CONSTITUTIONAL COMPLAINT: A COMPARATIVE STUDY OF THE AUTHORITY OF THE CONSTITUTIONAL COURTS OF THE REPUBLIC OF INDONESIA AND CROATIA

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Abstract: *This study aims to determine the forms of ideas and powers of the Constitutional Court in the Comparative Study of the Republic of Indonesia and Croatia. The results of this study explain that the Constitutional Courts of the Republic of Indonesia and Croatia are high state institutions in the constitutional system which are the holders of judicial authority together with the Supreme Court. There are three ideas that make constitutional complaints a new authority for the MK, the first being carried out by the MPR by changing the Constitution as the authority of the MK; Second, legislators (DPR and President) through amendments to the Constitutional Court Law; and the third is done by the Constitutional Court itself through the interpretation of the constitution with the method of constitutional interpretation.*

Keywords: *Constitutional Complaint, Comparative Study, Constitutional Courts.*

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Introduction

The history of the birth of the idea of a constitutional complaint or what is commonly known in other countries as a constitutional complaint is directly related to upholding human rights, in fact it is a logical consequence of the idea of a rule of law state. In summary, the theoretical construction of a modern legal state is constitutionalism, which means that the administration of state life is based on and therefore may not conflict with the constitution. Therefore, the constitution is truly embodied or obeyed and implemented in practice, not just as an aspirational document. To ensure that the constitution is truly adhered to and implemented in practice, the idea of forming a Constitutional Court was born[1]

Donnelly claims that violations of individual human rights are not only limited to violations of the law against victims, but include failure to grant their rights and do things that are legally right to grant those rights [2]. Furthermore, the role of the state, which is supposed to protect the realization of the rights to freedom of religion for minority religious groups, becomes weak and is often absent to maintain harmony in religious life and belief. In terms of its objective, law becomes a tool for rulers and contradicts the legal ideals of Pancasila which have the core of certainty, social use, justice for the sake of national interests, human dignity, recognition, respect and protection of human rights and the principle of Unity in Diversity [3].

The Constitutional Court which first implemented and developed its constitutional complaint authority was the German Federal Constitutional Court (Bundesverfassungsgerichts). Article 93 paragraph (1) point 42 GrundgesetzBundesrepublikDeutchland (19th amendment, January 29, 1969) provides constitutional authority to the German Federal Constitutional Court (Bundesverfassungsgerichts) to handle and try cases of constitutional complaints by individuals, on the grounds that their human rights are citizens or one of the human rights thereof, as set forth in certain articles in the constitution (Grundgeset), have been violated by government officials [5]

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In general, one of the main powers of the Constitutional Court in various countries is reviewing constitutional complaints. The Constitutional Court itself is a new phenomenon in the world of state administration. This means that the constitutional complaint authority possessed by the Constitutional Court in various countries in general is also a new phenomenon for countries that are transitioning towards constitutional democracy. Given that these countries have historical experiences of authoritarian politics, many state violations of the constitutional rights of their citizens remain unresolved.

Specifically, a constitutional complaint is a form of complaint by citizens to the constitutional court because they have received treatment (policy or no policy) from the state, in this case the government, people's representative institutions, and the Supreme Court, which are contrary to the constitution and detrimental to human rights. citizen. A constitutional complaint can only be filed after all legal efforts have been made through other state institutions and have exhausted themselves. In many countries, this authority is one of the powers of the constitutional court. However, in Indonesia, the 1945 Constitution does not explicitly give constitutional complaint authority or citizen complaints to the Constitutional Court [6].

Constitutional Question is a legal remedy given to court judges (other than MK judges) if the judge doubts the constitutionality of a legal norm that will be applied in a concrete case, so that before a case is decided the judge first makes a request to the MK regarding the constitutionality of the legal norm then a Constitutional Complaint as an effort constitutional complaints to the Constitutional Court regarding the criminalization of citizens' constitutional rights so that it is deemed necessary to defend these rights. So that this complaint will be a solution to create a democratic state based on law [7].

Expansion and Application of Constitutional Complaint in Indonesia is a necessity for progressive and sustainable legal development. Referring to the explanation of progressive and responsive law enforcement in fulfilling Substantive Justice and Empirical Facts of Claims for Constitutional Rights Related to Constitutional Complaint Cases, it is necessary to expand the Tasks of the Authority of the Constitutional Court which must be formulated in Article 24 C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the Law on the Court The Constitution and the Law on the Supreme Court are expected to be able to provide protection for the rights of citizens as well as an effort to uphold a just law [8].

The implementation of constitutional complaints in protecting citizens' constitutional rights has been carried out by several countries that have constitutional courts, one of which is the Constitutional Court of the Republic of Croatia. The constitutional complaint arrangements adopted by Croatia are contained in the country's constitution. If studied historically, the presence of constitutional complaints in several countries was caused by past political experiences which often committed constitutional violations in the administration of the state which led to violations of citizens' constitutional rights which had been protected by the constitution as a form of social contract between state organs and their people [9].

Based on the facts, there are at least four things that are criticized in law and state throughout 2020, including the process of forming laws (UU) that are not participatory, holding Pilkada in the midst of a pandemic, law enforcement and efforts to eradicate corruption and the narrowing of space for freedom of expression. Finally, there were two cases that were considered to have infringed on citizens'

constitutional rights, the first cases were EggiSudjana and PandapotanLubis in examining articles 134 and 136 of the Criminal Code regarding insulting the head of state and PanjiUtomo in the case of incitement to hostility, hatred and public humiliation of the government.

It is deemed necessary to implement and institutionalize the Constitutional Complaint and Constitutional Question mechanisms in the judicial review system at the Constitutional Court. The application of the constitutional question mechanism in Indonesia is a concrete manifestation of efforts to respect and protect the constitutional rights of citizens maximum [10].

1. Institution of the Constitutional Court of The Republic of Indonesia and Croatia

The Institutional Concept Of The Constitutional Court In The Croatia System

The Republic of Croatia is a constitutional parliamentary democracy. Legislative authority rests with the unicameral parliament (Sabor). The president serves as the head of state and nominates the prime minister, who leads the government. Domestic and international observers stated that parliamentary elections were held in December according to international standards. Security forces reported to civil authorities. The constitution and laws establish the right to a public trial, and an independent judiciary generally upholds this right [11].

The impeachment mechanism of the president can be carried out through a voting process from the representative council of as many as two-thirds of all members of the House of Representatives of the Croatian Parliament, decided by taking a majority of votes from two-thirds of the constitutional judges. If the Constitutional Court approves impeachment, the duties of the President of the Republic cease with the strength and basis of the Constitution (constitutional)

Talking about the Constitutional Court in Croatia, actually long before 1991, Croatia already had quite a long experience with an institution called the constitutional court. Since Croatia was still a state of Yugoslavia, since 1963 to be precise, Croatia has had a constitutional judicature like the Constitutional Court as we know it today. It can even be said that the Croatian MK that is standing today is only a continuation of the MK that had existed before, namely the MK of the former State of Croatia (1963-1990).

To find this out more clearly, the following will describe the authority of the Constitutional Court of the former State of Croatia in 1963 [12]:

a. Testing the constitutionality of the Law of the State of Croatia against the Constitution of the State of Croatia.
b. Examines the constitutionality or legality of regulations whose hierarchy falls under the State Act against the Constitution or the Croatian State Act.
c. Resolving authority disputes between judicial bodies and Croatian State Organs.
d. Resolve disputes regarding the rights and obligations of the socio-political community existing in the State of Croatia, as long as it is not within the jurisdiction of other courts.
e. Decide on individual lawsuits (a kind of constitutional complaint) filed against violations of basic rights guaranteed by the Constitution of the State of Croatia.
f. Supervise matters relating to Parliament's obligations in the framework of ensuring the upholding of the constitution and the rights of citizens.

Judging from the history of Croatian state administration, the birth of the Croatian Constitutional Court as we know it today (which was formed in 1991) cannot be separated from the geo-political situation that developed in the Eastern European region at that time. Where in the early 90s, the communist countries in Eastern Europe experienced ideological shock and collapse [13]. The collapse of communism that hit the Soviet Union and its satellite countries in Eastern Europe (including Yugoslavia) then prompted radical changes in the field of law, especially the state administration in each country which was marked by changes to the constitution from which previously had the character of communism-authoritarianism to constitutional democracy [14].

One of the interesting phenomena as a result of radical constitutional changes in ex-communist countries is the emergence of the Constitutional Court in these countries. As said by JimlyAsshiddiqie that almost all new democratic countries (formerly communist) formed a Constitutional Court with the Austrian Model, namely as a state institution that stands alone outside of the Supreme Court[13]. In the

constitutional system of the Republic of Croatia, based on the Constitutional Law on the Constitutional Court of the Republic of Croatia and the Law on Referendums for amendments to laws, the authority to amend laws only belongs to two institutions, namely the State Electoral Committee and the Constitutional Court [15].

The Institutional Concept Of The Constitutional Court In The Indonesian State Governmental System

The Constitutional Court has the authority to decide disputes over the authority of state institutions. This is as regulated under Article 24C paragraph (1) of the 1945 Constitution of Law Number 24 of 2003. State institutions that can become applicants or respondents in cases of disputes over the constitutional authority of state institutions are not only limited to the main state institutions, but other state institutions whose authorities are regulated in the Constitution can also dispute before the Constitutional Court.

One of the constitutional information products that we built after the first (1999), second (2000), third (2001), and fourth (2002) amendments to the 1945 Constitution was the establishment of a Constitutional Court whose position is equal to and outside the Supreme Court (MA). The Constitutional Court was formed with the intention of overseeing and maintaining that the constitution as the supreme law of the land is actually implemented or enforced in the administration of state life in accordance with the principles of a modern legal state, where the law is the determining factor for the overall dynamics of life. social, economic, and political of a nation [16].

The institution of the Constitutional Court in the Indonesian constitutional system according to the applicable laws and regulations, where the 1945 Constitution and Law No. 24 of 2003 as the legal basis for the Constitutional Court in carrying out its duties and responsibilities. Apart from that, it does not only explain the institutional authority of the MK, but also explains the institutional composition of the MK, which is the first official to hold a position in the institutional structure of the MK after the amendment to the constitution (UDD 1945) which was produced by the MPR as a state institution that was given a mandate in the field of judicial power. As a high state institution, the Constitutional Court is on an equal footing with other high state institutions with regard to institutional and functional relationships to exercise power and authority based on the 1945 Constitution [17].

The Constitutional Court is the executor of the branch of judicial power (judiciary) which is independent and separate from other branches of power, namely the government (executive) and representative deliberative institutions (legislative). The constitutional court as a judicial institution of the first and final level does not have an organizational structure as large as the supreme court which is the apex of the judicial system whose structure is vertical and horizontal, covering five judicial environments, the general court environment, the state administrative court environment, the religious court environment, and the judicial environment. military. As an organ of judicial power that carries out judicial functions, the Constitutional Court is independent, both structurally and functionally [18].

The authority of the Constitutional Court in deciding disputes over the authority of state institutions whose authority is granted by the 1945 Constitution of the Republic of Indonesia or in other words that only the authority granted by the 1945 Constitution has legal status (legal standing) from disputes over the authority of state institutions and the Constitutional Court has the authority to decide on such disputes, but the authority of the Constitutional Court in deciding disputes over the authority of state institutions whose authority is granted by the 1945 Constitution of the Republic of Indonesia is irrelevant or inconsistent with the dynamics of disputes over the authority of state institutions that have emerged recently this [19].

One of the constitutional obligations of the Constitutional Court is to give a decision on the opinion of the House of Representatives regarding alleged violations by the president/and/or vice president according to the Constitution. Judicial review by the Constitutional Court as control between state institutions for the realization of the ideals of a democratic rule of law state. In carrying out its authority, the Constitutional Court has affirmed itself as a state institution that guards democracy by upholding the principle of justice that upholds substantive justice in every decision it makes. Justice here becomes the philosophical basis for exercising the powers of the Constitutional Court.

In addition to substantive justice, as a philosophical basis in carrying out its authorities and obligations as mandated by the 1945 Constitution, the Constitutional Court as a judicial institution applies

the principles of openness and transparency, as well as accountability to the public. The existence of the Constitutional Court is also inseparable from legal theories, including the theory of sovereignty, constitutional theory, democratic law state theory, welfare theory, justice theory, and legal certainty theory. The juridical basis for the authority of the Constitutional Court to examine laws is regulated in Article 24C paragraph (1) of the 1945 Constitution which essentially states that the Constitutional Court has the authority to examine laws against the Constitution.

In the final stage, with the passing of Law Number 24 of 2003, the Constitutional Court has officially exercised its authority granted by the 1945 Constitution. The existence of the Constitutional Court with its authority was triggered by the poor state administration, especially during the New Order period which was marked by rampant corruption, collusion and nepotism, markus (case broker), the values of legal justice have been abandoned, and the constitutional rights of citizens have been violated [20].

2. Development of the Authority of the Constitutional Court between the Republic of Indonesia and Croatia

Implementation Constitutional Complaint and Constitutional Question in croasia

The constitutional complaint mechanism, also known as constitutional complaint, is also adopted by the Croatian state. Legitimately this can be read in article 62 of the Croatian Constitution. Against the constitutional complaint mechanism imposed on the role of control and protection of citizens' constitutional rights. It can be explained in detail that: “The constitutional complaint is part of the Croatian legal order which is stated in the Constitution of the Republic of Croatia, and is also mentioned in the Croatian Constitution on the Act on the Constitutional Court. According to article 62 of the Croatian Constitution Act, every Croatian citizen has the right to file a constitutional challenge to the Constitutional Court if they feel that by an act or policy a state organ, an organ of a regional government unit and an organ of a unit of regional administration, or any other organ with public authority is judged to have violating their human rights and freedoms guaranteed by the constitution”[21].

Based on the description of the various powers of the Croatian MK, it can be seen that the control mechanism for the norms of legislation (judicial review) there is fully implemented by the Croatian MK. In other words, the powers of judicial review in Croatia, both in the dimension of constitutional review and in the dimension of legal review, are all concentrated or centered on the Croatian MK. A reality that is different from the system in force in Indonesia where the authority for judicial review in Indonesia is divided into two jurisdictions: the judicial review of laws against the Constitution is under the jurisdiction of the Constitutional Court, while the review of regulations under laws against laws is under the jurisdiction of the Supreme Court. Both the abstract review and the concrete review in force in Croatia are all within the ex post review or posteriori review framework. This means that testing can only be carried out after the law or regulations are officially passed and promulgated, not laws that are still in draft form (RUU) as is the case in the French system [22].

The authority of the Croatian Constitutional Court is further elaborated in Article 35 of the Constitutional Act on the Constitutional Court of the Republic of Croatia, which states that the Croatian Constitutional Court has the authority to carry out constitutional reviews consisting of an abstract review and a concrete review (constitutional complaint). Thus the source of authority of the Croatian Constitutional Court in deciding concrete review cases does not originate from the constitution but from a derivative law on the Constitutional Court.

The Constitutional Court will then examine and decide on the constitutional complaint. If the Constitutional Court decides that the legal norms being tested are not contradictory to the constitution, then the Constitutional Court declares that the a quo legal norms are constitutional and can be applied by the courts. Conversely, if the Constitutional Court decides that the a quo legal norm is contrary to the constitution, then the Constitutional Court declares that the a quo legal norm is unconstitutional and therefore cannot be applied by the court.

Constitutional Complaint and Constitutional Question: The Idea of Adding the Authority of the Constitutional Court in Indonesia

Indonesia is a democratic country which has the consequences of adhering to, regulating, and

measuring itself against the development of its governance system and state administration. This is because Indonesia has consistency with the 1945 Constitution of the Republic of Indonesia as a philosophy of life, legal principles and law enforcement in the life of the nation and state [23].

A state organ that focuses on the constitution, this institution was formed to be the guardian and interpreter of the Constitution or the Guardian of the Constitutional. The Constitutional Court as the guardian of the constitution actually also has the function of guarding democracy, protecting people's constitutional rights, and protecting human rights. Based on JimlyAsshiddiqie's view, the Constitutional Court has two ideal functions listed in the 1945 Constitution of the Republic of Indonesia, namely: First, the Constitutional Court is formed as a guardian of the constitution. The purpose of the guardian of the constitution is that the Constitutional Court guarantees, encourages, directs, guides, and ensures that the 1945 Constitution of the Republic of Indonesia has been implemented properly by the administration of the state and is subject to constitutional law. Second, the Constitutional Court is used as an interpreting institution for the 1945 Constitution of the Republic of Indonesia, because the Constitutional Court is the only institution that has this right. Through these two functions, the Constitutional Court seeks to cover up all the weaknesses and deficiencies that exist in the 1945 Constitution of the Republic of Indonesia[17].

Even though the Constitutional Court is only given the authority to judicial review of laws, in practice, many cases are submitted to the Constitutional Court formally in the form of reviewing laws, but substantially include constitutional complaints (constitutional complaints and constitutional questions). In a general sense, a constitutional complaint is a form of citizen complaint 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. Likewise regarding constitutional question, in the Black's Law Dictonary, the term constitutional question contains two meanings, namely a general meaning and a special meaning. The general understanding, constitutional question is a term that refers to every issue related to the constitution [24]. Meanwhile, in a special sense, constitutional question refers to a mechanism for testing the constitutionality of laws, namely in the case of a judge who is trying a case in doubt about the constitutionality of the law applicable to that case[25].

The proposal to increase the authority of the Constitutional Court in constitutional complaints is an urgency that must be carried out [26]. In further study, the application of constitutional complaints in Indonesia is still limited, namely if there is a law that violates the constitutional rights of citizens, then a judicial review can be carried out to the Constitutional Court [27]. This has indicated that constitutional complaints are still limited to laws (judicial review). In fact, if examined further, acts of violation of constitutional rights originate from the actions of state organs [28]. It is not that constitutional complaint cases do not exist, but they have not been accommodated by both the competent authority and the legal basis. Judging from the Constitutional Court Decision Number 5/PUU-XVII/2019, it is an example of a constitutional complaint application that was rejected by the Constitutional Court [29]. In fact, if examined through the views of Brown and Wise, they stated that the idea of forming the Constitutional Court was to uphold the principle of a rule of law, to protect democracy and the basic rights of citizens.

The emergence of a constitutional complaint is motivated by the lack of optimal mechanisms for protecting citizens' constitutional rights. So that the Constitutional Court should be given authority in constitutional complaints. The concept of constitutional complaint is also closely related to the principle of constitutionalism because it is a way of fighting for constitutional rights that have been violated by state organs. Therefore, it is appropriate for the Constitutional Court to obtain authority in constitutional complaints.

There are three ideas for making a constitutional complaint a new authority for the Constitutional Court. The first is carried out by the MPR by amending the 1945 Constitution because the authority of the Constitutional Court has been regulated in a limited manner in Article 24C paragraph (1) of the 1945 Constitution, so that adding this authority must amend the 1945 Constitution. Second, the legislators (DPR and the President) carried out through amendments to the Constitutional Court Law, by expanding the scope of reviewing laws already owned by the constitutional court including also testing the constitutionality of acts or omissions of public officials that cause harm or violation of citizens' constitutional rights due to actions or the negligence of a public official is contrary to the constitution. and the third is carried out by the Constitutional Court itself through interpretation of the constitution using the method of interpreting the constitution. Of the three ideas, the most appropriate idea is to

amend the 1945 Constitution, in order to provide a strong foundation for the Constitutional Court in handling violations of citizens' constitutional rights [30].

One of the ways to provide protection for citizens' constitutional rights is by granting Constitutional Complaint authority to the Constitutional Court. The urgency of implementing the Constitutional Complaint mechanism is a form of protection for the constitutional rights of citizens, besides that it is a solution to improve the face of law enforcement, which lately does not reflect the intent and purpose of the law itself. Constitutional Complaint is the most concrete protection of citizens' constitutional rights, this is because there are many public institutions that violate citizens' constitutional rights. With the adoption of Constitutional Complaint as one of the powers of the Constitutional Court, judicial review will automatically decrease, at this time many cases of judicial review serve as camouflage for resolving disputes that smell of Constitutional Complaint. The implementation of problematic norms, in fact, is the norm that is at issue because the complaint forum has not been provided. The basis for filing a Constitutional Complaint case is a violation of the constitutional rights of citizens[31].

If you look at the comparison with the practice of constitutional complaint in Croatia, the thought construction and substance of a constitutional complaint is very likely to be adopted in Indonesia. This adoption can be through the addition of the Constitutional Court's authority to carry out concrete reviews in the Constitutional Court Law, so that the authority of the Constitutional Court is expanded to include abstract review and concrete review. Having a constitutional complaint mechanism through concrete review as part of constitutional review can maximize the role of the Constitutional Court as the guardian of citizens' constitutional rights, because it does not only provide protection through abstract examination, but also concrete examination in order to provide holistic protection of constitutional rights. citizen. The concept of a constitutional complaint itself is a concrete review which is triggered by a case in court regarding the constitutionality of a legal norm which forms the basis of the case, so that before deciding a judge can ask the constitutionality of a legal norm to the Constitutional Court before making a decision on the basis of a legal norm that is suspected to be unconstitutional [32]

However, according to HamdanZoelvaview, learning from various jurisprudence of the Constitutional Court, to accommodate adjudication of constitutional complaints and constitutional questions does not have to amend the 1945 Constitution or amend the Constitutional Court Law. This can be done through the development of decisions of the Constitutional Court by expanding the interpretation of the authority to review existing laws in the 1945 Constitution. The Constitutional Court can make a dynamic and broad interpretation of the constitutional rights and legal standing of the plaintiff. This view can be accepted if the interpretation of the constitution does not only adhere to the formal legal aspects of the original intent of the provisions of the constitution (backward looking) but views that relate to practical needs and political benefits at present and in the future (forward-looking) [33].

3. Competence in Applying Constitutional Complaints: An Overview of Legislative Politics in Indonesia and Croatia

Constitutional Complaint Competence at the Constitutional Court of the Republic of Croatia

The Republic of Croatia, in the Law to be precise Article 129 which outlines the various powers of the Croatian MK, does not regulate in detail the type of judicial review adopted by the constitution. The Croatian Constitution only states that the Constitutional Court has the authority to examine the conformity of laws with the Constitution. Meanwhile, a more detailed description of whether the constitutional review was carried out through an abstract review or concrete review mechanism or both, is not found in the Constitution.

This is where the similarities and differences between Croatia and Indonesia lie in the matter of organizing the judicial review institution in each country. The similarity is that both the Indonesian Constitution and the Croatian Constitution both only briefly state the powers of the Constitutional Court in the field of judicial review, while the details of whether this authority is exercised through an abstract review or concrete review mechanism or both, are not explained in the Constitutions of the two countries at all.

Competency Of Constitutional Complaint And Constitutional Question On Political Legislation In The Constitutional Court Of The Republic Of Indonesia

If you pay attention, the constitutional review system by the Constitutional Court in Croatia is similar to the constitutional review system by the Constitutional Court in Indonesia. This can be seen from our constitution, namely the 1945 Constitution of the Republic of Indonesia in particular Article 24C paragraph (1) which only outlines the authority of the Constitutional Court to review laws against the constitution. While the types of testing (abstract review and concrete review) are not described. In addition, the abstract review mechanism in Croatia and Indonesia is a posteriori abstract review, which is a review of laws that have been ratified and promulgated. Abstract This review can be accessed by all parties, both state organs and individuals so as to provide a means for citizens to obtain justice and legal certainty. In contrast to the abstact review in Austria and Germany which can only be accessed by certain state organs.

Meanwhile, Hamid Chalid said that the difference in this case is that the legislators in Indonesia define the judicial review authority of the Indonesian Constitutional Court in a rigid and narrow manner, which only includes an abstract review and does not include concrete review at all. Meanwhile, the legislators in Croatia described the judicial review authority of the Croatian MK in a broad and complete manner, which includes an abstract review and a concrete review as well[34].

There is one important thing that needs to be underlined in relation to the institutionalization of constitutional complaint and constitutional question mechanisms in Indonesia through the Constitutional Court of the Republic of Indonesia. Whereas the constitutional review system in force in Croatia which is the object of comparison in writing this paper is to include all types of statutory regulations (not just laws) within the scope of the constitutional review held by the Constitutional Court of the Republic of Croatia. From laws to regulations whose position is below the law, all of them can become the object of review at the Croatian Constitutional Court. Meanwhile in Indonesia, as we know, the constitutional review powers of the Constitutional Court of the Republic of Indonesia are limited only to laws. Meanwhile, other regulations whose position is under the law are not included in the object of constitutional review (objectumlitis) at the Constitutional Court of the Republic of Indonesia [35].

In fact, constitutional complaints explicitly are not included in one of the powers of the Constitutional Court which is determined in a limited manner by the 1945 Constitution of the Republic of Indonesia. This can be seen from the formulation of Article 24 C paragraph (1) of the 1945 Constitution of the Republic of Indonesia which reads: "The Constitutional Court... has the authority to examine laws against the Constitution", the formulation is general in nature and therefore the former 1945 Constitution of the Republic of Indonesia delegates regulations further in the law according to Article 24C paragraph (6) of the 1945 Constitution of the Republic of Indonesia. So that constitutional complaint arrangements in the revision of the Constitutional Court Law, it can be said that they do not conflict with the 1945 Constitution of the Republic of Indonesia. This is actually similar to the constitutional complaint arrangements in Croatia.

When looking at the decisions of the Constitutional Court it can be concluded that the involvement of the Constitutional Court in legislative politics is not only in matters of simple everyday political legislation. Some of the cases handled by the Constitutional Court fall into the realm of extraordinary politics because the policies tried by the Constitutional Court determine the course of the Indonesian nation's journey and involve the fate of most citizens. Ran Hirschl calls it "mega-politics". Mega Politics Case according to Hirschl is "... core political controversies that define the boundaries of the collective or cut through the heart of the entire nation." The categorization of cases included in mega politics are (1) cases related to the election process and results; (2) The core authority of the government; (3) The case gives legitimacy to changes in the regime of power; (4) Cases related to transitional justice; and (5) Defining national identity.

Through constitutional complaint decisions, the Constitutional Court can revoke the exercise of government powers that have violated constitutional rights. In terms of implementing a constitutional complaint, a clear legal basis is needed. Therefore, there are two basic proposals for constitutional complaint law, namely amending the 1945 Constitution of the Republic of Indonesia and revising the Constitutional Court Law. As is well known, Article 24C of the Constitution of the Republic of Indonesia regarding the Constitutional Court still does not accommodate constitutional complaints. So it is necessary to have an amendment to the 1945 Constitution of the Republic of Indonesia to implement a constitutional

complaint. Furthermore, efforts to revise the Constitutional Court Law are also an urgency that must be carried out as procedural law for the Constitutional Court in implementing constitutional complaints.

The authority of the Constitutional Court in protecting the constitutional rights of citizens based on the 1945 Constitution is still limited, because the protection of constitutional rights by the Constitutional Court can only be carried out through the authority of the Constitutional Court to review laws against the 1945 Constitution. This means that the Constitutional Court is only authorized to try violations of constitutional rights that occur as a result of the enactment of a law (law product of the DPR and the President) which contradicts the constitutional rights of citizens guaranteed by the 1945 Constitution. As for violations of citizens' constitutional rights that occur as a result of the actions of other state officials both in the executive, legislative and Judicial cases (cases that fall under the constitutional complaint category) cannot yet be handled by the Constitutional Court because the Constitutional Court has not yet regulated the authority to resolve them. Because not all violations of constitutional rights that have been If handled by the Constitutional Court, the constitutional function of the constitutional court as a protector of citizens' constitutional rights is not functioning. Because of this, the idea emerged to make constitutional complaints a new authority for the Constitutional Court.

If you look at the comparison with the practice of constitutional complaint in Croatia, the thought construction and substance of a constitutional complaint is very likely to be adopted in Indonesia. This adoption can be through the addition of the Constitutional Court's authority to carry out concrete reviews in the Constitutional Court Law, so that the authority of the Constitutional Court is expanded to include abstract review and concrete review. Having a constitutional complaint mechanism through concrete review as part of constitutional review can maximize the role of the Constitutional Court as the guardian of citizens' constitutional rights, because it does not only provide protection through abstract examination, but also concrete examination in order to provide holistic protection of constitutional rights citizen.

4. Conclusion

The Constitutional Court of the Republic of Indonesia and Croatia (abbreviated MK) is a high state institution in the state administration system which is the holder of judicial power together with the Supreme Court. In the constitutional system, the Constitutional Court is a state administrative justice institution which has the authority to review the constitutionality of laws and regulations which are under the Basic Law (the state constitution). However, the history of MK between Indonesia and Croatia has a very different history. This has implications for the construction of the authority of the Indonesian and Croatian MKs which have very visible differences from the aspect of the institutional history of the MK.

The constitutional complaint mechanism, also known as constitutional complaint, is also adopted by the Croatian state. Legitimately this can be read in article 62 of the Croatian Constitution. Against the constitutional complaint mechanism imposed on the role of control and protection of citizens' constitutional rights. Regarding the various powers of the Croatian MK, it can be seen that the control mechanism for the norms of statutory regulations (judicial review) there is fully implemented by the Croatian MK. In other words, the powers of judicial review in Croatia, both in the dimension of constitutional review and in the dimension of legal review, are all concentrated or centered on the Croatian MK.

There are three ideas for making constitutional complaints a new authority for the Constitutional Court, first carried out by the MPR by amending the 1945 Constitution because the authority of the Constitutional Court has been regulated in a limited manner in Article 24C paragraph (1) of the 1945 Constitution. changes to the Law on the Constitutional Court, by expanding the scope of reviewing laws and thirdly carried out by the Constitutional Court itself through interpretation of the constitution using the method of interpreting the constitution. Of the three ideas, the most appropriate idea is to amend the 1945 Constitution, in order to provide a strong foundation for the Constitutional Court in handling violations of citizens' constitutional rights.

References

[1] A. Asmono, "Gagasan Pengaduan Konstitusional dan Penerapannya dalam Sistem Ketatanegaraan Indonesia," Yuridika, vol. 26, no. 3, p. 204, 2011.

[2] J. Donnelly, "Human Rights and Human Dignity: An Analysis Critique of Non-Western Conceptions of Human

Rights," Am. Polit. Sci. Rev., vol. 76, no. 2, pp. 303–316, 1982.

[3] A. B. Sidharta, "Filsafat Hukum Pancasila," Bahan Kuliah Filsafat Hukum, Progr. Dr. Ilmu Huk. Univ. Pelita Harapan, Jakarta, pp. 4–11, 2013.

[4] M. A. Baiquni and A. E. Prihatini, "Pengaruh Budaya Organisasi dan Lingkungan Kerja terhadap Kinerja Karyawan pada PT. Warta Media Nusantara Tribun Jateng," J. Ilmu Adm. Bisnis, vol. 5, no. 3, pp. 256–263, 2016.

[5] G. El Guyanie, "Urgensi Pengujian Constitutional Complaint oleh Mahkamah Konstitusi Republik Indonesia," RIGHT J. Agama dan Hak Azazi Mns., vol. 3, no. 1, pp. 179–198, 2013.

[6] H. Zoelva, "Pengaduan Konstitusional dalam Sistem Peradilan di Indonesia," J. Sekertaris Negara RI, vol. 1, no. 6, 2010.

[7] Kaelan, Inkonsistensi dan Inkoherensi dalam Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Hasil Amandemen (Kajian Filosofis–Yuridis). Jakarta: Badan Pengkajian Majelis Permusyawaratan Rakyat, 2017.

[8] Martitah, Mahkamah Konstitusi (Dari Negatif Legislature ke Positif Legislature). Jakarta: Konstitusi Press (Konpress), 2013.

[9] V. Taniady and L. Furqoni, "Perluasan Kewenangan Mahkamah Konstitusi: Penerapan Constitutional Complaint dalam Menjaga Hak Konstitusional Warga Negara," J. Judic. Rev., vol. 24, no. 1, pp. 135–148, 2022.

[10] M. Mahfud, J. Hamidi, I. D. G. Palguna, M. A. Safa'at, and M. Lutfi, Constitutional Question: Alternatif Baru Pencarian Keadilan Konstitusional. Malang: Universitas Brawijaya Press, 2010.

[11] Human Rights Practices, Executive Summary: Croatia. US: Department of State, 2011.

[12] Constitutional Court of the Republic of Croatia, "History and Development of Croatian Constitutional Judicature," 2020. https://www.usud.hr/en/history-and-development-croatian-constitutional-judicature (accessed Dec. 09, 2022).

[13] J. Asshiddiqie, Model-Model Pengujian Konstitusional di Berbagai Negara. Jakarta: Sinar Grafika, 2010.

[14] H. Schwartz, The Struggle for Constitutional Justice in Post-Communist Europe. Chicago: University of Chicago Press, 2002.

[15] D. Gardasevic, "Constitutional Interpretations of Direct Democracy in Croatia," Iustinianus Primus L. Rev., vol. 7, no. 12, pp. 3–4, 2016.

[16] J. Johansyah, "Kedudukan Mahkamah Konstitusi sebagai Lembaga Negara Berdasarkan Undang-Undang Dasar 1945," Solusi, vol. 17, no. 2, pp. 94–105, 2019.

[17] Soimin and Mashuriyanto, Mahkamah Konstitusi dalam Sistem Ketatanegaraan Indonesia. Yogyakarta: UII Press, 2013.

[18] S. Margi and M. Khazanah, "Kedudukan Mahkamah Konstitusi dalam Kelembagaan Negara," J. Rechten Ris. Huk. dan Hak Asasi Mns., vol. 1, no. 3, 2019.

[19] F. Natasha and R. Priskap, "Analisis terhadap Kewenangan Mahkamah Konstitusi dalam Penyelesaian Sengketa Kewenangan Lembaga Negara Berdasarkan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," Limbago J. Const. Law, vol. 1, no. 3, pp. 517–536, 2021.

[20] N. S. Darmadi, "Kedudukan dan Wewenang Mahkamah Konstitusi dalam Sistem Hukum Ketatanegaraan Indonesia," J. Huk. Unissula, vol. 26, no. 2, 2017.

[21] D. U. C. Rahmawati and I. Hasani, Masa Depan Mahkamah Konstitusi RI Naskah Konferensi Mahkamah Konstitusi dan Pemajuan Hak Konstitusional Warga. Jakarta: Pustaka Masyarakat Setara, 2013.

[22] P. D. Novlarang, R. Saraswati, and L. T. ALW, "Urgensi Penerapan Constitutional Question di Mahkamah Konstitusi Republik Indonesia dalam Menjamin Hak-Hak Konstitusional Warga Negara (The Protector of Citizen's Constitutional Rights)," Diponegoro Law J., vol. 8, no. 2, pp. 1398–1418, 2019.

[23] M. Siahaan, "Integrasi Konstitusional Kewenangan Judicial Review Mahkamah Konstitusi dan Mahkamah Agung," J. Konstitusi, vol. 17, no. 4, pp. 729–752, 2020.

[24] B. A. Garner, Black's Law Dictionary (Eight Edition). USA: West Publishing Company, 2004.

[25] I. D. G. Palguna, Mahkamah Konstitusi, Judicial Review, dan Welfare State: Kumpulan Pemikiran I Dewa Gede Palguna. Jakarta, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia, 2008.

[26] M. Zaky, "Perbandingan Judicial Review Mahkamah Konstitusi Indonesia dengan Germany Federal Constitutional Court dan Implikasinya secara Global," Transnasional, vol. 11, no. 1, pp. 27–37, 2016.

[27] G. C. Purnamasari, "Upaya Hukum terhadap Pelanggaran Hak-Hak Konstitusional Warga Negara melalui Pengaduan Konstitusional (Constitutional Complaint)," Verit. Justitia, vol. 3, no. 2, pp. 244–269, 2017.

[28] H. Chalid and A. A. Yaqin, "Menggagas Pelembagaan Constitutional Question melalui Perluasan Kewenangan Mahkamah Konstitusi dalam Menguji Undang-Undang," J. Konstitusi, vol. 16, no. 2, pp. 363–390, 2019.

[29] S. Simanjutak, R. Alfaiz, and M. Ambarita, "Urgensi Perluasan Kewenangan MK terhadap Constitutional Question dan Constitutional Complaint sebagai Wujud Perlindungan Hak Konstitusional Warga Negara," J. Legis., vol. 4, no. 2, pp. 297–304, 2021.

[30] *H. Yanti, "Gagasan Constitutional Complaint sebagai Kewenangan Baru Mahkamah Konstitusi dalam Perlindungan Hak Konstitusional," Wajah Huk., vol. 2, no. 2, pp. 185–198, 2018.*

[31] *H. Setiawan, "Mempertimbangkan Constitutional Complaint sebagai Kewenangan Mahkamah Konstitusi," Lex Jurnalica, vol. 14, no. 1, 2017.*

[32] *X. Nugraha, A. M. Frisa Katherina, S. N. Ramadhanty, and E. P. Tanbun, "Constitutional Question: Alternatif Baru Pelindungan Hak Konstitusional Warga Negara melalui Concrete Review di Indonesia," Negara Huk. Membangun Huk. untuk Keadilan dan Kesejaht., vol. 10, no. 1, 2019.*

[33] *H. Zoelva, "Constitutional Complaint dan Constitutional Question dan Perlindungan Hak-Hak Konstitusional Warga Negara," J. Media Huk., vol. 19, no. 1, 2012.*

[34] *N. H. Sardini and G. Suswanto, 60 Tahun Jimly Asshiddiqie: Menurut Para Sahabat. Jakarta: Yayasan Pustaka Obor Indonesia, 2016.*

[35] *A. A. Yaqin, Constitutional Question: Kewenangan yang Terlupakan dan Gagasan untuk Melembagakannya di Mahkamah Konstitusi. Jakarta: Sinar Grafika, 2022.*