

CONSTITUTIONAL THEORY AND THE DUTIES OF THE CONSTITUTIONAL COURT IN SAFEGUARDING CONSTITUTIONAL RIGHTS

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Abstract

The constitution serves as the highest legal norm and foundational framework for the governance of a sovereign state. Within the framework of constitutionalism, the constitution is understood not merely as a collection of written or unwritten rules, but as the embodiment of a normative hierarchy that guides state authority and ensures the protection of citizens' rights. The Constitutional Court of the Republic of Indonesia plays a central role in upholding constitutional supremacy and safeguarding constitutional rights. Its powers include judicial review of legislation, constitutional interpretation, settlement of electoral disputes, adjudication of constitutional complaints, and—through specific legal procedures—issuing decisions on the dismissal of the President and/or Vice President. This article employs a normative juridical method with a qualitative approach, based on secondary data drawn from constitutional texts, legal literature, and decisions of the Constitutional Court. Through doctrinal analysis, the study reveals that the Constitutional Court functions not only as the guardian of the Constitution but also as a protector of democratic values and fundamental human rights. The findings underscore the importance of a theoretically grounded and constitutionally consistent role of the Court in reinforcing the rule of law and preventing the abuse of state power.

Keywords: *Constitutional Court; Constitutional Rights; Constitutional Theory.*

A. Research Background

The constitution consists of a set of legal norms systematically arranged to serve as the foundational framework for regulating the structure, authority, and functions of

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the state and its institutions. In a narrower sense, it refers to a formal legal document that codifies fundamental rules governing state power. Historically, the term “constitution” derives from the Roman legal concept *constitutiones principum*, which were imperial decrees considered binding sources of law. In the later development of European legal traditions, particularly in Italy, the term evolved to denote formal constitutional law. In Dutch constitutional terminology, the word “*Grondwet*” is used to refer to the written constitution as the highest legal norm within the state hierarchy.¹ Constitutional rights are entitlements derived from and guaranteed by the constitution, either explicitly through written provisions or implicitly through interpretative doctrines. These rights encompass various dimensions of individual and collective freedoms, including the right to personal development, access to justice, personal autonomy, equal participation in public governance, the protection of women and children, the right to social welfare, and the right to security. In order to have legal force, such rights must be clearly grounded in constitutional texts and reinforced through judicial mechanisms that ensure their recognition and enforcement within the legal system.²

Fundamental human rights are inherent rights attached to every individual from birth, derived from human dignity granted by the Almighty God. These rights are recognized as inalienable and must be protected under both international and national legal frameworks. Within Indonesia’s constitutional system, the 1945 Constitution explicitly affirms the importance of upholding and protecting human rights. Article 1 paragraph (3) of the Constitution declares that “Indonesia is a state based on law” (*rechtsstaat*), which means that all acts of the state must be based on legal norms and

¹ Erry Gusman, “Perkembangan Teori Konstitusi Untuk Mendukung Negara Republik Indonesia”, *Ensiklopedia of Journal*, Vol. 1, No. 2, 2019, p. 163-169.

² Agus Ariana Putra, “Konflik dan Penyelesaian Sengketa Tanah Pelaba di Desa Adat Kerobokan Kabupaten Badung Perspektif Hukum Adat Bali”, *Journal of Law Research*, Vol. 1, No. 1, 2023, p. 16-22.

guided by the principle of legality. In this context, the state bears the constitutional obligation to respect, protect, and fulfill the human rights of all its citizens.

It is important to emphasize that Indonesia is a unitary state, not a federal one. Therefore, the responsibility to uphold human rights lies with the central government in coordination with regional authorities. The assertion that human rights “cannot be removed or revoked” must be understood with greater nuance: legal systems at both national and international levels recognize the distinction between non-derogable rights—such as the right to life and the right to be free from torture—and derogable rights that may be limited under specific circumstances, such as during national emergencies. Thus, the enforcement of human rights must always reflect a balance between legal certainty and proportionality. As noted by Dewa Putu and Hendra Widiatmika³, the Indonesian legal system, which is grounded in constitutional principles, demands a consistent and principled approach to ensuring that human rights are not violated under the pretext of state sovereignty.

The Indonesia’s Constitutional Court in is proof that the nation is increasingly emphasizing the importance of defending the citizens constitutional rights. This is evident from the Constitutional Court which continues to strive to carry out its duties as guardian of the constitution and guaranteeing the citizens positionak rights. The way issue was phrased that is possible taken in relation to the title of the article on constitutional theory and the duties of the constitutional courts ruling in protecting constitutional rights is as follows: 1) how is constitutional theory explained; 2) how is the constitutional court in Indonesia; 3) what are the duties of the Constitutional Court in protecting the Constitutional Rights of the 1945 Law, such as, Protecting human rights, maintaining democracy in completing peaceful elections, removing the president

³ Dewa Putu and Hendra Widiatmika, “Penerapan Perpol Nomor 8 Tahun 2021 Tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif di Direktorat Reserse Kriminal Umum Polda Bali”, *Journal of Law Research*, Vol. 1, No. 1, 2023, p. 1-5.

and installing a new one, contesting the constitution as a protection for the constitutional rights of citizens.

B. Research Method

This study employs a qualitative and normative approach, which is standard in legal scientific research (*rechtswetenschappelijk onderzoek*). The research utilizes legal dogmatics (*rechtsdogmatiek*) through systematic analysis of relevant statutes and legal doctrines, combined with hermeneutical interpretation (*hermeneutische interpretatie*) of legal texts concerning the duties of the Constitutional Court in safeguarding constitutional rights. A comparative law approach (*rechtsvergelijking*) is also applied to enrich the analysis. Secondary data were sourced from Scopus-indexed scholarly articles accessed via the Google Scholar database, with inclusion criteria limiting the selection to relevant publications between 2019 and 2024. Additionally, key jurisprudence from the Constitutional Court was reviewed as a primary legal source to strengthen the legal foundation and analysis. This methodology integrates doctrinal, jurisprudential, and comparative analyses to produce a valid and scientifically accountable legal study.

C. Research Result and Analysis

1. Constitutional Theory

This section introduces constitutional theory by tracing the etymology of the term “constitution” from the French *constituer*, the Dutch *grondwet*, and the German *grundgesetz*, emphasizing its role as the foundational legal text of a state.⁴ However, constitutional theory must be placed within a broader legal-philosophical framework that includes important doctrines such as Montesquieu's trias politica, Kelsen's Reine

⁴ Banna Nidham Ulhaq and Isa Anshori, “Identitas Nasional Suatu Bangsa dan Negara Serta Peranan Penting Konstitusi Dalam Kehidupan Bernegara”, *Jurnal Global Citizen*, Vol. 11, No. 2, 2022, p. 82-88.

Rechtslehre, and the Anglo-American principles of *che salus populi suprema lex esto* and the doctrine of *ultra vires*, which serve to uphold human rights.

The meaning of the constitution is essentially broad, encompassing all policies, both formal and informal, which stipulate mandatory rules for administering government. The complete constitutional structure of a nation is usually referred to as the “constitution”, which consists of a set of laws or governing a nation. These regulations can consist of decisions of authorized organizations and can also be not written as written and unwritten constitutional regulations, including in the current understanding of the constitution because they are customary in state administration. Here are several definitions of the constitution from experts:

- a. Leon Duguit who views the state from its social function. He is of the view that what is sovereign is not the law as the text in the Constitution states, but rather what is manifested in social life (*solidarité sociale*). So that the Constitution not only contains basic norms regarding state structure but also the state structure originates from community life as *de riele machtsfactoren*. (real power factors that live in society).
- b. Ferdinand Lasalle divides the Constitution into two meanings, namely the sociological or political understanding and the juridical understanding.²⁰ The sociological or political understanding (*sociologische or politikche begrip*) views the Constitution as a synthesis of real political power factors in society (*de riele machtsfactoren*) such as king, parliament, cabinet, pressure groups, political parties, and so on. Furthermore, the juridical meaning (*juridische begrip*) of the Constitution is seen as a legal text which contains basic provisions regarding state buildings and the foundations of state government⁵.

⁵ Diya Ul Akmal and Dea Linta Arlianti, “Dinamika Perlindungan Hak Konstitusional Warga Negara Dalam Implementasi Pengujian Undang-Undang di Mahkamah Konstitusi”, *Mulawarman Law Review*, Vol. 7, No. 1, 2022, p. 49-70.

c. Herman Heler said there are three meanings of the constitution, namely as follows:

- 1) *Diepolitikche vervassung als gesellschaftlich wirklichkeit* (Implementation of politics as a social reality), The constitution from a socio-political perspective. Constitution in this sense depicts the reality of society and politics;
- 2) *Die verselbstandigte rechtsverfassung* (Constitution as independent law); The constitution is a collection of norms that reside in a community which are then united under one set of laws. In this context, the constitution already has legal meaning;
- 3) *Die geschreiben verfassung* (Written Constitution) is defined as Law and the Constitution are considered the top legal manifestations that must be enforced by the government and its officials. This problem is in line with the principle of “government by statute, not by human initiative”, which means that the government needs to be run based on the legal system, not predicated on individual will. The concept of constitutionalism in the early 19th and early 20th centuries, which included limited powers and guaranteed constitutional rights of the state, began to be formulated legally⁶.

In life, the constitution has a crucial national and global function. According to Shepard L. Withman and John J. Wuest, the main purpose of a constitution is to “establish fundamental guidelines for the administration and structure of government,” or, in other words, to limit government power, to defend people rights

⁶ Al Qodar Purwo Sulistyو and Kaharudin Putra Samudra, “Peran Konstitusi Negara Dalam Mengawali Bangkitnya Kehidupan Warga Negara Pasca Wabah Virus Covid 19”, *Jurnal Pendidikan Sosial Keberagaman*, Vol. 7, No. 2, 2020, p. 95.

and to regulate the further application of sovereign authority. Lowenstein stated that the constitution is a basic tool for monitoring the process of power⁷.

2. Constitutional Court in Indonesia

The Constitutional Court is a newly established constitution with the third amendment as a result of the reformation according to the federative the republic of the indonesia's constitution of 1945. The Constitutional Court has four authorities and 1 responsibility in line with paragraphs (1) and (2) of the Article 24c of the legislation. The foundation within the republic of the Republic of Indonesia unitary state in 1945. This idea was the background for Jimly Asshiddiqie to assess that the constitutional court's establishment of Indonesian went smoothly, related to the era with the idea of creating a role for reviewing laws, which is related considering the Supreme Court's jurisdiction and the history of the Indonesia's founding state.⁸

In general, state power is described into three main paths, even though state institutions are still developing rapidly and cannot yet be fully categorized into these three branches. The parliament, judiciary and executive branches are governments that already exist within the government structure. of Article 1 Paragraph 24 of the 1945 Constitution regulates the judiciary as an independent judicial body to protect the supremacy of justice under the law and carried out by federal courts, the supreme ciurt and lower courts See also paragraph 2 of Article 24 of the 1945 Constitution. Therefore, unless the Constitutional Court and The Supreme Court, is also among the main ways society expresses itself, the constitutional court is a legal organization Which was established to uphold justice and legislation in the country of its jurisdiction.

⁷ Ilham Dwi Rafiqi, "Perbandingan Konstitusional Negara Indonesia dan Rusia", *Jurnal Hukum*, Vol. 5, No. 1, 2022, p. 1.

⁸ Oktavani Yenny, "Perluasan Wewenang Mahkamah Konstitusi Sebagai Pengawal Konstitusi", *Tanjungpura Law Journal*, Vol. 4, No. 1 2020, p. 39-58.

The courts established under the constitution establishment is predicated on the principle of constitutional supremacy. Every state institution plays a role in running the government and is the executor of the people's sovereignty which is protected by the constitution. In the role of an actor and judicial institution entrusted using the mandate of constitutionalism, the duty of the constitutional court is to upholding the legislation and justice. However, this feature does not yet exist completely other than that implemented by the highest court. The role of the Court of Constitutional law able to be located back to the purpose of this creation was to maintain the supremacy of the charter. Maintaining the primacy of the constitution, therefore, the legal judicial criteria that must be considered by the Constitutional Court is that the constitution is not only seen from its fundamental standards, but also from the principles and morality of the constitution, including protecting democratic legal regulations, the constitutional rights of citizens.⁹

3. Duties of the Constitutional Court in Maintaining Constitutional

The Constitutional Court is a state institution established through the third amendment of the 1945 Constitution of the Republic of Indonesia in response to the development of legal and constitutional thinking in line with global democratic standards. As an organ of the Constitution, the Court is tasked with upholding the supremacy of constitutional norms and ensuring the protection of citizens' fundamental rights. The Constitutional Court performs essential duties, including judicial review of laws, resolving disputes over general election results, adjudicating constitutional complaints, and issuing legal opinions in the process of presidential and vice-presidential impeachment. These functions are not only grounded in Article 24C of the 1945 Constitution but also mandated through Law No. 24 of 2003 concerning

⁹ Melani Safitri and Arif Wibowo, "Peran Mahkamah Konstitusi di Negara Indonesia (Menenal Mahkamah Konstitusi)", *Jurnal Penelitian Multi Disiplin*, Vol. 2, No. 1, 2023, p. 71-76.

the Constitutional Court, as amended. Through its rulings, the Court acts as both the guardian and interpreter of the Constitution, seeking to enforce the rule of law and democratic values in national governance. The Court's vision aligns with its role as a safeguard against the abuse of power by other state institutions and as a final protector of the constitutional rights of the people. It is also accessible to individuals who believe their rights or constitutional authority have been violated due to the enactment of legal norms or state actions. In line with its constitutional mandate, the Court is expected to carry out its powers independently and responsibly. It exercises legal authority not only in a formalistic manner but also based on the principles of justice, democracy, and human dignity. The Constitutional Court's role continues to evolve in response to contemporary challenges—including balancing constitutional interpretation with political neutrality, addressing legal ambiguity in customary law recognition, and responding to public criticism over judicial ethics and impartiality.¹⁰ Thus, the Court's duties in maintaining the Constitution encompass not only legal judgments but also moral and democratic responsibilities, making it a vital institution in Indonesia's constitutional system.

Looking at the ins and outs of the Constitutional Court, it is necessary to understand that the authority of the Constitutional Court is also regulated in law, namely human rights, resolution of disputes over general election results, constitutional complaints as protection of constitutional rights, as well as the dismissal of the President and/or Vice President.

a. Protection of Human Rights

Protection regarding human rights under Indonesian law and the constitution. Namely, the 1945 Constitution is the basis for every Indonesian people to enjoy their rights in the state and in state affairs. Guaranteeing constitutional human rights is

¹⁰ Queensly Siska Seroy, *et.al.*, “Kompetensi Mahkamah Konstitusi Dalam Penegakan Hak Asasi Manusia”, *Lex Administratum*, Vol. IX, No. 6, 2021, p. 45-55.

very necessary to direct the implementation of state administration. The existence of guarantees for the basic rights of every person means that the government cannot and must not carry out arbitrary actions against its nation. Apart from that, these constitutional rights also reflect the equality between state power and the rights of the nation.¹¹

Human rights are constitutional rights, because of the prestige of human rights which have a higher position in the hierarchy of ordinary legal norms which are placed within the Indonesian constitution, especially the Constitution of 1945. It can be interpreted that discussions about the concept of constitutional rights lead to discussions in connection with human rights. The placement regarding human rights in the constitution is an entity that protects and guarantees human rights.

An integral component of the constitutional rights. because they are normed in every article and every arm of state authority are obliged to respect and implement them. Constitutional rights are very important to be protected, upheld and respected because they are an affirmation of the demands of justice in a democratic state climate. Every citizen has the same and equal rights regardless of differences. In particular, Constitutional Rights function to limit the government's power so that it does not act arbitrarily against any individual. Constitutional rights are a guarantee of protection to create a balance between the administrators of power and citizens.¹²

The Republic of the Indonesia's of 1945 Constitution has explicitly explained the protection of human rights which was then described regarding human rights, republic of Indonesian law no.39 of 1999. With the promulgation of Law Number 39

¹¹ Dwi Prasetyo and Ratna Herawati, "Tinjauan Sistem Peradilan Pidana Dalam Konteks Penegakan Hukum dan Perlindungan Hak Asasi Manusia Terhadap Tersangka di Indonesia", *Jurnal Pembangunan Hukum Indonesia*, Vol. 4, No. 3, 2022, p. 402-417.

¹² Fantika Setya Putri and Gayatri Dyah Suprobowati, "Eksistensi Mahkamah Konstitusi Republik Indonesia Terhadap Pengukuhan Hak Konstitusi Warga Negara", *Jurnal Demokrasi dan Ketahanan Nasional*, Vol. 1, No. 4, 2022, p. 626-634.

of 1999 concerning human rights, the Indonesian nation has entered a new era, especially in upholding a democratic society that protects human rights.

The classification of human rights consists of several aspects of rights, namely sociocultural rights, economic rights, political, and civil rights. Civil rights are inherent rights related to the position of an individual human being in social life and as a citizen. These rights, for example, are the freedom of religion, the right to life, and the right to equality before the law. Political rights are rights related to the connection between citizens and the state and related to the administration of government, for example freedom of association and assembly, the right to take part in political activities, and the right to vote. Economic rights are rights related to economic activity, including the right to employment and a good standard of living, the right to receive wages, and the right to choose work. Socio-cultural rights are rights that are more collective in social life, for example the right to self-development, the right to education, in addition, the right to a healthy and pleasant environment. The following are the constitutional rights of the Indonesian nation as stipulated within the 1945 Constitution:

1) The Right to have Citizenship

- a) Article 26 D section (1) Right to Citizenship Status;
- b) Article 27 section (1), Article section 28D (1), and Article 28D section (3)

The Right to Equal Status in Government and the Law.

2) The Right to Life

- a) Article 28A and Article 28I section (1) The Right to Survive and Protect One's Life and Existence;
- b) Article 28B section (2) Right to Life, Development and Growth.

3) The Right to Freedom of Thought and Freedom of Choice

- a) Article 28I section (1) The Right to the Freedom of Conscience and Thinking;
 - b) Article 28E section (2) The Freedom to Hold any Beliefs;
 - c) Article 28E section (1) and Article 29 section (2) The Freedom to Practice One's Religion and Worship as One Pleases;
 - d) Article 28E section (1) The Freedom of Choice Education and Teaching, Employment, Citizenship, Place of Residence;
 - e) Article 28E section (3) The Freedom to Assemble and Form Associations;
 - f) Article 28E section (2) The Right to Express Thoughts and Attitudes in Accordance with Conscience.
- 4) The Right to Self-Development
- a) Article 28C section (1) The Right to Develop Oneself by Meeting Fundamental Necessities, Obtaining Education, and Taking Advantage of Art, Culture, Science, and Technology;
 - b) Article 28H section (3) One's Whole Growth as a Dignified Human Being is Made Possible by their Entitlement to Social Security;
 - c) Article 28F The Freedom to Speak and Gather Information in order to Grow as a Person and in Society;
- 5) Right to Education
- a) Article 27 section (2) Humanity's Right to Work and a Good Standard of Living;
 - b) Article 28D section (2) The Right to Labor and Equitable Compensation and Adequate Compensation and Treatment at Work Relationships;
 - c) Article 28I section (1) The Right not to be Enslaved.
- 6) Right to Information
- a) Article 28F Right to Communicate and Obtain Information;

- b) Article 28F The Ability to look for, Acquire, Own, Store, Manage, and Transfrom Information using All Types of Available Channels.
- 7) Rights to Ownership and Residence
 - a) Article 28H section (4) The Right to Own Private Property ;
 - b) Article 28H section (1) Right to Residence.
- 8) The Entitlement to Health and a Wholesome Environment
 - a) Article 28H section (1) The right to a Prosperous, Material, and Spiritual Life;
 - b) Article 28H section (1) The Entitlement to a Decent and Healthful Living Space;
 - c) Article 28B section (1) The Right to Obtain Health Services.
- 9) Family Rights, Article 28B section (1) Appropriate to Start a Family.
- 10) Right to Protection
 - a) Article 28G section (1) The Right to be Protected of Oneself, One's Property, Dignity, Honor and Family Under One's Control;
 - b) Article 28I section (2) The Right to Obtain Defense Against Discrimination;
 - c) Article 28I section (3) The Right to Cultural Identity Protection and Traditional Community Rights in Harmony with Developments Over Time and Society;
 - d) Article 28B section (2) and Article 28I section (2) The Right to be Shielded from Discrimination and Violence;
 - e) Article 28G section (2) The Ability to Apply for Political Asylum Abroad.
- 11) The Right to Freedom from Threats of Discrimination & Violence.
 - a) Article 28 G section (1) Human Right Include the Right to Feel Safe and Protected from the Fear of Taking Action;

- b) Article 28G section (2) The Right to be Free from Cruel Treatment or Torture that Diminishes Human Worth;
- c) Article 28I section (2) The Right to be Free from Discriminatory Treatment on any Basis Article;
- d) Article 28H section (2) in order to Attain Equality and Justice, Everyone has the Right to Special Treatment and Access to the Same Opportunities and Benefits.

12) The Entitlement to Justice and Legal Certainty

- a) Article 28D section (1) The Entitlement to Acknowledgement, Ensures and Fair Legal Safety and Assurance;
- b) Article 28D section (1) and Article 27 section (1) The Right to be Treated Equally Under the Law;
- c) Article 28 section (1) The Right to be Acknowledged by the Law.

13) The Right to Fight for Rights

- a) Article 28C section (2) The Right to Progress in the Collective Defense of One's Rights;
- b) Article 28 and Article 28E section (3) The Freedom of Assembly, Association, and Expression of Opinion.

14) The Right to Government, Article 28D section (3) and Article 27 section (1) The Entitlement to Equal Chances in Government.¹³

The Constitutional Court is in charge of responsibility to evaluate the compliance of laws with Indonesia republic's situation in 1945 in compliance with article 1 of the republic of Indonesia 1945 constitution. The power is granted regarding constitutional court or right of judicial review in its position as the party authorized to exercise power. Justice. The court established by the constitution is

¹³ Herdi Munte and Christo Sumurung Tua Sagala, "Perlindungan Hak Konstitusional di Indonesia", *Jurnal Ilmiah Penegakan Hukum*, Vol. 8, No. 2, 2021, p. 183-192.

proof that the Constitutional Court carries out material review for the protection and guarantee regarding human rights in decision No. 6-13-20/PUU-VIII/2010 regarding the assessment attachment 16 of 2004 pertaining to the RI Procedure office. Which is controlled based on customary law and its members.

In a step to fight regarding constitutional rights in the civilization of human dignity, the Constitutional Court carries out constitutional review. Constitutional testing has two main objectives. First, ensuring that the democratic system operates well in a balanced relationship. In this context, constitutional testing examines the relationship between the governing and exclusive governmental branches. The purpose of this constitutional examination is to prevent one branch of state authority from using its power at the expense of other areas of authority to protect the fundamental freedoms granted by the constitution that are destroyed when every citizen is protected from authority by institutions Country.

Apart from its role, the Constitutional Court also contributes to guaranteeing the citizens constitutional rights so that these rights are implemented and the Constitutional Court is respected by citizens and the government acts as the sole and highest interpreter of the constitution through reflection his decision. Regarding the definition of a democratic state regarding the protection and enforcement regarding human rights, it is as stated in the 1945 constitution's article 28 which emphasizes the importance of constitutional duties in this matter, namely in the following paragraph:

Paragraph (4)

protects, promotes, implements and implements human rights and the obligations of the state, especially the government.

Paragraph (5)

guarantees the implementation of human rights in line with a country's legal and democratic ideals.

In this article, it emphasizes how essential government accountability is for the defense and upholding of human rights should be implemented consistently so that injustice does not occur related to human rights violations.¹⁴ A portion of the protection of fundamental rights guaranteed by the constitution is the protection of constitutional matters. If citizen's constitutional rights are violated, they can apply for the state to defend their constitutional rights, then submit a constitutional grievances to their constitutional court. If the case is decided, the MK will maximize safeguarding the constitutional rights of it people.¹⁵

In a legal state, the constitution and laws protect human rights human beings, which is then carried out by the authority body as the executor of judicial power. In another sense, a judicial body that has free and independent powers, judges and a single legislative body do not have the authority to act independently from the influence of government power, which influences their own decisions. Indonesia's strong constitution has an important role in regulating and limiting state power. The national constitutional, or the 1945 constitutional, is the highest body of statutory regulations and is responsible for safeguarding constitutional rights are other provisions of the basic citizens rights, which are outlined within the 1945 constitution. It is regulated explicitly in the constitutional and becomes part of the constitution, so that all those who hold state power must rights are violated by the government. Either as citizens or as part of the constitution.¹⁶

b. Maintaining Democracy in Resolving Election Disputes

The constitutional court is often involved in setting disagreements about election results, ensuring that the election process is in line with democratic and

¹⁴ Jihan Thania Damayanti, *et.al.*, "Tanggung Jawab Terhadap Negara Terhadap Hak Konstitusional Anak Terlantar di Indonesia", *Lex Privatum*, Vol. IX, No. 4, 2021, p. 76-86.

¹⁵ Andi Arifin, "Peran Hakim Dalam Mewujudkan Negara Hukum Indonesia", *Indonesia Journal of Law Research*, Vol. 1, No. 1, 2023, p. 6-10.

¹⁶ Jerimas Pelokilla, "UUD 1945 Sebagai Landasan Konstitusional Terhadap Perlindungan Hak Warga Negara Indonesia", *Journal Of Civic Education Research*, Vol. 1, No. 1, 2023, 24-28.

constitutional principles.¹⁷ General elections that are carried out directly, fairly and honestly based on Pancasila are a way for the people to realise their sovereignty in the Republic Indonesian republic is predicated on ideology and of the 1945 Constitution of the Republic of Indonesia's. Through this election process, voters and representatives of the people's candidates, including individuals and political parties, will discuss about the people and decide what the moment will be like. These must be utilized to carry out state and government administration.

In a country that was founded on the basis of popular sovereignty, elections are very important and the Republic of Indonesia's 1945 Constitution stipulates the fact that the organizers of general elections are responsible for holding elections. There are several factors that contribute to the importance of this elections in the management of a democratic state. It is significant in the electoral process, such as that must be free and fair elections, public, fair and sincere manner and that every stages must meet the requirements set for each stage.¹⁸

The constitution, as the nation's highest legal foundation, plays a crucial role in maintaining democracy, including in resolving election disputes. Maintaining the constitution in this context means upholding the fundamental principles of democracy, such as justice, transparency and accountability, in the dispute resolution process. First, election dispute resolution must comply with constitutional norms and values. This means that the process must be transparent, fair and accountable, and uphold human rights and equality before the law. Second, the Constitutional Court as an institution with the authority to decide election disputes, must uphold its independence and not be influenced by intervention from any party. The ruling

¹⁷ Muhammad Jufri, "Konstitusionalitas Calon Legislatif Mantan Narapidana Korupsi Pasca Putusan Mahkamah Konstitusi", *Jurnal Pengawasan Pemilu*, Vol. 8, No. 1, 2023, p. 47-68.

¹⁸ Dian Leonaro Benny, *et.al.*, "Implikasi Putusan Mahkamah Konstitusi Nomor 48/PUU-XVII-2019 Terhadap Tugas dan Wewenang Badan Pengawas Pemilu Tingkat Kabupaten/Kota", *Law Journal*, Vol. 11, No. 7, 2022, p. 70.

of the Constitutional Court's must be supported by facts, law and the constitution, and reflect a sense of justice for all parties involved. Third, all parties involved in election disputes, including election participants, election organizers and voters, must respect the legal process and the constitution. Violence, intimidation and anarchist acts must not be tolerated in any form. Fourth, public education about the importance of maintaining the constitution in resolving election disputes needs to be encouraged. The public needs to understand that democratic elections are elections that are held by upholding the constitution and producing legitimate leaders with integrity. Maintaining the constitution in election disputes is not only the responsibility of the Constitutional Court, but also all elements of the nation.

The following is an example of the duties of the Indonesian Constitutional Court of Indonesian regulating and maintaining democratic elections, namely:

1) In the 2024 presidential election:

The role of the Constitutional Court is crucial in supervising and adjudicating conflicts about the outcome of the general election submitted by couples running as presidential and mayoral candidates. Constitutional Court handled the election results lawsuit proposed by the pair Anis Baswedan-Muhaimin Iskandar and Ganjar Pranowo-Mahmud MD. Who alleged fraud and abuse of authority by the Prabowo Subianto-Gibran Rakabumi Raka couple. Apart from adjudicating disputes, the Constitutional Court also made various breakthroughs in the trial process, such as giving the public the opportunity to submit *amicus curiae* and summoning various high-ranking officials to give testimony. With these steps, the Constitutional Court seeks to maintain the honesty of the election process and ensure that citizen's constitutional rights are protected while strengthening the principles-principles of democracy in Indonesia

2) Regional head election (*Pilkada*)

Constitutional Court also resolves various disputes over regional election results, provides justice to aggrieved parties and maintains the integrity of the election process at the regional level.

c. Dismiss The President and Vice President

The court of constitutional law is also tasked with the process of dismissing the Vice President. President in Indonesia Law No. 24 of 2003 with reference to the constitutional court which has been revised with the 2020 Law No. 7 and the 2020 Law No.17 of 2014 Regarding *DPD*, *DPRD*, *MPR*, and *DPR* as well as sections 7A and 7B of the UUD 1945 Constitution, how Law No. 13 of 2019 and constitutional regulation of 2009 No. 21 concerning guidelines have been updated, procedures for deciding according to about alleged infractions by on behalf of the people's representative council President and Vice President.¹⁹

The process of dismissing either the Vice President or the President through the Constitutional Court begins along with a proposal from the House of commons. The House of commons must have strong reasons and sufficient evidence to postpone the President and/or Vice President's dismissal. After receiving the proposal from the House of commons, the Constitutional Court will hold a hearing to to review and make a decision the case. The court of Constitutional law session is accessible to everyone and all related parties can take part in the proceedings of the Conference. The Constitutional Court will consider all evidence and testimony submitted by the House of commons and other parties before making a decision. The Constitutional Court's decision in cases the President's dismissal and/or Vice President is final and legally enforceable. If the Constitutional the President and/or

¹⁹ Ari Wuisang and Roby Satya Nugraha, "Kekuatan Mengikat Putusan Mahkamah Konstitusi Dalam Pemberhentian Presiden dan Wakil Presiden", *Jurnal Palar (Pakuan Law Review)*, Vol. 8, No. 17, 2022, p. 60-72.

Vice President are found guilty by the court are established to have broken the law, then the House of commons is planning a plenary meeting to decide on the dismissal of either the Vice President or the President. That of the Constitutional Court authority to dismiss either the Vice President or the President is an important mechanism for maintaining democracy and the constitution.

The President Vice and/or President are dismissed in the course of their employment if they are for one of the following reasons: a) Committing state treason; b) Money laundering; c) Other serious crimes; d) Bribery; e) Disgraceful behavior; f) Proven unfit to serve as both the President and Vice President.²⁰

Regulates the method regarding the dismissing the Vice President and President of the Court of Constitutions to review and accept the proposed dismissal proposal House of commons. The Constitutional Court must look over, determine and make a decision on the proposed dismissal within a 90-day maximum timeframe from the receipt of the proposal by the Constitutional Court, apart from that, the Court Constitutionals also investigates the evidence of listening to the testimony. Witnesses and experts, verify whether the alleged violation actually occurred.

Then it is regulated before changes occur to the 1945 law, House of commons decree Number III/MPR/1978, and Law No. 24 of 2003 in conjunction with concerning the Constitutional Court Law No. 24 of 2003 working with the legislation No. 8 of 2011 explaining the 1945 Law as well as the highest position of the state and the most profitable work arrangements. Institutions with or between other high state institutions whose jurisdiction is that the decision is only a procedure in the

²⁰ Ucha Widya, "Pemberhentian Presiden dan/atau Wakil Presiden Dalam Undang-Undang Dasar Negara Republik Indonesia 1945 Pasca Perubahan", *Jurnal Lex Renaissance*, Vol. 7, No. 1, 2022, p. 194-208.

individuals deliberative assembly that allows the President and Vice President to be dismissed.²¹

d. Constitutional Complaints as Protection of Constitutional Rights

The protector of constitution, also known as serving as the constitution's defender, is among the roles of the constitutional court. Providing defence for the of citizens constitutional rights is one of the important tasks in protecting the constitution. Defence of the constitutionally guaranteed rights of national and state life always results in breach of citizen's constitutional rights. One of the newest forms of constitutional violations is when public officials' actions or policy decisions violate the basic rights of citizens.

The upholding and safeguarding of constitutional rights has been reflected in the Constitutional Court's function as an company that safeguards the substance of the 1945 the Constitution of the Republic Indonesia. Therefore, if the issue of these laws and regulations violates individual rights protected by the constitution. The Constitutional Court is tasked with straightening out and resolving this problem. A constitutional complaint is a form of legal action carried out to defend the constitutional rights of citizens whose jurisdiction to make decisions belongs the Court of Constitutional's.²²

According to Maruar Siahaan, constitutional complaints are a form of public complaint about government actions, statutory regulations, or court decisions that are considered detrimental. According to Mahfud MD, he explained that a complaint case is a case submitted in the Constitutional Court regarding a violation of constitutional rights and there has been no legal action to handle it or legal process,

²¹ Diki Dinarta and Irwandi, "Analisis Yuridis Prosedur Pemberhentian Presiden dan Wakil Presiden dan/atau Wakil Presiden Dalam Masa Jabatan Menurut Undang-Undang Dasar Negara Republik Tahun 1945", *Journal of Constitutional Law*, Vol. 1, No. 2, 2021, p. 307-324.

²² Supriardoyo Simanjuntak, *et.al.*, "Urgensi Perluasan Kewenangan MK Terhadap Constitutional Question dan Complaint Sebagai Wujud Perlindungan Hak Konstitusional Warga Negara", *Jurnal Legislatif*, Vol. 4, No. 2, 2021, p. 297-304.

which is called a constitutional complaint. Constitutional complaints can also be made if there are statutory regulations that directly conflict with the constitution, but are not a higher statutory limitation under the 1945 Constitution. Apart from that, this complaint can be made against court decisions that conflict with constitutional rights even though the decision these regulations have legal force and cannot be changed and cannot be appealed.²³

One of several basic characteristics of constitutional complaints is as follows:

(1) A constitutional complaint may be filed by the only person whose conduct immediately affects; (2) There is a separate procedure that only addresses the act's constitutional concerns; (3) It can be filed by anyone; and (4) The rights of victims are recognized by the court hearing a constitutional case, if this is defined in Indonesian as follows: (a) Constitutional complaints can be filed by anyone who is directly affected by the act; (b) There is a separate procedure that only addresses constitutional issues of the law; (c) the court that decides on constitutional objections possesses the power to restore the victims' rights.²⁴

A constitutional complaints mechanism, theoretically, is considered an essential that can be explained through the 1945 Constitution being amended with the aim of perfecting the basics of democratic and contemporary state administration, a more transparent and strict checks and balances mechanism, a clearer division of power, additionally the creation of institutions. New state institutions to address the existing problems, challenges and demands of contemporary state development "constitutional complaints can be completed in a number of ways, such as amendments to the 1945 Constitution, modification of

²³ Munawara Idris, *et.al.*, "Kewenangan Mahkamah Kostitusi Menangani Pengaduan Konstitusional Melalui Penafsiran Konstitusi", *Alauddin Law Development Journal*, Vol. 5, No. 2, 2023, p. 317-331.

²⁴ Muh Fadil Ashari A, *et.al.*, "Urgensi Pengaduan Konstitusi Bagi Perlindungan Hak Konstitusional Warga Negara di Indonesia", *Journal of Lex Generalis (JLS)*, Vol. 3, No. 2, 2022, p. 346-359.

statutory regulations regarding the interpretation and construction of the constitution, the filing planning system and covering the objectives of the case .

The enforcement and protection of constitutional rights are represented in the role of the constitutional court's rulling in the Constitutional Court as the main guardian of the substance of the Republic Indonesia 1945 Constitution. When legal problems arise related to violations of the constitution element that harm the rights guaranteed by the constitution to of individuals in Indonesia, the Constitutional Court is tasked with correcting and resolving these problems. One of the legal strategies for Defending to people's constitutional rights based on the constitutional system is by filing a constitutional complaint, and the power to choose decisions it lies with the Constitutional Court.

D. Conclusion

It can be concluded from the analysis of the material above that: 1) Constitutional theory is the fundamental basis of the state which contains the basic rules regarding the founding of the state. Constitutional theory discusses the origins, objectives and functions of the constitution in state life. The Constitution is the highest institution that regulates state administration and guarantees the nation's basic rights; 2) The Indonesian Constitutional Court was formed based on the 1945 Constitutions second amandment was adopted in 2000. The Constitutional Court has the authority to oversee the constitution and uphold human liberties; 3) The duty of the constitutional court is to safeguard constitutional rights.

The Constitutional Court's main authority is judicial review, constitutional interpretation, dispute resolution and constitutional complaints. The Constitutional Court has an important role in maintaining human rights, democracy and constitutional justice. The Constitutional Court 's role is realized through: Protection of Human Rights, Maintaining Democracy in Resolving Election Disputes Dismiss the

Vice President and the President Constitutional Complaints as Constitutional Protection the Constitutional Court plays a significant part in safeguarding the constitutional rights of citizens and upholding the supremacy of law in Indonesia. The Constitutional Court's authority is a crucial instrument for protecting human rights, democracy and constitutional justice.

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