicable legal remedy process, which indirectly the constitutional protection guaranteed by the Constitution is not optimal and only the protection of rights that are only on paper. Constitutional complaints, which are a last resort after going through several available legal remedies (exhausted) to obtain protection for citizens who seek protection of their rights, cannot pursue any legal remedies because there is no legal umbrella

²² I.D.G Atmadja, *Hukum Konstitusi* (Malang: Setara Press, 2012).

²³ "Pasal 24 C ayat 1 Undang-Undang Dasar 1945," t.t.

²⁴ Abdul Rasyid Thalib, *Wewenang Mahkamah Konstitusi dan Implikasinya dalam Sistem Ketatanegaraan Republik Indonesia* (Bandung: PT Citra Aditya Bakti, 2006).

²⁵ I.D.G PALGUNA, "Yang Terlepas Dari Kewenangan Mahkamah Konstitusi RI : Pengaduan Konstitusional (Constitutional Complaint)." t.t.

²⁶ I.D.G PALGUNA, *Pengaduan Konstitusional (Upaya Hukum Terhadap Pelanggaran Hak Konstitusional Warga Negara)* (Jakarta: Sinar Grafika, 2013).

²⁷ Izlindawati Asmaeny Azis, *Constitutional Complaint & Constitutional Question dalam Negara Hukum* (Jakarta: Kencana, 2018).

²⁸ *Pasal 24C UUD NRI 1945*, t.t.

²⁹ Maruarar Siahaan, "Hak Konstitusional dalam UUD 1945," *fakultas Hukum Universitas Kristen Satya Wacana* (Salatiga, 2011).

that can protect them. The protection of the constitutional rights of citizens essentially depends on the functioning of the Constitutional Court with the fair and civilized exercise of its authority.³⁰

2. Creating injustice and legal uncertainty

Injustice and legal uncertainty do not rule out the possibility that it can occur in society for various reasons, such as unscrupulous law enforcement, bad law enforcement agencies, and legal gaps that cause imbalances in demands, convictions, or decisions or laws made in society. Legal injustice can occur from various forms of both judicial processes, the application of law and also the injustice of human rights protection. Meanwhile, legal certainty can occur due to the interpretation of laws, policies, state institutions that create uncertainty and harm citizens whose constitutional rights are violated by the law or the policies of these public officials. In this case, the absence of constitutional complaints in Indonesia has an impact on citizens who feel that their constitutional rights are violated by both laws, actions, decisions, and policies of public officials do not get justice and legal certainty guaranteed by the constitution due to unavailable legal solutions.

3. Vulnerable to abuse of authority by state officials

Abuse of authority by public officials is an act that violates the rule of law or deviates from the purpose of the authority given, which can harm the public interest, the state, or other parties. Abuse of willfulness can take the form of breaking through authority, confusing authority, or being arbitrary.³¹ Misappropriation of authority can have administrative, criminal, or civil legal consequences, depending on the type and impact of the act.

The dismissal of judge Aswanto by the DPR that crosses the fence of constitutional law is an abuse of authority which is included in the issue of constitutional complaints related to arbitrary actions committed by public officials which are a form of interference with judicial power that should be independent. Because the Court does not have the authority to resolve the legal issue, in its decision the Constitutional Court rejected the application, one of which was related to the normal test of article 10 paragraph (1) of the Constitutional Court Law.³²

4. Reducing the credibility and legitimacy of the Constitutional Court

The credibility and legitimacy of the Constitutional Court greatly affect the effectiveness and authority of the Constitutional Court in maintaining the rule of law and protecting the constitutional rights of citizens. Therefore, the Constitutional Court must always strive to improve and maintain the credibility and legitimacy of its institutions. The credibility and legitimacy of the Constitutional Court (MK) institution are two very important things to maintain the function and role of the Constitutional Court as an independent, professional, and responsible institution holding judicial power. The credibility of the Constitutional Court refers to the ability and quality of the Constitutional Court in exercising its authority in accordance with the 1945 Constitution and the Constitutional Court Law. The legitimacy of the Constitutional Court refers to the recognition and public support of the decisions and actions of the Constitutional Court.

One of the absolute elements that must exist in the rule of law is the fulfillment of basic human rights. Constitutional rights that have expressly stated the basic rights of citizens, if they are ignored or even violated, is there a legal remedy mechanism to guarantee constitutional rights for every citizen, because constitutional rights are not limited to written recognition but must be able to guarantee and protect the constitutional rights of citizens actually.³³

According to Bagir Manan there are several things that must be considered the need for additional duties and authorities for constitutional complaint efforts First, if you want to affirm constitutional complaints as part of the constitution, then Indonesia itself must be able to create a healthy and accepted democracy. To achieve this, the structure of democracy in Indonesia must be strengthened. Second, strengthen the law that focuses on the

³⁰ Achmad Ebi Subiyanto, *Pengujian Undang-Undang (perkembangan permohonan perlindungan hak konstitusional warga negara dalam praktik)*, 1 ed. (Depok: Rajawali Pres, 2020).

³¹ Pasal 17 dan Pasal 18 Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan, t.t.

³² PUTUSAN MAHKAMAH KONSTITUSI, "Putusan Mahkamah Konstitusi No 103/PUU-XX/2022."

³³ Jimly Asshidiqie, *Pengantar Ilmu Hukum Tata Negara* (Jakarta: Rajawali Pres, 2010).

principle of legitimacy of power. Third, in a human state, the order of state life is based on the fulfillment of human rights, which are not just rules.³⁴

Conclusion

The absence of constitutional complaint legal remedies within the authority of the Constitutional Court will reduce the legitimacy of Indonesia as a modern democratic legal state because there is no legal effort that the public has to question the treatment of rulers who are indicated to violate someone's constitutional rights. The impact arising from the absence of a constitutional complaint is. Non-optimal protection of constitutional rights of citizens. Creates injustice and legal uncertainty. Vulnerable to abuse of authority by state officials. Reducing the credibility and legitimacy of the Constitutional Court.

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³⁴ Sri Pujianti, "Focus Group Discussion Constitutional Complaint Bagi Pemajuan dan Perlindungan Hak Konstitusional Warga Negara di Indonesia," *mkri.id*, November 2020.

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