

## PROTECTION OF CITIZENS' CONSTITUTIONAL RIGHTS FROM THE AUTHORITY OF THE PRESIDENT IN INDONESIA

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### ABSTRACT

*The constitutional rights of Indonesian citizens have been regulated in the 1945 Constitution, that constitutional rights are the rights of citizens which include the right to live, the right to have a family and continue offspring, the right to self-development, the right to obtain justice and access to the same law, the right to personal freedom, the right to feel safe, the right to welfare, the right to participate in government, women's rights and children's rights. One of the efforts to safeguard the rights of citizens that have been protected by the 1945 Constitution of the Republic of Indonesia is the establishment of a state institution whose job is to handle all matters relating to constitutional rights in the country, namely the Constitutional Court. The 1945 Constitution gives limited authority to the Constitutional Court to examine laws passed by the president against the constitution. By using normative legal research methodology and literature studies and using a conceptual approach (conceptional approach). This research will discuss the protection of citizens' constitutional rights from the president's authority in forming PERPU which is subjective. The result of this research is that efforts to protect citizens' constitutional rights can be carried out based on protection from the Constitutional Court as an institution that carries out a constitutional review of laws drafted by the president as well as restrictions on the president's authority in establishing PERPU.*

**KEYWORDS** *Constitutional Rights, Presidential powers, Constitutional Court*



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### INTRODUCTION

Constitution is a word that comes from the French, namely *constituer* means 'establishment'. The meaning of the word formation is attached to the basis of the formation of the state. The constitution contains the initial meaning (beginning) of all laws and regulations concerning the state which are understood as the norms of

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the political and legal system in a state which are documented in writing, in which there are rules, institutions and division of authority, rights and obligations. Meanwhile, what is meant by constitutional rights are the rights of citizens guaranteed by the Constitution. The state institution in Indonesia that has a role in examining every law that is formed is the Constitutional Court. The Constitutional Court is expected to be able to protect the rights of every citizen listed in the Constitution for the sake of creating a good and just democratic life.

The establishment of the Constitutional Court institution is a reform effort carried out by Indonesia in shaping a better democratic life. With the existence of an institution that has a special role in maintaining the dignity of the 1945 Constitution of the Republic of Indonesia as the highest norm in Indonesia. The Constitutional Court is an institution that has high authority in the corridors of its authority and adopts authority in the form of a constitutional complaint or constitutional complaint which is a form of legal effort to protect citizens' constitutional rights in a constitutional system that has the authority to try them.

The Constitutional Court has authority which principally originates from Pasal 24C of Undang Undang Dasar Republic Indonesia 1945 Juncto Pasal 10 of Undang Undang Nomor 8 of 2011 Concerning the Constitutional Court, in carrying out its function of guarding the constitution, the Constitutional Court has 4 (four) powers and 1 (one) obligations with details as follows:

1. The Constitutional Court has the authority to examine undang-undang against the Constitution Undang Undang Dasar 1945 (judicial review).
2. The Constitutional Court has the authority to decide disputes over the authority of state institutions whose powers are granted by Undang-Undang Dasar (disputes regarding state institution's authority).
3. The Constitutional Court has the authority to decide on the dissolution of political parties.
4. The Constitutional Court has the authority to decide disputes regarding General Election's result.
5. The Constitutional Court has the obligation to render a decision on the opinion of the House of Representatives (DPR) regarding the allegation that the President/Vice President has violated the law and/or the opinion that the President and/or Vice President no longer fulfill the requirements as President and/or Vice President.

Constitutionalism was also born as an effort to protect the rights of citizens from government authority. The notion of constitutionalism was born from the development of an understanding of the constitutions of various countries. Constitutionalism itself has a different meaning from the constitution, namely the essence of constitutionalism is the limitation and control of power dynamics in a government in a country (Asshiddiqie, 2010). its subjectivity is still very abstract so that it is feared that the subjectivity of the President's views in his authority to create PERPU will lead to violations of the people's constitutional rights which are regulated in the UUD 1945 as part of implementing the principles of constitutionalism of the Indonesian people (Soemantri, 2015).

Based on the discussion above, this research will try to examine and describe The efforts to protect citizens' constitutional rights from government authority

based on the role of the Constitutional Court and the Limitation of Government Authority (Constitutionalism).

## **RESEARCH METHOD**

This research is a juridical-normative research with a conceptual approach. Data collection uses the Library Study technique, namely the method of collecting library data, reading and recording and processing research materials (Zed, 2008). Literature studies can also study various reference books and the results of similar previous studies which are useful for obtaining a theoretical basis for the problem to be studied (Zoelva, 2012).

The data source used in this study is secondary data which consists of primary legal materials, namely laws and regulations related to the theme of the discussion. The secondary legal materials in this study consist of books, scientific journals, papers and scientific articles which can provide an explanation of the primary legal materials.

## **RESULTS AND DISCUSSION**

### **The Constitutional Court As Protector of Citizens' Constitutional Rights**

Indonesia is a country that recognizes human rights as constitutional rights as stated in the Undang-Undang Dasar Republik Indonesia 1945 in Pasal 28, starting from Pasal 28A to Article 28J, as well as the rights of citizens in Pasal 27, Pasal 30 and Pasal 31. Based on the rights of citizens listed in the article, the state has the obligation to protect, respect and fulfill these rights. Apart from that, there are also citizens' rights that arise because of obligations from the state as stated in pasal 33 ayat 3 of the Undang-Undang Dasar Republik Indonesia 1945. Therefore the protection and fulfillment of human rights at the level of state life must be guaranteed in the state constitution and legislation derived from the country's constitution (Thaib, 2005).

There needs to be a legal mechanism that is able to guarantee that every citizen's constitutional rights are not violated or ignored by legal products issued by the government and these rights do not only become rights that are only written in documents but actually the government participates in protecting and fulfilling them. Therefore, Indonesia as a democratic country implements constitutional review as a mechanism to protect the constitutional rights of its citizens.

The Constitutional Court exists as an institution that operates a constitutional review mechanism that has made many contributions to improving the quality of the constitutional system and state law. Referring to the past, the Indonesian state has experienced a period when many laws were made unilaterally and were very subjective to the benefit of the government in power. The House of Representatives (DPR) which should have a role in reviewing presidential draft laws instead only functions as a rubber stamp for approval of the ratification of the law irrevocably even though its contents are strongly indicated as violating the Constitution (Thaib, 2005). Even at that time, changes to laws that were said to be problematic could only be made through a legislative review, which was basically determined by the government. (Thaib, 2005) The case of changing the RUU Penyiaran 1997 became a dark history that is difficult to erase from the course of

Indonesian legislation. At that time, the RUU Penyiaran 1997 had been discussed and debated for a long time in the DPR until finally the government and the DPR agreed to enact it. However, once it was conveyed to the president to be signed and promulgated, the president refused and asked that the Undang-Undang be discussed again to change its contents according to the president's wishes.

The reforms carried out by this nation in protecting the constitutional rights of citizens were the establishment of the Constitutional Court which has the authority to review all laws deemed to be contrary to the Undang-Undang Dasar Republik Indonesia 1945 or unconstitutional so that it does not have binding legal force. When viewed from the point of view of the touchstone, constitutional review is limited to tests carried out to assess and test the constitutionality of a legal norm by using the constitution as the touchstone (Yaqin, 2022).

In the constitutional review, there are main tasks that must be carried out, namely to ensure the functioning of the democratic system in the relationship between the balance of roles or the interplay between the branches of legislative, executive and judicial powers. In other words, the constitutional review is intended to prevent the utilization of power by another branch of power. Then the task is also to protect each individual citizen from abuse of power by state institutions that harm the fundamental rights of citizens guaranteed in the constitution

(Palguna, 2013) The authority of the Constitutional Court to adjudicate cases of constitutional complaints is inherent in the function of the Constitutional Court to carry out a constitutional review. The granting of authority to try cases of constitutional complaints to the Constitutional Court is considered to be contributing to efforts to strengthen respect for human rights and fundamental freedoms in general and citizens in particular, to intensify the protection of these rights and at the same time to reinforce the degree of constitutional rights and those freedoms.

### **The Limits of the President's Authority in Protecting the Rights of Citizens**

The president as the leader of the state has legislative power which gives authority over statutory regulations which of course are still within the framework of government power. In other words, the power of the President is not only limited to the authority to make implementing regulations for laws, but also has the authority to submit draft laws to the parliament (DPR). Based on Pasal 4 and 5 Ayat (2) of the Undang-Undang Dasar 1945, it is explained that the President as the chief executive of the state also has the authority as administrator of government, the President in his leadership has rights over statutory regulations, forms implementing regulations for laws needed to facilitating the continuity of the state government. The President has powers over fields relating to various laws and regulations as follows:

1. Legislative Power, namely the president has the power to submit drafts Undang-Undang to the DPR.
2. Reglemental power means having the power to form government regulations to implement laws or to carry out government regulations in lieu of laws.
3. Executive power which includes regulatory power with a presidential decree.

The President is given legislative authority in terms of establishing PERPU based on the view that the President is the biggest law producer. because the President is a leader who should have a lot of knowledge and have the widest, greatest access in obtaining the information needed in the process of drafting state laws. The president must be able to understand why, for whom, how much, when, where, and how these regulations are made. The President has the expertise and also the experts who make it possible to carry out the process of making state regulations.

The condition for the President to issue a PERPU is in terms of compelling urgency. This is in accordance with Pasal 1 angka 4 Undang-Undang No. 12 Tahun 2011 concerning the Formation of Legislation, namely, "Government Regulations in Lieu of Laws are Legislations stipulated by the President in matters of compelling urgency". However, the subjectivity of a president in interpreting "compelling interests" which form the basis for the formation of a PERPU still needs to be studied further. This is because the provisions in this article are considered too abstract, giving rise to ambiguity regarding the subjectivity of the President's view in his authority to create a PERPU so that there are no violations of the constitutional rights of citizens as regulated in the UUD 1945 as part of implementing the principles of constitutionalism for the Indonesian.

The formation of PERPU based on the perspective of constitutionalism is that the authority of the President must be seen as part of efforts to protect the constitutional rights of citizens regulated in the UUD 1945. protection of citizens' constitutional rights, in other words, it is necessary to have clear and firm limits on the subjectivity of the President's authority in establishing PERPU so as to be able to provide space for the protection of citizens' constitutional rights through the application of constitutional rights regarding limited government.

Based on this explanation, an understanding can be drawn regarding what limitations must exist in limiting the president's authority in his authority to issue PERPU. These limitations :

1. Limits regarding the time when a PERPU can be issued or formed.
2. Substance limits or norms that become the contents of PERPU.
3. Limitations on the Protection of People's Constitutional Rights.

Even though the formation of PERPU was based on "compelling interests", which meant that PERPU needed to be issued by the president in dealing with a precarious situation that occurred to citizens. However, the subjectivity of the president's interpretation of the basis for making the PERPU must still pay close attention to conditions where there is no violation of citizens' constitutional rights which need to be protected and regulated in the 1945 Constitution. Protection of citizens' constitutional rights however must still be protected and may not be violated for the sake of imposing "compelling interests",.

The limitation of the President's subjectivity in his authority to issue PERPU based on the content or content of Pasal 22 UUD 1945 is for the protection of citizens' constitutional rights. That no matter how critical the conditions are forcing it, the protection of the constitutional rights of citizens absolutely must be considered and protected. It would be an anomaly if on the grounds of protecting the people in critical and coercive situations, but in practice the President, with his

personal subjective interpretation, even formed a PERPU which clearly contradicts the provisions on the protection of citizens' constitutional rights.

## CONCLUSION

Based on the results of the studies that have been presented, it can be concluded that the role of the Constitutional Court as an institution protecting the constitutional rights of citizens by carrying out a constitutional review mechanism to conduct testing and review of draft laws formed by the President to prevent abuse of power in forming laws that are contradicts the Undang Undang Dasar 1945 and violates the constitutional rights of citizens.

Restrictions on the president's authority in forming PERPU in the interest of protecting the constitutional rights of citizens need to be implemented because the basis for forming a PERPU is the subjective interpretation of the President in the contents of Pasal 22 UUD 1945. really pay attention to the conditions where there is no violation of the constitutional rights of citizens and continue to be guided by the fact that no matter how critical the conditions are that force the establishment of a PERPU, the protection of the constitutional rights of citizens must be attended to and protected. In order to avoid ambiguity in policy with the excuse of protecting the people in critical and coercive situations, the President, with his personal subjective interpretation, made a decision to form a PERPU which clearly contradicts the provisions regarding the protection of citizens' constitutional rights

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