The Proposal of Constitutional Complaint for the Indonesian Constitutional Court

Proposal Pengaduan Konstitusional untuk Mahkamah Konstitusi Indonesia

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Abstrak

Penelitian ini tentang proposal pengaduan konstitusional pada Mahkamah Konstitusi Indonesia. Penelitian ini dilatarbelakangi persoalan ketidakjelasan pengaduan konstitusional dalam praktik, sementara kasus yang muncul cukup banyak. Metode penelitian yang digunakan adalah normatif dengan pendekatan perundang-undangan, analisis, dan pendekatan kasus. Hasil penelitian menunjukkan bahwa dasar pemikiran pelembagaan meliputi: pengaduan konstitusional merupakan pengejewantahan nilai-nilai konstitusionalisme dalam bernegara hukum Pancasila, sebagai penyempuna checks and balances, basis perlindungan hak asasi manusia, sekaligus bertujuan mewujudkan pemerintahan yang baik. Langkah kebijakan dapat dilakukan melalui amandemen Undang-Undang Dasar 1945, atau penafsiran non originalis, atau melalui perubahan Undang-undang MK. Objek sengketa yang menjadi batasan dalam pengaduan konstitusional, yaitu: putusan pengadilan, tindakan penyelengara negara dalam penafsiran konstitusi dan undang-undang, Ketetapan MPR, dan lainnya.

Kata kunci: Konstitusional; Mahkamah Konstitusi; Peluang; Pengaduan, Problem; Proposal.

Abstract

The research focuses on the proposal of a Constitutional Complaint for the Indonesian Constitutional Court. The background causes of the constitutional weakness to protection and fulfilment of constitutional rights, especially the absence of a Constitutional Complaint mechanism. Research methods used normative legal research methods with statutory, analytical, and case approaches. The study results show that legal thinking, including an embodiment of the values of constitutionalism in the rule of law of Pancasila, complements a checks and balances system, the basis for protecting fundamental rights, and aims to realize good governance. There are several steps/ methods to giving this authority, amendments to the 1945 Constitution, non-original interpretations, and revision of the Constitutional Court Act. Several objects of dispute are the Court's verdict, the problems of interpreting the 1945 Constitution and law by a state official, People Consultative Assembly decisions, and others.

Keywords: Complaints; Constitutional, Constitutional Court; Opportunity; Problem; Proposal.

A. INTRODUCTION

1. Background

The wave of global reforms that lead to constitutional amendments often raises new hopes for constitutional democracy and the rule of law system. It had realized by amendments to the constitution, changes to the state's institutional structure, and strengthening the protection of fundamental rights. This strengthening also provides solutions to previous legal problems, such as weak checks and balances in the national legislation system and law enforcement and weak guarantee of protection - fulfilment of fundamental rights. One product of the state institutions from the wave of reforms in Indonesia and is idealized to be at the forefront of guarding the constitution and building the protection of fundamental rights with a modern judicial system is the Constitutional Court of the Republic of Indonesia/ Mahkamah Konstitusi Republik Indonesia (hereinafter the MKRI). The Constitutional Courts' best practices in the United States, Germany, and South Korea influenced its formation.

In constitutional law theory, the establishing of the Constitutional Courts in the world has the same functions as follows: protecting the constitution, interpreting the constitution, and guarding democracy (the guardian and the sole interpreter of the constitution, as well as guardian of the process of democratization). In addition, the Constitutional Courts are the protector of the citizen's fundamental rights.[1] There

[1] Tanto Lailam, *Pertentangan Norma Hukum dalam Pratik Pengujian Undang-undang di Indonesia*, (Yogyakarta, LP3M UMY, 2015), 162

are similarities in the authority of the Constitutional Courts, such as constitutional review, dispute resolution of election results, dissolution of political parties, disputes over the authority of state institutions, and opinions in the impeachment process (constitutional complaint). However, the existence of the Constitutional Courts was designed as a judicial institution that first functions of judicial review.[2] The granting of the function of judicial review is correct "malfunctions" in a democratic government.

The establishment of the MKRI as an institution that oversees the Indonesian Constitution (hereinafter 1945 Constitution) and democracy balances government power/ checks and balances system and strengthens guarantees of fundamental rights. It upholds constitutional values, provides protection for citizens' constitutional rights[3], strengthens the mechanism of checks and balances,[4] and creates a clean government. The background of the idea focuses on judicial review that is to solve significant legislation problems in the context of improving the legal system, the dilapidated legal system in Indonesia, the multi-interpretational 1945 Constitution, and the many laws that deviate and oppress the people. Moreover, no mechanisms and institutions have the authority to examine the validity - the constitutionality of laws against Pancasila and the 1945 Constitution.

The amendment 1945 Constitution process (1999-2002) focuses on judicial review authority. It was only natural that the Constitutional Complaint (hereinafter the CC) authority did not have time to be discussed in depth. Especially, it was not too urgent/ main problem to be submitted to the MKRI. However, whatever the results, the history of the amendments to the 1945 Constitution has given birth to the MKRI, which is the hope of the nation to uphold the constitution, organize the administrative structure, and manage the democratic system. The weakness of the 1945 Constitution in the protection of constitutional rights is the absence of the Constitutional Complaint authority. This view is certainly motivated by the fact that constitutional amendments in the reform movement are not the end of the agenda for the realization of a democratic and rule of laws system. It is the beginning of improving the legal and judicial system.

The weakness of the 1945 Constitution is the absence of the CC mechanism as a basis for protecting citizens' constitutional rights against actions by state officials

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2 Simon Butt, "The Indonesian Constitutional Court: Reconfiguring Decentralization for Better or Worse?," *Asian Journal of Comparative Law* 14, No. 1 (2019): 147–174.

3 In this article, the terms of constitutional rights and fundamental rights are used interchangeably, especially when discussing the power of the Indonesian Constitutional Court.

4 Pan Mohamad Faiz Kusuma, "The Role of the Constitutional Court in Securing Constitutional Government in Indonesia" (Australia, Dissertation University of Queensland, 2016), 1.

who misinterpret the constitution and law, court decisions that violate constitutional rights, and state administrators who default on constitutional obligations that are mandated. This weakness has implications as no judicial institution to enforce this mechanism. The CC did not regulate explicitly, causing the space for the protection of constitutional rights not to be optimal.[5] The purpose of the rule of law and democracy systems is constitutional rights guaranteed by the 1945 Constitution for everyone, when state administrators violate those constitutional rights, then each person can demand the return of his/ her rights based on the 1945 Constitution through a modern and reliable court.

The weakness of the 1945 Constitution, if examined normatively, is that no state institution (especially the judicial power) has the authority to make the CC—however, a spirit of authority from constitutional review implementation by the MKRI. It should be understood that the CC is an inseparable part of constitutional review, but the object of the dispute is to assess the constitutionality of laws and the interpretation of the constitution. According to I Dewa Gede Palguna, the CC is part of constitutional review, while a constitutional review is part of constitutionalism.[6] It means that the normative weakness of the 1945 Constitution is actually not a barrier to continuing to apply it on a limited basis or a case basis (through the entrance to judicial review).[7]

The academic debate becomes a problem of a constitutional review authority of the MKRI (through the interpretation of the 1945 Constitution). Of course, the more democratic and the rule of law systems, the more it will strengthen the need for a legal mechanism to fulfil constitutional rights. Moreover, the cases that have emerged in this decade are more characterized by the CC. The dialectic in the MKRI practices gives hope to institutionalizing the CC firmly and with legal certainty. For this reason, this research opened the veil, unraveled the problem, as well as described the constitutional opportunities that allow a more structured application, at the same time building the main construction of the dispute, which becomes fundamental competencies.

2. Research Questions

Based on the elaboration in research problems, several questions can be formulated in the institutionalization of the CC for the MKRI, including: (1) how is the construction

[5] Pan Mohamad Faiz Kusuma, "A Prospect and Challenges for Adopting Constitutional Complaint and Constitutional Question in the Indonesian Constitutional Court," *Constitutional Review* 2, No. 1 (2016): 103.

[6] I Dewa Gede Palguna, *Pengaduan Konstitusional (Constitutional Complaint): Upaya Hukum terhadap Pelanggaran Hak-hak Konstitusional Warga Negara*, (Jakarta, Sinar Grafika, 2013), 643.

[7] In this article, the terms judicial review and constitutional review are used interchangeably, especially when discussing the power of the Indonesian Constitutional Court.

of legal thinking behind the urgency of institutionalizing the CC? (2) What are the problems and opportunities for institutionalizing the CC?, and (3) What are the competencies in the CC legal mechanism?.

3. Methods

This legal research aims to unravel various issues of protecting the constitutional rights of citizens, some of which do not have a dispute resolution mechanism, at the same time providing the right legal construction related to the institutionalization of the CC in the Indonesian judicial power structure. This research applied a normative legal research method (secondary data) with statutory and analytical approaches. Data collection techniques were carried out in two ways: library research aimed at examining primary legal materials, secondary legal materials, and tertiary legal materials. Data analysis in this study belonged to the descriptive qualitative type. Descriptive analysis was intended to provide an overview or explanation of the object of research by categorizing data as follows: (1) the data was systematized or organized and adapted to the object under study; (2) the data that had been systematized, then described and explained according to the object under study based on theory; (3) the data that has been described is then evaluated and analyzed, assessed using the applicable legal standards and future legal policies. This step is taken to understand the research focus in-depth and comprehensively.

B. DISCUSSION

1. Constitutional Complaint Theory

A Constitutional Complaint is one of the legal mechanisms designed to strengthen the guarantee of the protection of citizens' rights against every action of the state/government/state administrators in all branches of power. The action in question is an action that violates the constitutional rights of citizens or does not take action/fulfilment of legal actions that harm the constitutional rights of citizens. The European Center for Constitutional and Human Rights (ECCHR) states that the CC is "a mechanism that can be brought by individuals whose fundamental rights have been violated through an act of a state authority".[8]

I Dewa Gede Palguna stated that the CC refers to the action of a citizen who claims that one of his constitutional rights has been violated by the act or omission

[8] EECHR, "Constitutional Complaint" https://www.ecchr.eu/en/glossary/constitutional-complaint, accessed on June 5th 2021

of a public official.[9] The public officials referred to are government agencies, court decisions, and laws. Hamdan Zoelva said that the CC is a form of citizen complaints through an adjudication process in Court for actions (policies) or neglect by the state, in this case, state institutions that violate the rights of citizens guaranteed by the constitution.[10]

Gerhard Dannemann characterized the Constitutional Complaint with four factors. *First*, the existence of legal action to restore constitutional rights for violations committed by public/state officials; *second*, the judicial system that focuses on the constitutionality of the action in question and not on other legal issues related to the same case (between the constitutional review and complaint); *third*, the settlement of this authority can be proposed by a person who is negatively affected by the action/ has his constitutional rights impaired; and *fourth*, the Constitutional Courts that decide on this authority to restore the victim's constitutional rights.[11]

In several countries that have a Constitutional Court or similar courts, the authority to hear and decide cases of the CC has become one of the constitutional powers of the Constitutional Courts and similar institutions in a number of countries, such as Germany, Austria, Spain, Turkey, South Korean, and other countries.[12] For example, in Germany, the German Federal Constitutional Court/the *Bundesverfassungsgerich* (hereinafter the German BVerfG) is an institution whose function is to ensure that the Constitution of the Federal Republic of Germany (*Grundgesetz*/Basic Law) is obeyed by the state and citizens, with the main function of ensuring the respect and effectiveness of a free and democratic constitutional order, and the enforcement of fundamental rights. The constitutional powers of the German BVerfG include constitutional review: abstract review and concrete review, individual Constitutional Complaint, federal election disputes (elections disputes), disputes between federal state institutions (disputes between constitutional organs), the dissolution of political parties, and the impeachment of the federal president and the impeachment of judges. The Constitutional Complaint mechanism known as the *verfassungsbeschwerde* was first regulated by the Constitutional Court Act of March 16, 1951 (*Gsetz über das Bundesverfassungsgerichts 16 März 1951*), but was later regulated in Article 93 (1)

[9] Palguna, Constitutional Complaint and the Protection of Citizens the Constitutional Rights", *Constitutional Review* Volume 3 No.1 (2017), 1-24

[10] Hamdan Zoelva, "Constitutional Question Dan Perlindungan Hak-Hak Konstitusional," *Jurnal Media Hukum* 19, no. 12 (2012): 153.

[11] Matthias Goldmann, "The European Economic Constitution after the PSPP Judgment: Towards Integrative Liberalism?," *German Law Journal* 21, no. 5 (2020): 1058–1077.

[12] M. Lutfi Chakim, "A Comparative Perspective on Constitutional Complaint: Discussing Models, Procedures, and Decisions," *Constitutional Review* 5, No. 1 (2019): 096.

No. 4a and b of the German Constitution through constitutional amendments. Based on data from the German BVerfG performance report in 2021, BVerfG has received 250,580 cases, and 97.9% of that number (245,539 cases) are Constitutional Complaint cases. Around 6000 cases are decided by the German BVerfG every year.[13]

2. The Proposal Constitutional Complaint for the MKRI Authority

a. Foundation of Thought

The CC's institutionalization needs scientific studies and appropriate policy alternatives under the legal policies desired by the community in a democratic and ~~the~~ rule of law system based on the Pancasila and 1945 Constitution. At least a policy foundation is needed to measure the importance of the CC in Indonesia and the effectiveness of its functions in the future, as well as to see whether the MKRI is able to carry out the new mandate. Philosophical, sociological, and juridical foundations are needed to make the right institutional design and absolute competence limits. The philosophical basis is, of course, related to legal ideals (*rechtsidee*) as the highest constitutional value, the ideals to be realized by the CC function, for example, whether the CC can realize the protection and fulfilment of the constitutional rights of citizens. The sociological basis is more focused on the perspective of applying the law in real situations, which is always accompanied by characteristics in the form of acceptance of regulations by a group of people. While the juridical basis places more emphasis on the ordering of laws and regulations, this order or hierarchy is related to the theory of conflicting norms and sources of law, conflicting norms in the sense that the legal norms to be made do not conflict with higher legal norms (UUD 1945), values, legal principles that are the reference in its formation.

Some of the legal thought foundations (philosophical, sociological, and juridical, which are involved in a complete meaning) in the institutionalization of authority include:

First, the embodiment of the values of constitutionalism. The main problem of the constitutionalism concept and the rule of law in Indonesia is a guarantee of the principle of the supremacy of the 1945 Constitution by all elements of the nation and state.[14] One principle is the constitutional rights protection of citizens

[13] Tanto Lailam, "Peran Mahkamah Konstitusi Federal Jerman Dalam Perlindungan Hak Fundamental Warga Negara Berdasarkan Kewenangan Pengaduan Konstitusional (The Role of the German Federal Constitutional Court in Protecting of Fundamental Rights Based on the Constitutional " *Jurnal Hak Asasi Manusia* (2022): 65.

[14] Maruarar Siahaan, "Integrasi Konstitusional Kewenangan Judicial Review Mahkamah Konstitusi Dan Mahkamah Agung," *Jurnal Konstitusi* 17, No. 4 (2021): 729.

by state administrators. For this reason, the MKRI was formed as part of the branch of judicial power to realize the values of constitutionalism and the rule of law of Pancasila (Negara Hukum Pancasila). Constitutionalism is an understanding related to the function of the 1945 Constitution in a country (written / unwritten). Understanding in the form of power limitation/ governance of how the people's sovereignty is carried out according to the applicable rules. The constitution is meant not only in the sense of a modern/ written but includes values, principles, and norms in society.

Hence, constitutionalism requires the limitation of power, distribution of power, and the doctrine of accountability and transparency for government administration. Constitutionalism that develops in a country departs from the philosophy of people's sovereignty that the people are the owner and source of power in the state. The upholding of constitutionalism is very dependent on the consensus of the people in establishing a country. At least several elements of consensus must be upheld: (1) the agreement of the founding fathers (founders of the state) and the people in formulating and realizing the goals to be achieved and shared goals (e.g., *staatidee/rechtsidee*). (2) the building of the rule of law and democratic systems to be realized as the basis for constitutional government and good governance; (3) agreement on the desired constitutional design (institutions entrusted by the people to run the government) and a democratic filling process.[15]

When transferring power from the people to the government (including general elections), it must be accompanied by a legal mechanism when that power is abused by the government. Lord Acton thought "power tends to corrupt, absolute power corrupts absolutely"[16] will become real, acts of abuse of power and betrayal of the people's consensus are things that often happen when the egoism of power gives rise to authoritarian and oligarchic power. Hence, if the power functioning to realize justice and people's welfare, a legal mechanism to enforce it is needed to remind state administrators to comply with the people's consensus (which is then regulated in the constitution). One of the legal mechanisms is the constitutional review, which includes abstract judicial review, concrete/ specific judicial review, and constitutional complaint.

The constitutional review and complaints are a package to ensure that the power held by the government is not misused or deviates from the consensus

[15] Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia,* (Jakarta, Konstitusi Press, 2005), 25
[16] Said Karim, Baharuddin Badaru, and Askari Razak, "The Essence of Law Enforcement For Corruption In West Sulawesi" *IOSR Journal of Humanities and Social Science* (IOSR-JHSS) 24, No. 6 (2019): 10–14.

made by the people. The essence of the embodiment of constitutional values in democratic and the rule of law systems is how every legal issue can be resolved fairly, accountable, and transparently. There should be no dispute that is not resolved by constitutional means, and the state must provide an appropriate way of resolving disputes. By building a framework for thinking about the values of constitutionalism and the rule of law, the CC must exist. If there is none, it means that the state has not fully implemented the implementation of constitutionalism values in a legal state, there will be a violation of the values of constitutionalism by the state, and indirectly the state has corrupted the values of constitutionalism.

Second, perfecting a checks and balances system. Ideally, the position and role of each state institution should be equally strong and mutually controlled in checks and balances relations. In checks and balances, the position of the main state institutions is equal, which has functional linkages and control over the powers of other state institutions. Another view is that the position between these state institutions cannot be higher than the others; only their functions and duties differ. The current state administration design adheres to the doctrine of separation of power, with the principle of the checks and balances system, but it is not yet an ideal system. There are still many gaps deviating from the checks and balances system. Hence, to create an ideal system in this principle is the institutionalization of the CC for the MKRI to protect fundamental rights. At the same time, state institutions work based on the constitution and a checks and balances system.

Third, the basis for the protection of fundamental rights. A democratic and ~~the~~ rule of law system that guarantees the protection and fulfilment of fundamental rights is an absolute thing that state institutions must do. Every state institution has a constitutional obligation to realize the protection and fulfilment of the constitutional rights of citizens under their primary duties and functions. Because of this constitutional obligation, the constitution must provide a dispute resolution mechanism if the protection and fulfilment of constitutional rights are not implemented by state power. The dispute resolution mechanism in the context of protecting and fulfilling these constitutional rights must be comprehensive, lest there be gaps/or the absence of an institution authorized to resolve disputes.

The protection and fulfilment of constitutional rights must be accompanied by legal mechanisms when problems arise. This solely ensures fair legal certainty and an accountable and transparent judicial process. It means that if individual citizens feel that state officials have violated their constitutional rights, then they have the

constitutional right to file their case in a particular court to give a fair decision. Without a clear, accountable, and transparent dispute resolution mechanism, it will lead to weak protection and fulfilment of citizens' constitutional rights and tend to create abuse of power and an anti-criticism/ impunity government.

I Dewa Gede Palguna argument is that legal efforts to protect the constitutional rights of citizens are carried out through the CC. It is a lawsuit filed by an individual to the Court against the actions (or omissions) of a public institution that result in the violation of the basic rights or constitutional rights concerned. The purpose of this authority is that every person or particular group has the freedom and equality in participating in a country and upholding democratic principles, including the responsibility regarding the protection of constitutional rights owned by the community.

Fourth, good governance. Good governance is a manifestation of the people's mandate that must be implemented by the authorities (people's representatives) because, without good governance, it is impossible to fulfil the constitutional rights of citizens. On the other hand, a bad/authoritarian government will amputate the rights of the people by making excuses that no institution is authorized to resolve disputes. The realization of good governance requires the institutionalization of the CC. It is undoubtedly motivated by the fact that it is a form of implementation of constitutional democracy in the form of people's control to protect and restore constitutional rights guaranteed by the constitution. In good governance, dispute resolution mechanisms are the primary key, including the CC. It will be a guard in realizing good governance. For example, a state administrator who misinterprets the law must be rectified through a constitutional complaint.

b. The Problem of Institutionalizing Constitutional Complaint

The idea of a Constitutional Complaint has developed in various countries with good, accountable, and transparent constitutional and judicial systems. Without a good, accountable, and transparent judiciary will be an abuse of power in judicial activities, ineffective law enforcement and justice, as well as pile up cases that do not have a vision of a fast case settlement - with legal certainty and justice. Institutionalizing a Constitutional Complaint is not easy since it needs an in-depth and comprehensive study. At least some problems follow the idea of institutionalizing CC in the MKRI.

First, the historical-sociological perspective. If referring to the original intent interpretation in the 1945 Constitution amendment process, at the time

of formulating the constitutional authority of the MKRI, it only focused on examining laws and did not discuss the CC (if any, they were not clearly spelt out/ implicitly). Of course, due to the major problems to be dismantled in the context of improving the legal system: are the dilapidated legal system in Indonesia; the multi-interpretational constitution; and many laws that deviate and oppress the people. Quoting the opinion of former Constitutional Justice Laica Marzuki, who stated that law could contain a legal crime charge (misdadigrechts),[17] this can be proven by the laws governing centralization causing the slow pace of regional development (regional autonomy) and hindering the independence/welfare of local communities.[18] Not to mention the provisions of laws that restrict freedom of opinion and expression, articles on insulting the president to ensnare political opponents, and others.

This condition then inspired the legal policies of forming the MKRI with the main function of reviewing laws against the 1945 Constitution (without the CC). Whereas theoretically and in legal practice in the reference countries at the time of the Constitutional Courts (e.g., Germany and South Korea), the CC are an inseparable part of the constitutional review authority. Of course, the hope of the drafters when amending the 1945 Constitution was that after the reformed constitution, the reformed constitution must be preserved so that if there is a law that contradicts the reformed constitution, it must be annulled. Including that constitutional review has accommodated the CC because the object is the same, assessing the constitutionality of laws. In addition, a good and responsive system of laws and regulations is created by upholding constitutional and democratic values, protecting and fulfilling fundamental rights, and realizing good and clean governance.

Based on the historical-sociological analysis, there was no mandate to institutionalize the CC during the amendment to the 1945 Constitution, and the drafters did not see the importance of it for Indonesia in the future. Currently, the condition of the state of Indonesia, which is increasingly advanced and democratic, requires the institutionalization of this authority. Hamdan Zoelva's view, in the CC authority, is based on the interpretation of the constitution, which is related to

[17] Laica Marzuki, "Uji Konstitusionalitas Peraturan Perundang-Undangan Negara Kita: Masalah dan Tantangan", *Jurnal Konstitusi*, Volume 7, Nomor 4, (2010): 120

[18] Tanto Lailam, "Problem dan Solusi Penataan Checks and Balances System Dalam Pembentukan Dan Pengujian Undang-Undang di Indonesia (Problem and Solutions for Arranging of The Checks and Balances System in The Process of Making Law and Constitutional Review in Indonesia), *Jurnal Negara Hukum*, Vol. 12, No. 1 (2021): 123.

the interpretation of the text, original intent, and historical (backwards-looking), then the expansion of the interpretation of the authority of the MKRI as regulated in the 1945 Constitution is impossible, except through amendments to the 1945 Constitution.

Second, making the MKRI an institution authorized to resolve the CC is not the only way to protect the constitutional rights of citizens in Indonesia. If the main issue of the CC is regarding the provisions of the law that violate the constitutional rights of citizens, this matter can be brought to the CC as a case for judicial review. However, if the main issue lies in a government policy that violates the law (onreghtmatig overheidsdaad) and the provisions under the law, it can be processed in the general Court, which leads to the Supreme Court. In addition, if the Constitutional Complaint case's subject matter is administration, demands for administrative recovery can be pursued by bringing the case to the state administrative court (Pengadilan Tata Usaha Negara).

From the author's perspective, the CC is very different from the existence of testing legal norms in the Administrative Court or judicial review under the law against laws that are under the authority of the Supreme Court. The CC legal mechanism was submitted after legal remedies had reached a dead end (the law provided no legal remedy regarding the case). One of the objects of this CC is court decisions (including the Administrative Court and the Supreme Court) that violate constitutional rights. Even in practice, in the German BVerfG, the court decisions are the object of the most resolved disputes. It means that if the decisions of the Supreme Court and Administrative Court violate the constitutional rights of citizens, they can be submitted to the MKRI by the CC legal mechanism.

On the other hand, the MKRI has not yet become an authoritative institution capable of properly resolving constitutional review cases. Several decisions of the MKRI have confused lawmakers. Several inconsistent decisions have emerged in the same case (overruling), decisions that have exceeded the applicant's application (ultra petita), recommendations for new norms, retroactive decisions, decisions that apply forward, and decisions that are not solutive and leave legal issues to legislators (open legal policy), and others. Even in decisions regarding institutions authorized to resolve regional election disputes and the institutional independence of the Corruption Eradication Commission, the MKRI tends to be inconsistent (conflicts between decisions). There are several categories of decisions that deviate from the provisions of the MKRI Act. Several times the issue of the low morality of constitutional judges arises in the form of a decrease in integrity

when exercising the authority to review laws and dispute local election results. The decline in integrity by the behaviour of constitutional judges who are not following the morality/ethics of the 1945 Constitution (cases of bribery in carrying out their authority).[19] With these conditions, of course, if the faucet for the CC is opened, it is clear that the MKRI will be flooded with requests for the CC. Based on the experience of the German BVerfG, it has to settle thousands of CC per year.

If the problem is not a solution, then cases will pile up, and there will be a tendency to abuse power, or at least the burden of cases that the Justices of the MKRI will resolve becomes very large. The number of Constitutional Justices, which is only nine justices, will not be able to examine and adjudicate cases of the CC in the thousands per year (based on the experience of the German BVerfG) because of the number of cases from the current authority has placed a heavy burden on settlement (especially general election and regional election disputes).

c. The dynamics of the MKRI's Practices on Constitutional Complaint

Since 2005, the CC has given rise to constitutional debates among constitutional justices and the public. The first case is the decision of the MKRI No. 001/PUU-IV/2006 regarding the review of Law Number 32 of 2004 concerning Regional Government, in particular Article 106, which states that the verdict of the High Court in settlement of local election disputes is final and binding proposed by the pair of Regent and Deputy Regent of Depok Drs. H. Badrul Kamal, MM and KH. Syihabuddin Ahmad, BA. However, in reality, the provisions of the Article were annulled by the Supreme Court's decision No. 01 PK/Pilkada/2005 concerning the Pilkada Depok, which defeated the applicant in the election dispute. In this case, there is a legal framework for an academic debate: "whether the judicial review under the authority of the MKRI includes the authority for CC".

In this decision, 7 Constitutional Justices concluded that the MKRI did not have the authority to make the CC, but there were dissenting opinions from 2 Constitutional Justices: Justice Maruarar Siahaan and Justice Sudarsono. Justice Maruarar Siahaan said that the MKRI could accept the CC with reasons or a legal basis based on the principles contained in the 1945 Constitution. Article 24C of the 1945 Constitution and Article 10 paragraph (1) of Act No.24 of 2003, as well as Article 51 paragraph (1.a). the MKRI Act No. 24/2003 regulates the authority to review laws, including the implementation of laws. Based on the

[19] Tanto Lailam, "Membangun Constitutional Morality Hakim Konstitusi di Indonesia", *Jurnal Penelitian Hukum De Jure* Volume 20, Nomor 4, (2020): 527.

constitutional interpretation authority, such as in the German BVerfG and the Korean Constitutional Court, the MKRI can examine cases of CC. Another dissenting opinion argument from Justice Sudarsono states that Article 51 paragraph (1.a) of the MKRI Act No. 24/2003 states, "The applicant is a party who considers his constitutional rights and authorities to be violated and harmed by law: individual Indonesian citizens. This provision is the basis of fundamental rights, so the constitutional loss here must be interpreted comprehensively as a result of the enactment of the law and the result of court decisions that harm the individual's constitutional rights.

Decision No.013-022/PUU-IV/2006 regarding the review of the Article of insulting the President as regulated in the Criminal Code, in this decision also mentions in detail that the Constitutional Court does not have the authority to make the CC and constitutional questions/tests concrete legal norms (constitutional question). In the decision, the MKRI said that until now, it does not have the authority to make Constitutional Complaint, which occurs when a citizen is seriously harmed by the actions or omissions of a state official or public official while all available ordinary legal remedies are no longer available (exhausted).

Since the emergence of academic debates in the practice of judicial review, which began with differing opinions by Constitutional Court Justice Maruarar Siahaan and Constitutional Justice Soedarsono, many cases characterized by CC through the entrance to judicial review have emerged. More decisions were declared unacceptable on the grounds that the MKRI did not have CC authority, for example, the review of the Indonesian People Consultative Assembly (*Majelis Permusyawaratan Rakyat*) Decree regarding the revocation of state government power from President Soekarno. In addition, the case submitted by the death row convict Amrozi et al. in the examination of Law No. 2/PNPS/1964 on Procedures for the Implementation of the Death Penalty. However, there are also cases characterized by CC which were granted by the MKRI, for example, the case of judicial review of Law No. 10 of 2008 proposed by the Hanura Party, which essentially questioned the misinterpretation of the law in determining the acquisition of legislative seats. Another case is the criminalization case of KPK leaders Bibit S. Riyanto and Chandra M. Hamzah, who later proposed a review of Law No. 30 of 2002 concerning the Corruption Eradication Commission. The essence of the CC filed is the alleged irregularity in the application of the law by investigators.

In 2019, the public's desire for the MKRI to have CC authority was carried out by submitting a review of Law Number 48 of 2009 concerning Judicial Power as stated in the Indonesian Constitutional Court Decision No. 28/PUU-XVII/2019. In this case, the applicant submits an application to the MKRI to interpret that the CC is part of its judicial review authority. By the Court, the application was rejected. The reason for the refusal is that in constitutional theory, it is true that CC is part of examining the constitutionality of the law, but in this context, it is different from the authority of the MKRI, so the court cannot add the authority of CC through the interpretation of the 1945 Constitution.

d. Opportunities for Institutionalizing Constitutional Complaint

Institutionally and the substance of the dispute, the legal policies of the CC can be given to the MKRI as the only state institution whose authority is very close to its characteristics of it, especially in the practice of other countries where CC are an inseparable part of examining the constitutionality of laws. The MKRI also ex officio has the authority to interpret norms and implement the norms of the 1945 Constitution. Of course, it was motivated by the fact that the main dispute that must be resolved in the CC is the wrong interpretation of the 1945 Constitution and laws by state institutions that cause constitutional harm. The institutionalization of the CC for the MKRI can be carried out by several methods/steps, both at the level of constitutional amendments, interpretation of the constitution - conventions, and amendments to the MKRI Act.

These three methods/steps see the urgency of the function of the state institution. It is the same with the function of the CC, which was missed/not included at the time of the establishment of the MKRI. At the same time, see whether this CC is urgent in structuring the functions of state institutions because it will not only give authority to the MKRI but will also change the constitutional structure, relations between state institutions within the framework of the checks and balances system, as well as the basis for protecting fundamental rights which could be the case that it would «explode in large numbers», and the MKRIs internal problems. However, as a commitment to a democratic and rule of law system by upholding fundamental rights, the CC is needed to strengthen guarantees for the protection of fundamental rights and create good governance.

There are several methods/steps for institutionalizing the CC in Indonesia. This method/step is not the most appropriate choice but adapts to the needs of legal policies:

a. Amendments to the 1945 Constitution.

Amendment to the 1945 Constitution is an ideal way to create fair legal certainty and, at the same time, strengthen institutions for the protection of *fundamental* rights in the constitutional system in Indonesia. It can be done by amending Article 24C of the 1945 Constitution. This amendment must be comprehensive because, in addition to adding the authority for CC, it must also create a one-roof review design of legislation. Amendments to the 1945 Constitution will strengthen the institution of CC and strengthen the position of the Constitutional Court as the administrator of the rule of law, democracy, and the protector of the constitutional rights of citizens. Of course, it is difficult to predict when this institutionalization. There is no time certainty, considering that the Indonesian state administration system does not yet fully require a comprehensive constitutional amendment. Moreover, the amendment to the 1945 Constitution in 1999-2002 was a historical event/reform due to the fall of the New Order authoritarianism system (revolutionary legal process). This institutionalization path is more appropriate to be the last alternative and future constitutional law politics in the institutionalization of the CC.

b. Constitutional Interpretation

The institutionalization by interpreting the 1945 Constitution, where the Constitutional Court can make an interpretation by building a legal construction where constitutional complaint becomes part of the judicial review system. The interpretation of the law/constitution is a necessary thing, considering that the law/ constitution in the past and the recap of the content and the ideas behind it are not under the development of the state administration. Constructing the ideas and ideals of the formulator, of course, requires an interpretation adapted to current conditions. The interpretation of the constitution is the spirit of understanding every meaning in the text of the constitution, "reading the constitution is interpreting the constitution".

The Constitutional Court as "the guardian of the constitution and the sole interpreting of the constitution" not only uses historical interpretation/ original intent if it turns out that the interpretation hinders the application of constitutionalism values. At the same time, this interpretation causes the provisions of the 1945 Constitution not to work as a system and/or contradicts the main idea underlying the constitution itself as a whole related to the objectives to be realized. It is impossible to use historical interpretation/ original intent to institutionalize the constitutional complaint. The choice of

interpretation can use a "non-originalist" interpretation which can be the basis for institutionalizing constitutional complaint. The freedom to choose and use the interpretation method must be in the corridor and carried out based on the philosophy of Pancasila and the 1945 Constitution. The judge must be able to reflect on each article text related to the facts of the incident found in the trial into the judge's decision which contains the aura of Pancasila values and the aura of the fundamental values of the 1945 Constitution.

c. Constitutional Court Act Revision

The difficult step to take is the revision of the MKRI Act. The revision in question is to give CC authority as well as procedural law. This choice requires the political will of legislators, whose commitment has yet to be seen. For several times the amendments to the MKRI Act have never touched the authority of CC. The amendments to the MKRI Act have only strengthened additional functions, for example, the settlement of regional election disputes. However, this revision in the future does not rule out the possibility of submitting a constitutional complaint

According to the author, the most appropriate steps in institutionalizing CC are: *first*, the MKRI can interpret the constitution, emphasizing that CC is an inseparable part of constitutional review. This interpretation can use non-original intent or contextual interpretation that CC is urgent as an effort to protect constitutional rights, which so far cannot be resolved in the MKRI. This non-original intent interpretation is also often carried out, for example, in adding authority in testing government regulations in lieu of law (peraturan pemerintah pengganti undang-undang perppu), election dispute resolution, and other issues. The entrance to this institutionalization must go through a judicial review of the law/constitutional review in the case of a CC.

Thus, cases of CC can be resolved by the MKRI, although later, it will be very limited to certain cases (related to judicial review of the constitutionality of laws). This is because it is difficult to make other issues of dispute, for example, reviewing the MPR decree or reviewing regional regulations that are contrary to the 1945 Constitution, as part of a CC. This step will make it easier for the MKRI to make CC part of constitutional conventions, which grow and develop in the practice of state administration. Conventions can occur through repeated practices that grow into habits that state administrators must obey. In addition, the CC can also be applied at the regional level by carrying out the construction of administrative

courts at the provincial level but focusing on the CC against regional institutions and implementing provincial and city district regulations.

Second, After the non-original intent interpretation as the basis for institutionalizing the CC, the next step is to strengthen that interpretation by revising the MKRI Act, which emphasizes the authority of CC in the MKRI Act. *Third*, the last step at the time of the amendment to the 1945 Constitution was by making changes to Article 24C by affirming CC as the authority of the MKRI. In addition to the method/steps of institutionalizing CC mentioned above, it is necessary to change the structure and number of Justices of the MKRI. When the faucet for it is open, it will certainly have an impact on thousands of requests for it in one year (based on the experience of the German BVerfG, the CC cases are more than 5000 per year. If the problem is not resolved, there will be an accumulation of cases, and the burden borne by judges will be even heavier. The step is to increase the number of Justices of the MKRI, which then divides them into two rooms (1 room/senate 8/9 judges), eight constitutional judges per senate as in the German BVerfG structure.

However, suppose the alternative of adding constitutional justices is not possible. In that case, the other way is to reinforce the attitude following the "decision of the MKRI who is not authorized in resolving disputes over the election results" by refusing to examine and try and submitting to lawmakers to immediately implement the MKRI's decision by forming special court for election disputes.

e. Objects of Constitutional Complaint Dispute

One of the crucial points regarding the granting of new functions/authorities to the judiciary is the object of a dispute as a form of absolute competence of the judiciary. The object of CC is different in each country, which of course, follows the political needs of the law and the prevailing judicial power system. Substantive a CC are part of a constitutional review because the issue is the constitutionality of the law/constitutionality of the act of interpreting the constitutional and statutory material. In practice in German BVerfG, CC also has the competence to assess the constitutionality of laws with the dimension of individual complaints. Even the German BVerfG has the authority to review laws in abstract judicial review, specific judicial review, and CC authority.

In contrast to Germany, Indonesia must have a CC model whose object is separate from the constitutional review/ judicial review. A constitutional review is a judicial review of the law's constitutionality, which is reviewed using constitutional

measuring instruments. The constitutionality review of this law uses a formal examination and a material examination (including a special test of materiality/ testing the validity of the law). Formal testing is related to the process of forming laws, or the authority to assess whether a legal product (law) has complied with all the procedures for its formation as determined/regulated in the constitution and applicable laws and regulations. Therefore, a law can be annulled formally if it violates the procedure for establishing law as regulated in the Constitution (Article 20 of the 1945 Constitution). Meanwhile, material testing is more related to its contents (e.g., articles, paragraphs, phrases) which are considered to be contrary to the Constitution. In most cases, the formal examination only cancels the article/paragraph/phrase. But a law as a whole can also be annulled if its content contradicts the Constitution. On the other hand, material testing with special characteristics (applicability testing) has also developed where the performance of the substance/material has been developed, for example, testing of laws that have no validity against the 1945 Constitution, such as reviewing of Law No.45 of 1999.

The CC must be made by the Indonesian legal system and be able to place competence in one of the fields. It must be clearly distinguished which is the subject of the dispute over the judicial review and which is the subject of the constitutional complaint. In practice in Germany, the CC has different objects from examining the constitutionality of laws (abstract and concrete norms). For example, in the latest case of the German BVerfG decision No. 1 BvR 2656/18, 1 BvR 96/20, 1 BvR 78/20, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20 on March 24, 2021, in that decision the first senate German BVerfG stated that the provisions of the Federal Climate Change Act (Bundes Klimaschutzgesetz – KSG) set national climate targets and the annual emission amounts allowed up to 2030 are not compatible with basic rights to the extent that they do not have adequate specifications for further emission reductions from 2031 onwards. In practice, the CC has more dimensions of individual rights (individual complaints).

The object of this dispute is interesting to examine in-depth because a CC is one of the legal mechanisms designed to guarantee the protection of citizens' rights against every action of the state/government/state administrators in all branches of power. The action in question is an action that violates the constitutional rights of citizens or does not take action/fulfilment of legal actions that harm the constitutional rights of citizens.. According to I Dewa Gede Palguna, the object of the CC is the act (or omission) of public institutions/government bodies, court

decisions, and laws.[20] For example, cases concerning the implementation of the law, deviations from the law enforcement process, and general court decisions that are considered to violate the Constitution. [21]

Mahfud MD's view that the object of dispute in the CC includes three things:[22] (1) violation of constitutional rights for which there is no legal instrument for litigation or no longer available legal settlement (judicial); (2) the existence of laws and regulations under laws that directly violate the contents of the Constitution, but do not clearly violate higher laws and regulations under the 1945 Constitution; (3) court decisions that violate constitutional rights even though they already have permanent legal force and cannot be challenged again with legal remedies to a higher court.

In the Indonesian legal system, it is necessary to reconstruct the understanding of the elements inherent in CC so that they do not get confused in understanding the object of its dispute by a constitutional review/judicial review. At least some elements are attached to the constitutional complaint:

a. The existence of a guarantee of the constitutional rights of citizens as regulated in the Constitution. This guarantee is the basis for demanding the protection and fulfilment of individual constitutional rights. The existence of a CC is a dispute resolution medium to demand the protection/fulfilment of these constitutional rights.
b. Individual citizens submit the CC to the state/judicial institution with this function, the MKRI, that has special competence.
c. There is an element of constitutional loss. This constitutional loss is caused by the interpretation/application of laws and regulations that are wrong/contrary to the Constitution or not carrying out/implementing court decisions/government administrative decisions (wanprestasi). It is what distinguishes it from examining the constitutionality of the law. The main constitutional review of the dispute is the existence of a legal product in the form of a "law" that is problematic, according to the applicant. It is also different from the review of legislation under the law by the Supreme Court. In addition, the CC differs from an application within the scope of the state administrative

[20] I Dewa Gede Palguna, Constitutional Complaint and the Protection of Citizens the Constitutional Rights", *Constitutional Review* Volume 3 No.1 (2017): 1-24

[21] Hamdan Zoelva, "Constitutional Question dan Perlindungan Hak-Hak Konstitusional," *Jurnal Media Hukum* 19, no. 12 (2012): 152-165

[22] Achmad Edi Subiyanto, "Perlindungan Hak Konstitusional Melalui Pengaduan Konstitusional," *Jurnal Konstitusi* 8, no. 5 (2011): 708–731.

court whose main dispute is in the legal product of a decision or action (negative and positive). In the context of the Indonesian legal system, the CC is not focused on legal products (abstract rules and decisions or norms) but on the implementation/interpretation that is less precise/wrong by state institutions in carrying out their constitutional obligations. Because it could be that the Constitution is right and the interpretation is wrong, it could be that the regulations and decisions are correct. However, the implementation is wrong, including the act of not doing something different from the goal/ not issuing a decision (default) in carrying out the constitutional obligations that should be the responsibility of the state institution (in case).

d. Constitutional losses in CC must be concrete and specific (special), not abstract or still within the framework of being harmed by state officials. It is different from a constitutional review because, in a constitutional review, the construction of a constitutional loss can also be an event that will occur (based on legal reasoning) and can be disputed.
e. There is a causal relationship (*causal verband*) between the losses suffered by the citizen applicant and the actions taken by the government (including not taking action in the context of default). This is different from the constitutional review. The constitutional review is more focused on the cause and effect of the constitutional loss with the enactment of the law. It is also different from administrative justice. In the context of administrative justice law, the focus of the problem lies in default decisions and actions on administrative applications (e.g., permit applications that are intentionally not processed).
f. In the structure of judicial power in Indonesia, ideally, the CC does not aim to cancel legal products (regulations and decisions) but instead demands the fulfilment of constitutional rights by state administrators so that the decisions will have an impact on the fulfilment of constitutional rights. Because cancelling a law product has become the object of a constitutional review dispute, an administrative decision is an object of dispute in the state administrative court.

As an independent authority, the CC must have its object of dispute (absolute competencies):

a. Court decisions that violate constitutional rights.
   Court decisions that violate constitutional rights, Court decisions that are not followed up, and are not implemented by the government (especially in administrative justice cases). Concerning this object, it must be limited whether

the object of the CC can be made after a decision that has permanent legal force or after a review because the review can be carried out many times. Including the decision of the Supreme Court can be the object of dispute in this CC, so assess whether the decision violates constitutional rights or not. In the practice of the German Constitutional Court, the object of disputed CC that is mostly resolved is Court decisions, such as federal Courts (civil and criminal Courts), administrative Courts, tax Courts, state Constitutional Court decisions, and others.[23] In this context, judges in these Courts are subject to and comply with the Constitutional Court's decision.[24]

b. Interpretation of the Constitution/ Law.
State administrators whose authority by the Constitution, but in the exercise of their authority, misinterpret the contents of the Constitution, or state administrators who do not implement the contents of the Constitution, which result in violating constitutional rights. The wrong interpretation by state institutions of the law, the law is right, but the implementation of the law is wrong. Improper application of laws detrimental to constitutional rights does not need to annul the law. It is enough that the application of the law is reported to the MKRI to assess whether it violates constitutional rights. For example, in the case of interpreting the term of office of the replacement KPK leadership, it concerns the option to replace the remaining term of office of the replaced leader or remain in office for five years. This case is included in the judicial review with the decision of MKRI No.5/PUU-IX/2011. This misinterpretation is a form of the disputed object of constitutional complaint, which is enough to question the wrong interpretation.

The interpretation of the Constitution by the state administrators results in a violation of the constitutional rights of citizens. Examples of legal events fall into the category of CC, such as the misuse of national insight tests (test material). The national insight test in the selection of state civil servants can be justified based on the Constitutional Court's decision No.70/PUU-VXII/2019, which states that Article 69B paragraph 1 and Article 69C of the Corruption Eradication Commission Law are constitutional, as long as they do not harm

[23] Tanto Lailam, "Peran Mahkamah Konstitusi Federal Jerman Dalam Perlindungan Hak Fundamental Warga Negara Berdasarkan Kewenangan Pengaduan Konstitusional (The Role of the German Federal Constitutional Court in Protecting of Fundamental Rights Based on the Constitutional, *Jurnal Hak Asasi Manusia* Volume 13, Nomor 1, (April 2022): 65–80.

[24] Armin Von Bogdandy and Davide Paris, "Building Judicial Authority: A Comparison between the Italian Constitutional Court and the German Federal Constitutional Court," *Revista Derecho del Estado*, no. 43 (2019): 5–24.

constitutional rights. Likewise, the Supreme Court Decision 2 P/HUM/2020 also states that the national insight test for state civil servants is constitutional. In this case, making test materials that deviate from the law deviates from the values of Pancasila and the Constitution, which is not true. Currently, there is a problem with the material of national insight in the process of re-selection of state civil servants at the Corruption Eradication Commission. Several questions have dimensions that are contrary to constitutional values, such as the question «choose Pancasila or the Qur'an» this question aims to clash religious beliefs and commitment to the state, even though religious belief is a fundamental right that must be protected. This question is irrelevant and tends to violate fundamental rights in religion.

c. Conflicts between laws. The conflict between laws is a scourge in itself, and until now, there is no proper dispute resolution mechanism. This conflict of law material needs to be resolved constitutionally. Until now, there is rarely a mechanism for reviewing it. In the future, if there are individual citizens whose constitutional rights are impaired due to a conflict of contents in the law, it is sufficient to file the CC.

d. The MPR decree violates constitutional rights. MPR stipulations for which, until now, no legal settlement mechanism can be included in the category of Constitutional Complaint.

e. Legislation under the law whose material directly refers to the 1945 Constitution. Many regulations were born and refer directly to the Constitution, especially in local government administration. Regional regulations can also be one of the constitutional authorities in the framework of CC. This was done because the Supreme Court was unable to test Regional Regulations against the Constitution. In addition, for example, the cancellation of the Natural Resources Law based on violations of the Constitution contained in Government Regulations. Such as the MKRI's assessment of 6 products of implementing regulations for the Natural Resources Law: Government Regulation Number 16 of 2005 concerning Development of Drinking Water Supply Systems, Government Regulation Number 20 of 2006 concerning Irrigation, Government Regulation Number 42 of 2008 concerning Management of Water Resources, Government Regulation Number 43 of 2006 2008 concerning Ground Water, Government Regulation Number 38 of 2011 concerning Rivers, Government Regulation Number 73 of 2013 concerning Swamps, these six Government

Regulations did not meet the basic principles of limiting the management of water resources as mandated by the 1945 Constitution.[25]

f. Actions by state administrators that violate the Constitution. This authority is a solution to the actions of state officials who often do not follow up on Court decisions or delay/not implement/not issue decisions (default) on the fulfilment of citizens' constitutional rights. State administrators in question are all state administrators both at the central and regional levels, both those established by the 1945 Constitution, laws and regulations under it.

g. Other disputes that arise in the future include limitations on the definition of CC.

Some opinion that the CC can only be filed if all legal remedies have been exhausted or the last legal remedy that can be used by citizens whose constitutional rights have been violated. The requirement for filing a CC is that the case is final and binding (no other legal remedies can be taken) as in the practice of the German BVerfG. In the context of Indonesia, the author disagrees with at least several things: (1) it is necessary to look at the case submitted if the case submitted is a case of violation of constitutional rights caused by a court decision that has permanent legal force, then this opinion can be justified. However, ideally, the CC can be made as the first and last request if the case is in the form of an application/ lawsuit for the negligence of a state administrator and a case of incorrectly applying the Constitution and laws, for example, review of the MPR Decree. (2) efforts to make complaints must be equal to examining the constitutionality of laws in the judicial review system, but the objects of dispute are distinguished, and this decision is final and binding.

C. CONCLUSION

Constitutional Complaint as the basis for the protection and fulfilment of constitutional rights with the rationale include: the Constitutional Complaint is the embodiment of the values of constitutionalism in a rule of law of Pancasila (Negara Hukum Pancasila), as a complement to checks and balances that ensure that state institutions work under the constitution and a system of mutual checks and balances, the basis for the protection of *fundamental* rights, as well as the aim of realizing good governance. From the perspective of legal policies, there are several steps/methods of

[25] Tanto Lailam, "Penataan Kelembagaan Pengujian Norma Hukum di Indonesia", *Jurnal Konstitusi,* Volume 15, Nomor 1, (Maret 2018): 226

institutionalization, amendments to the 1945 Constitution, non-original interpretations, or revisions to the MKRI Act. Some objects of dispute: court decisions, actions of state administrators in interpreting the constitution, actions of state administrators in interpreting/implementing content in law, violations of constitutional rights due to conflicts between laws, the MPR decree, problems with laws and regulations -invitations under laws whose material directly refers to the Constitution, actions by state officials who delay or do not implement/do not issue decisions (defaults) on the constitutional rights of citizens.

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