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The Constitutional Court's Protection and Fulfilment of the Citizens' Rights: Constitutional and Islamic Law Perspectives

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Abstract: This study aims to examine the degree to which the Constitutional Rights of Indonesian Citizens are maintained by the state, specifically focusing on democratic Public Elections (*Pemilu*) and Public Elections for Regional Heads (*Pemilukada*). This study centers on the advancement of the political democratic process, particularly concerning law enforcement and the safeguarding of human rights. This analysis focuses on the implementation of these features by the Constitutional Court (*Mahkamah Konstitusi*), which has the responsibility of handling post-conflict public election issues. This study utilizes empirical legal methodologies, employing a framework that combines constitutional law and Islamic law. The data was acquired through in-depth interviews and a meticulous examination of pertinent literature. The participants were experts in the domains of the constitutional law and the Islamic law. This paper argues that the state has successfully protected the legal rights of citizens by incorporating them into laws, so fulfilling their constitutional privileges. Constitutional rights refer to essential human rights, particularly the right to engage in the democratic process through voting or candidacy in public elections. In the Indonesian state administration system, citizens have the privilege to report any election matters to the appropriate authorities and have it lawfully resolved by the Constitutional Court Institution. Islamic law supports the harmonization of law enforcement and the protection of citizens' rights within the context of human rights. In Aceh, a region that implements special autonomy and Islamic law, there is no prejudice against the rights of individuals based on their gender or religion. Under Islamic law, voting or running for office is regarded as a right rather than an obligation. However, participating in the act of voting is highly valued as it provides benefits and serves as a preventive measure against damage.

Keywords: Policy enforcement, rights of citizens, Constitutional Court, constitutional legislation, Islamic law

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Abstrak: Penelitian ini bertujuan untuk mengkaji tentang Pemenuhan Hak-hak Konstitusional Warga Negara Indonesia dalam penyelenggaraan negara khususnya dalam demokrasi Pemilihan Umum (Pemilu) dan Pemilihan Umum Kepala Daerah (Pemilukada). Penelitian tersebut didasarkan pada jalannya proses demokrasi politik dalam bentuk penegakan hukum dan pemenuhan HAM melalui penegakan hukum melalui Mahkamah Konstitusi (MK) sebagai lembaga peradilan yang menangani masalah pemilukada. Kajian tersebut menggunakan metode hukum empiris dengan pendekatan hukum tata negara dan hukum Islam. Data dikumpulkan melalui wawancara mendalam dan studi pustaka. Informan yang diwawancarai adalah ahli hukum tata negara dan hukum Islam. Tulisan ini berkesimpulan bahwa negara telah melakukan perlindungan hukum dan memenuhi hak-hak konstitusional warga negara dengan menjaminkannya dalam undang-undang. Hak-hak konstitusional merupakan bagian dari hak azasi manusia yaitu hak memilih atau dipilih dalam pemilihan umum. Dalam sistem tata negara di Indonesia khususnya ketika terjadi sengketa pemilu, maka akan warga negara memiliki hak untuk melaporkan kepada pihak yang memiliki kewenangan dan diproses secara hukum dalam Lembaga Mahkamah Konstitusi. Menurut hukum Islam penegakan hukum dan perlindungan hak warga negara sebagai bagian dari HAM tidak ada pertentangan. Apalagi di Aceh sebagai daerah yang menerapkan otonomi khusus dan Syariat Islam, hak-hak warga negara tidak ada yang didikriminasi baik karena perbedaan jenis kelamin maupun karena perbedaan agama. Namun dalam konteks hukum Islam meskipun memilih atau dipilih merupakan hak, bukan kewajiban, tetapi ikut memilih lebih utama dan mengandung kemaslahatan dan dapat menghindari mafsadat.

Kata Kunci: Penegakan hukum, hak warga negara, Mahkamah Konstitusi, hukum tata negara, hukum Islam

Introduction

Following the 1998 reform, Indonesia underwent significant alterations in its constitutional structure, which encompassed the establishment of a multi-party politic system, the introduction of the Regional Representative Council (*Dewan Perwakilan Daerah/DPD*), the Creation of the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi/KPK*), the establishment of the Financial Services Authority (*Otoritas Jasa Keuangan/OJK*), and the formation of the Constitutional Court (*Mahkamah Konstitusi/MK*). The Constitutional Court has significantly enhanced democracy by bolstering the protection of human rights. To a certain degree, this has enhanced the efficacy of checks and balances processes inside governmental institutions. There is a belief that the

courts have the potential to enhance their reliability and effectiveness in promoting democracy.¹

Indonesia, being a nation governed by legal principles, ensures that its citizens are granted constitutional rights through the judicial proceedings conducted by the Constitutional Court. The Constitutional Court possesses the power of judicial review, however in reality, numerous cases are legally presented to the Constitutional Court as judicial review proceedings, primarily involving constitutional objections. There is an ongoing debate among legal professionals regarding the necessity of granting the Constitutional Court greater power to address constitutional concerns. However, the pressing need to safeguard citizens' constitutional rights is becoming increasingly apparent. At the operational level, the absence of constitutional complaint jurisdiction in the Constitutional Court implies that numerous constitutional complaints may not be pursued by the Court in Indonesia, being a nation governed by legal principles, ensures that its citizens are granted constitutional rights through the judicial proceedings conducted by the Constitutional Court.²

The significance of the constitution in a nation is paramount, as it serves a crucial role in governing and restraining authority inside the country. The 1945 Constitution, as the supreme national constitution, functions as the primary legal authority that establishes standards and provides guidance for other legal rules. The constitution is established to provide constraints on the rulers' authority in order to prevent any manifestation of their arbitrary behaviour towards the populace. In order to ensure the diverse interests of the people, it is imperative that the establishment of this entity incorporate a system that upholds equitable rights for all citizens. Based on the limitations outlined in fundamental legislation, it possesses the role or embodiment of the supreme law that must be adhered to by all entities, including not only the populace but also the government and even the rulers.

The primary objective of the rule of law is to safeguard the rights and liberties of individuals, ensuring the overall well-being and legal safeguarding of all citizens, thereby establishing a system of justice that is grounded in the enforcement of relevant laws. Citizen lawsuits serve as the vehicle for safeguarding citizens' rights against governmental misuse of power.³ The

¹ Iwan Satriawan and Khairil Azmin Mokhtar, "The Role of Indonesian Constitutional Court in Resolving Disputes Among the State Organs," *Hasanuddin Law Rievew* 5, No. 2 (2019). Suparto Suparto, et.al., "Establishment of Electoral Court in Indonesia: Problems and Future Challenges," *Journal of Indonesian Legal Studies* 8, No. 2 (2023), p. 501-544.

² Febri Handayani, "Implementasi Perlindungan Hak Konstitusional Warga Negara oleh Mahkamah Konstitusi Menurut Sistem Ketatanegaraan di Indonesia," *Riau Law Journal* 3, No. 1 (2019), p. 44. Andrew Rosser, "Towards a Political Economy of Human Rights Violations in Post-New Order Indonesia," *Journal of Contemporary Asia* 43, no. 2 (2013), p. 243-256.

³ Abdul Fatah, "Gugatan Warga Negara Sebagai Mekanisme Pemenuhan Hak Asasi Manusia Dan Hak Konstitusional Warga Negara," *Jurnal Yuridika* 28, No. 3 (2013).

implementation of popular sovereignty is achieved through the establishment of institutions designed to address the concerns of citizens living in a democratic nation governed by a constitution. Due to its inclusion in the constitution or law, all branches of state power are obligated to uphold it.⁴

While the application of the constitution encompasses more than just the written laws, it is worth noting that there exist constitutions that are neither written nor included in the official constitution. The rights enshrined in the constitution serve as constraints that state administrators must not infringe against while exercising state authority, encompassing both the rights of people and human rights.⁵ Specifically, this refers to the constitutional right to be elected, to vote, and to participate in public elections.⁶

Moreover, when it comes to upholding these constitutional rights, any legal issues can be addressed through the judicial proceedings conducted at the Constitutional Court. According to the statute, the Constitutional Court has four authorities that safeguard the constitutional rights of the citizens, both on an individual and institutional level. Exploring this issue is crucial, as the State not only safeguards the constitutional rights of individual citizens but also ensures the protection of state institutions and socio-political organizations in Indonesia. In addition to its four duties, the Constitutional Court is also obligated to adjudicate infractions committed by the President in the administration of the State and Government, as determined by the People's Representative Council (*Dewan Perwakilan Rakyat/DPR*).⁷

The Republic of Indonesia is known as a state governed by the rule of law, and that is confirmed through the establishment of an autonomous and impartial judicial authority, which is embodied in the Supreme Court and the Constitutional Court.⁸ The establishment of the Constitutional Court as a state entity in the Indonesian constitutional system shares similar attributes with the

⁴Syariful Alam, et.al., "Islamism and The Challenge of Democratization in Indonesia," *De Jure: Jurnal Hukum dan Syariah* 15, No. 2 (2023). Kiki Muhamad Hakiki, "Islam dan Demokrasi: Pandangan Intelektual Muslim dan Penerapannya di Indonesia," *Wawasan* 1, No. 1 (2016).

⁵ Jerimas Pelokilla, "UUD 1945 Sebagai Landasan Konstitusional Terhadap Perlindungan Hak Warga Negara Indonesia," *JOCER: Journal of Civic Education Research* 1, No. 1 (2023), p. 24-28.

⁶ Rahman Yasin, "Hak Konstitusional Penegakan Hak Politik Pemilih Dalam Pemilu Serentak 2024 Berdasarkan Konstitusi: KPU, Bawaslu, DKPP, dan MK," *Jurnal Bawaslu Provinsi Kepulauan Riau* 4, No. 2 (2022), p. 186-199. Siti Fariza, "Kedudukan Hak Konstitusional Warga Negara Terkait Gagasan Calon Perseorangan/Independen Dalam Pemilihan Umum Presiden dan Wakil Presiden," *Staatrecht: Indonesian Constitutional Law Journal* 3, No. 1 (2019), p. 157-177.

⁷Undang-Undang Nomor 24 Tahun 2003 Tentang Mahkamah Konstitusi. Pasal 10 ayat (2).

⁸ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. (Pasal 24 Ayat (2))

Supreme Court. These include the exercise of impartial, autonomous, and neutral judicial authority, without favouring any one party.⁹

The Constitutional Court exercises its inherent powers to administer justice and ensure the preservation of law and justice. Consequently, both the Supreme Court (*Mahkamah Agung/MA*) and the Constitutional Court (MK) have the common attributes of autonomy and impartiality in their operations.¹⁰ The judicial institution possesses an autonomous and impartial character, ensuring its independence and transparency by preventing any external interferences aimed at pursuing undesirable actions for personal interests, rather than the common good.

Article 10 Paragraph (1) of the regulations regarding the Constitutional Court emphasizes the power of the Constitutional Court in the form of a Political Dispute, stating that "the Constitutional Court has the authority to adjudicate at the first and last level, its decision is final to review laws against the 1945 Constitution of the Republic of Indonesia (1945 Republic of Indonesia Constitution), and then after the examination, this institution can also decide disputes over the authority of state institutions whose authority is granted by legal regulations." The decision made at the Constitutional Court regarding the provisions of the term "other official" is still needed as an emergency exit if the parties experience difficulties and limited access to the Court.¹¹ This termination can take the form of the dissolution of political parties and disputes about the results of general elections. In practice, this institution has the authority to accept and adjudicate matters that have been determined.

The adoption of constitutional complaints is a pressing matter that needs to be promptly implemented. It is necessary to enhance the authority of the Constitutional Court, which serves as the protector of the constitution, in order to effectively address constitutional complaints and safeguard the constitutional rights of citizens. European countries like Germany and Asian countries, one of which is South Korea has already incorporated constitutional complaints into their respective constitutions. Therefore, adopting constitutional complaints through the Constitutional Court requires amending the 1945 Constitution and revising the Constitutional Court Law to establish a solid legal foundation.¹²

⁹ Muhammad Idris Nasution, "Disparitas Putusan Mahkamah Agung Dan Pengadilan Agama Dalam Penerapan Fasakh Terhadap Perceraian Atas Dasar Murtaf, *El-Usrah: Jurnal Hukum Keluarga* 1, No. 1 (2020), p. 368.

¹⁰ Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi. Pasal 2.

¹¹ Norhasanah, "Dispensasi Kawin Di Bawah Umur (Analisis Putusan Mahkamah Konstitusi Nomor 74/PUU-XII/2014 Uji Materiil Pasal 7 Ayat 2 Undang-Undang Perkawinan), *El-Maslahah* 8, No. 1 (2018). p. 7.

¹² Vicko Taniady and Laili Furqoni, "Perluasan Kewenangan Mahkamah Konstitusi: Penerapan Constitutional Complaint dalam Menjaga Hak Konstitusional Warga Negara," *Journal of Judicial Review* 24, No. 1 (2022), p. 135.

There are two mechanisms used to guarantee the constitutional rights of citizens, namely: court mechanisms and extra-judicial mechanisms. There are two important meanings of the constitutional complaint mechanism in its application to guarantee and protect the constitutional rights of citizens, namely constitutional complaint as a theoretical need in the administration of the rule of law and also as an empirical one in the administration of the rule of law. In the Islamic legal politics, there is a judicial institution which becomes means and way of fighting for people's rights over the facts of life which often experience injustice in the adjudication process in court. This injustice occurs because rights are oppressed by the policies of the authorities in a country itself. Islamic legal politics is very much in line with the concept of constitutional complaint. This is in accordance with the protection of human rights in Islam as well as the area of *al-mazalim* as a court for the arbitrariness of the authorities towards the people who injure the people's rights.¹³

In line with that, fulfilling citizens' rights as part of respecting human rights is also highly upheld from an Islamic legal perspective. Because Islamic law and human rights are two things that are compatible and is not conflicting. This was not only practiced in the early history of Islamic law during the time of the Prophet Muhammad, his companions and during the Umayyad, Abbasid, and Ottoman dynasties. However, it is also the modern era when countries have entered the era of nation states such as Pakistan, Nigeria, Malaysia, and Indonesia.¹⁴ The protection of constitutional rights and human rights can be seen as implemented through the right to life, freedom of opinion, freedom of religion, and the right to employment for all people in a non-discriminatory manner.

This study uses empirical legal methods with an approach to constitutional law and Islamic law.¹⁵ The constitutional law theory is used as an analytical tool for fulfilling citizens' rights through a constitutional court based on law. In addition, the next analysis is the protection of citizens' rights from the perspective of the Islamic law. Data was collected through in-depth interviews and literature study. The informants interviewed were experts in general law

¹³ Nur Fadilah Putri Sagala and Irwansyah Irwansyah, "Analisis Penegakan Hak Konstitusi Melalui Constitutional Complaint Pada Mahkamah Konstitusi Sebagai Perwujudan Negara Hukum Menurut Perspektif Siyasah Dusturiyah," *EDUCATIO: Jurnal Pendidikan Indonesia* 9, No. 2 (2023), p. 840.

¹⁴ M. Arskal Salim, "The Shari'ah Bylaws and Human Rights in Indonesia," *Studia Islamika* 15, No. 1 (2008). Ahmad Nur Fuad, et.al., "Islam and Human Rights in Indonesia: An Account of Muslim Intellectuals' Views," *al-Jami'ah: Journal of Islamic Studies* 45, No. 2 (2007).

¹⁵ Munir Fuady, *Metode Riset Hukum: Pendekatan Teori dan Konsep*, Jakarta: Rajawali Press, 2018. Jimly Ash-Shiddieqy, *Pengantar Hukum Tata Negara*, Jilid I, Jakarta: Sekretariat Mahkamah Konstitusi, 2006.

from Syiah Kuala University and the Islamic law from Ar-Raniry State Islamic University.

Realization of Constitutional Rights of the Indonesian Citizens

The 1945 Constitution as a written basic law (a written constitution) emphasizes that Indonesia is a state of law (*rechtstaats*/rule of law). One of the elements possessed by a rule of law is the fulfilment of various basic human rights (basic rights/fundamental rights). The United Human Rights Office believes that the definition of human rights belongs to humans themselves and cannot be separated from differences in nationality such as national origin, ethnicity, religion, status, gender, skin colour and others. These various rights start from the most basic things, such as the right to a decent life, which includes the right to education, health, work, health and even the right to food.¹⁶ Even though in its formulation there are many differences of opinion, the aim of its creation is for the fulfilment of various rights. Basic rights are human rights that already exist because they are the nature of being human themselves, starting from the beginning of life that exists together with the existence of human and ends when people deceased.

Constitutional rights are rights bestowed by the constitution that are immune to being revoked or restricted by any entity, including the state. The state is obligated to honour, uphold, and safeguard these rights. While individuals have the choice to exercise or abstain from exercising their rights, failing to utilize them for the greater good would imply complicity in perpetuating injustice. If the rights of citizens are impeded, it signifies a violation of their rights by the state or its administrators, as it is the state's responsibility to fulfil and safeguard the rights of its citizens.¹⁷

Constitutional complaint is a forum for making complaints regarding protection which is part of human rights of the citizens. This forum is the final legal effort to defend all citizens' constitutional rights. This means that every dignity and right owned by the people is recognized and has a legal force as a form of protection implemented by the judicial institution, namely the Constitutional Court. However, the presence of the Constitutional Court has sometimes leads to the emergence of various legal interpretations in the society. Because there are still Constitutional Court's decisions which are being debated by legal experts even though the Constitutional Court's decisions are supposed to provide legal certainty and legal justice. One form of the implementations is a popular control to restore constitutional rights guaranteed by the constitution.

The citizens' constitutional right to participate in public elections (*Pemilu*) and simultaneous regional head and deputy regional head elections

¹⁶ Carolus Boromeus Kusmaryanto, "Hak Asasi Manusia atau Hak Manusiawi? (Fundamental Human Rights or Human Rights), *Jurnal HAM* 12, No.3 (2021), p. 525.

¹⁷Interview with Rizanizarli, the Professor at Universitas Syiah Kuala, January 22, 2024.

(*Pilkada*) in 2024 is a manifestation of a constitutional democratic government system. The right to elect and vote is a fundamental entitlement of citizens and should be treated with utmost seriousness by organizers. Elections serve as a means to exercise people's sovereignty in selecting capable leaders who will govern in accordance with the 1945 Constitution. It is imperative that elections, held every five years, are conducted democratically and with integrity. The active involvement of organizers and stakeholders is crucial in ensuring the success of the elections, particularly in guaranteeing that citizens who meet the necessary criteria are registered in the Permanent Voters List (*Daftar Pemilih Tetap/DPT*) and can exercise their right to vote.

Organizers must prioritize safeguarding citizens' rights to prevent the recurrence of instances where their voting rights were unjustly revoked during past elections and simultaneous elections.¹⁸ Ensuring fair and transparent elections, free from any signs of fraud, is a fundamental objective of political rights. This entails addressing a significant number of complaints and subsequently initiating legal proceedings through authorized institutions.

To ensure the realization of citizens' constitutional rights, it is imperative to adhere to existing regulations in law enforcement. It is not uncommon that deviations from proper law enforcement procedures can hinder the fulfilment of constitutional rights. If such deviations persist, the constitutional rights that should be universally enjoyed may remain elusive, as law enforcement may be perceived as favouring specific groups or individuals.

Constitutions emerge for various reasons, one of which is to ensure the protection of rights that may be at risk and to restrict the actions of specific groups, regardless of the preferences of the people or those in power. The establishment of a constitution reflects the aspiration to safeguard people's rights through the principles of constitutionalism. Additionally, constitutions are also motivated by the desire to foster more efficient collaboration between nations.¹⁹

When it comes to upholding constitutional rights, there is always a struggle to ensure protection, particularly in the attempt to limit regulations that may infringe on the principles of constitutionalism.²⁰ In addition to safeguarding individual rights, it is important to establish procedural methods to secure the guaranteed rights. Human rights, as a means of protection, must align with the provisions outlined in the constitution. This means that every constitution must adhere to the various rights it is meant to uphold, serving as a safeguard for citizens' rights.²¹ Regulations and guarantees for the recognition of human rights

¹⁸ Rahman Yasin, "Hak Konstitusional Warga Negara...", p. 186-199.

¹⁹ Titik Triwulan Tutik, *Konstruksi Hukum Tata Negara Indonesia Pasca Amandemen UUD 1945*, Jakarta: Kencana Prenada Media, 2010, p. 90.

²⁰ Zulkarnain Ridlwan, "Negara Hukum Indonesia Kebalikan Nachtwachterstaat," *Fiat Justitia: Jurnal Ilmu Hukum* 5, No. 2 (2011), p. 144.

²¹ Undang-Undang Dasar Republik Indonesia 1945. (Pasal 27, Pasal 28A – Pasal 28J).

and citizens' rights are outlined in several articles. These articles aim to accommodate the constitutional rights of the Indonesian people as a whole, ensuring that these rights are applicable to all citizens without exception or distinction.²²

In an effort to create a constitution that can keep up with developments and fulfil basic human rights, the constitution must have a dynamic aspect and be able to capture the phenomenon of historical change, so as to make it a constitution that is always alive (living constitution). The only problem is that the government's performance as implementer of the constitution (executive, legislative and judicial) still does not provide justice and satisfaction for justice seekers. Therefore, strengthening constitutional awareness is a necessity within the framework of protecting and fulfilling the basic rights of citizens. The Constitution, as the main basic law and the representative result of the will of all the people, must be implemented seriously in every aspect of life. The principle that arises is that every action, deed and/or rule from all authorities delegated by the constitution must not be in conflict with the basic rights in the constitution itself.²³

A constitution is considered good if it can be implemented into regulations that include elements that are stable and in accordance with the wishes and needs of the wider people. There are implementation rules, and there must be a forum for their implementation and they must be consistent (compatible) with other laws, meaning that they are not in conflict with a single regulation with other regulations.²⁴ Apart from regulations, a stable forum is also a necessity in enforcing the constitution to ensure implementation of the regulations that have been established by representatives in various state institutions.

In order to guarantee the well-being of citizens, the constitution is obligated to anticipate and address a wide range of problems and challenges that arise over time. These issues encompass various domains, such as laws, politics, and socioeconomics, which directly impact the rights of every citizen. As an authorized and accountable institution, the Constitutional Court plays a crucial role in safeguarding the rights of citizens.²⁵

²² Achmad Edi Subiyanto, "Perlindungan Hak Konstitusional Melalui Pengaduan Konstitusional," *Jurnal Konstitusi* 8, No. 5, (2011), p. 716.

²³ Didik Sukriono, "Membangun Kesadaran Berkonstitusi Terhadap Hak-Hak Konstitusional Warga Negara Sebagai Upaya Menegakkan Hukum Konstitusi," *Jurnal Legislasi Indonesia* 13, No. 3 (2016).

²⁴ Asman, "Dynamics of Adult Age and its Relevance to Age Limits of Marriage in Indonesia: A Juridical-Normative Perspective," *Journal of Islamic Law (JIL)*, Vol. 2, No. 1, 2021, p.133.

²⁵ Dinoroy M. Aritonang, Peranan Dan Problematika Mahkamah Konstitusi (MK) Dalam Menjalankan Fungsi Dan Kewenangannya, *Jurnal Ilmu Administrasi: Media Pengembangan Ilmu Dan Praktek Administrasi* 10. No. 3 (2013), p. 375.

Protection of Citizens' Constitutional Rights by the Constitutional Court

The Constitutional Court, as outlined in Law Number 24 of 2003, has the authority and responsibilities to establish a fair and democratic environment in order to achieve an ideal constitutional system in the country. Its purpose is to prevent any arbitrary actions by the president, vice president, or lawmakers that may result in legal regulations that harm society or violate the constitutional rights of the people. By doing so, the Constitutional Court ensures the protection of citizens' human rights, as well as the legality of state institutions and the rights of social and political organizations.

Currently, a notable aspect of the Constitutional Court's jurisdiction is its power to review laws against the 1945 Constitution of the Republic of Indonesia (UUD 1945) and other political matters, such as the outcomes of public elections, including legislative (DPR) and executive (President) elections, as well as regional public elections (*Pemilukada*). The Constitutional Court's authority to decide on regional election cases comes into play after the regional public elections have taken place. However, the Court's decisions often lead to dissatisfaction among the parties involved, particularly those who feel aggrieved by the Court's rulings.

A Constitutional Court decision cannot usually be contested because the Constitutional Court's decision is final in its regulations stating "the Constitutional Court has the authority to adjudicate at the first and last instance whose decision is final". This meaning clearly shows that the Constitutional Court's decision is a final decision in every matter submitted to the judiciary which is within its authority without any opportunity to make efforts such as appeal or cassation because the nature of the decisions and cases within its authority are already in the last resort, even though some of its decisions are still pending and feel dissatisfied.

However, the problem is what if the Constitutional Court's decision does not reflect the sense of justice of the party who has been defeated or harmed, so that the aggrieved party cannot take legal action again to defend their rights. Therefore, the Constitutional Court's decision to stop other legal actions for the aggrieved party certainly causes various constitutional rights to be violated, even though the Constitutional Court itself is an institution that protects the constitution and must run well which is expected to have elements of justice and satisfaction for the community.

The fairness of a Constitutional Court decision, made by the Constitutional Court Judge, is determined solely by the legal arguments presented by the nine judges. However, if there are differing opinions among the judges, the decision will still be implemented if more than 50% of the votes agree. This is why the Constitutional Court's decisions often face criticism from various parties. The judge's decision whether a case is fair or not depends on their own judgment, particularly their understanding of justice as it is perceived

and evolving in the society. Additionally, the judges have a responsibility to God Almighty, which serves as the main basis for their decision, especially when it concerns the constitutional rights of citizens.

Every decision made by the judges of the Constitutional Court, whether on an individual or institutional level, carries a duty towards the state and the religion they follow. The regulations of the Constitutional Court explicitly state that "decisions made by the Constitutional Court are driven by a belief in justice rooted in faith in the Almighty God." Consequently, judges, regardless of their personal beliefs, are expected to rule in cases that infringe upon the constitutional rights of citizens. Judges who hold a belief in God will understand that any deviation from this responsibility would be considered a sin and, conversely, adherence to their duty will be rewarded by the Almighty, as mandated by the legislation.

Conversely, safeguarding the constitutional rights of citizens is a proper and effective exercise of authority by the Constitutional Court. Substantive justice can be achieved when judges carry out their duties without any external interference, as mandated by the constitution. The constitution upholds the principle of protecting citizens from any harm, and this is accomplished through the independent and unimpeded actions of judges. Judicial independence ensures that the administration of justice is solely focused on achieving legal certainty, justice, and societal benefits, rather than causing injustice or dissatisfaction among the public during legal proceedings.

The purpose of implementing citizens' rights is to safeguard the constitutional rights of individuals, thereby ensuring the achievement of fair and just outcomes. Consequently, constitutional rights are considered to be a subset of human rights, despite not being explicitly defined and outlined in legal terms or *letterlijk*.²⁶ Broadly speaking, constitutional rights encompass a range of rights such as political, legal, economic, socio-cultural, and religious rights. As such, one of the constitutional rights enjoyed by individuals is the right to participate in the electoral process by exercising their right to vote and stand for election.

In order to ensure free and fair elections, it is essential for citizens to possess both political rights and a strong sense of integrity. The exercise of the right to vote should be accompanied by awareness and maturity, as it is a constitutional and democratic privilege. This criterion serves as a measure of whether a country upholds the principles of being a rule of law state that promotes democracy.

The political rights of citizens, which are considered fundamental human rights, can be categorized into two main types: individual political rights and institutional political rights. According to Jonathan Riley, constitutional

²⁶ Undang-Undang Republik Indonesia Nomor 39 Tahun 1999 tentang Hak Asasi Manusia.

democracy can be seen as a complex process consisting of two stages of political decision-making. The first stage is known as the constitutional or higher track phase, while the second stage is referred to as the post-constitutional or lower track phase.²⁷ These stages involve cooperative games where moral principles are rational and fair-minded, aiming to promote the common good in a comprehensive manner as outlined in the constitution. The two stages of state democracy involve the careful consideration of legal experts in formulating policies on political matters. However, these policies must adhere to the boundaries established by statutory regulations. The implementation of these policies aims to ensure justice and promote the overall well-being of both public officials and the general population, thereby contributing to the advancement of the state.

The two stages of state democracy involve the deliberation of legal experts to formulate policies in political matters, while adhering to statutory regulations. These policies aim to ensure justice and promote the well-being of both public officials and the general population. The constitution, specifically the Constitution of the Republic of Indonesia 1 of 1945 (UUD 1945), guarantees and protects both individual and institutional rights, which cannot be challenged by specific political interests. The Constitutional Court (MK) is responsible for safeguarding these constitutional rights and providing legal protection in disputes. However, in cases where the government is authoritarian and exerts indirect influence, violations of constitutional rights often occur.

For this reason, in providing protection for constitutional rights, the role of the Constitutional Court is very necessary, even the constitutional rights protected by the Constitutional Court are limited to the constitutional rights regulated in the Constitution and Law Number 24 of 2003. The Constitutional Court's authority to protect the constitutional rights of citizens is indeed very limited, but if we pay attention to other countries such as the Netherlands, for example, which protects the constitutional rights of its citizens very broadly.²⁸ Constitutional rights in the Netherlands are even linked to new technologies, where constitutional rights are linked to other rights in technology as a specific model, namely the right to submit requests to the Government in writing and other issues related to the implementation of the rights of associations and groups or social organizations in an environment (digital environment). Other new rights include: 1. A right to anonymity (the right to conceal names), 2. A

²⁷ John Ferejohn and Jack N Rakove, *Constitutional Culture and Democratic Rule*, United Kingdom University, Press 2001, p. 147.

²⁸ Kus Eddy Sartono, "Kajian Konstitusi Indonesia Dari Awal Kemerdekaan Sampai Reformasi Konstitusi Pasca Orde Baru," *Humanika: Kajian Mata Kuliah Umum*, 8, No 1 (2008), p. 3.

right to access government information (the right to access government information), and 3. A right to internet voting (the right to use the internet).²⁹

In Indonesia, constitutional rights emphasize civil rights, social rights and political rights as well as economic and cultural rights. Meanwhile, technology rights still need to regulate technology rights, which are also part of the rights that need to be protected by the existence of the Constitutional Court in Indonesia. Many countries in the world that already have Constitutional Courts, both continental European countries and Arab countries and other Islamic countries, have practiced protecting the constitutional rights of their citizens through an institution called the Constitutional Court, even though the name or designation of the institution in these countries is different.³⁰ For this reason, Indonesia has the Constitutional Court and every day it exercises its authority and contribution in protecting the constitutional rights of citizens through judicial review of material laws against the 1945 Constitution. This review is intended to establish law enforcement to give birth to substantive justice that is broad and felt. by all levels of society.

Aligned with this, the matter of human rights is an inherent entitlement bestowed upon every citizen, as it encompasses the implementation of Islamic law. The correlation between the two is evident, as the application of the Islamic law is a religious imperative that must be adhered to with utmost sincerity and without coercion. Consequently, it cannot be contradicted by human rights, as both are acknowledged by the State. While it is permissible for a citizen to abstain from exercising their right to vote in an election, it is impermissible for them to actively dissuade others from participating or abstaining from voting. However, it is important to note that the failure to exercise the right to vote may result in detrimental consequences, as uncast votes may be attributed to specific individuals.³¹

The constitutional rights of citizens are contingent upon their understanding of their rights and responsibilities as citizens. As a Muslim, one should have no objection to implementing the constitution within the framework of the Islamic law. However, the level of understanding among citizens can be influenced by various factors such as formal education, non-formal education, and the community environment. Consequently, fluctuations in an individual's level of faith can impact their comprehension of these rights. While abstaining from voting is a right held by all citizens, it is advisable for individuals to exercise this right if they are able to do so. The reason for low voter turnout can

²⁹Paul De Hert, et.al., "Constitutional Rights and New Technologies: A Comparative Perspective," *Ethical Theory and Moral Practice* (2008).

³⁰ Jimly Asshiddiqie, *Model-Model Pengujian Konstitusional di Berbagai Negara*, Jakarta, Konpress, 2005, p. 16.

³¹Interview with Husni Jalil, the Professor at the Faculty of Law Universitas Syiah Kuala, January 20, 2024.

be attributed to the insufficient political education provided to citizens. Therefore, it is necessary to enhance political education in order to ensure that citizens have a comprehensive understanding of their rights and responsibilities as exemplary citizens.³²

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Substantial justice sometimes will not be achieved if there are still constitutional rights of citizens that have not been protected. Even though Constitutional Court judges have discretion in upholding justice in the Constitutional Court, this does not mean that judges can ignore the sense of justice of the community or citizens. Judges as law enforcers of the Constitutional Court institution have the obligation and to pay attention to and accommodate the ideas of constitutional complaints and constitutional questions from every citizen. Every lawsuit filed against a judge in his decision must have a reason and basis in legal considerations, the aim being that the decision is argumentative and has legal force. So, the Constitutional Court then carried out a review and provided several legal considerations, related to the constitutionality basis proposed by the petitioners. The idea of accommodating constitutional complaints and constitutional questions is intended so that the constitutional rights of citizens are not easily violated, for this reason they need protection from the judges in the Constitutional Court.³⁴

However, recently the presence of judges at the Constitutional Court in giving decisions regarding judicial review has still made many mistakes and even tends to emerge a lot of criticism from the public, even though judges have

³²Interview with Syarifuddin Hasyim, the Professor at the Faculty of Law Universitas Syiah Kuala, January 20, 2024.

³³ Amrullah and Ahmad Rizki, "Tinjauan Maqashid Syariah Terhadap Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017 Tentang Permohonan Batas Usia Kawin," *El-Ussrah: Jurnal Hukum Keluarga Islam* 3, No.1 (2020), p. 122.

³⁴ Agus Purnomo, et. al., Dimensions Maqāṣid Al-Sharī'ah and Human Rights in The Constitutional Court's Decision on Marriage Age Difference in Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, No. 3, (2023), p. 1400.

so broad rights and authority that people often mention that the Constitutional Court judges decide cases in the world is God's representative because his decision is final. For this reason, it is necessary to pay attention to how Islam views the function of law enforcers, especially judges, in carrying out their profession so that they do not deviate from the values of *Shari'a* (Islam law) in an essential truth.

Preservation of Citizens' Rights via the Constitutional Court from the Islamic Law Perspective

Many countries, including those in the Muslim world, have ratified international human rights norms. Islamic law strongly supports human rights and aligns with the values of Islamic teachings. However, there are differing interpretations among Muslims regarding human rights issues.³⁵ Some Muslim groups hold a negative view of human rights due to its association with Western imperialism and colonialism. Conversely, there are Muslims who, through extensive interaction with the West, adopt accommodating or imitative views on human rights.

According to Islamic law, rights must be enforced and disseminated by individuals with authority, skills, and special characteristics, such as judges. These law enforcers must possess determination and a deep understanding of holiness. Those who possess the truth and adhere to it firmly are highly esteemed. In the context of *Sharia*, Allah SWT instructs believers to hold fast to the religion revealed to them, as it is the right path and the Qur'an is a great source of honor "Adhere firmly to the faith that has been disclosed to you, as you are undoubtedly following the correct course, and the Qu'ran is undeniably a magnificent source of honor for both you and your community". Therefore, all laws, including those created by humans, cannot be separated from divine values. In Indonesia, there are three legal systems recognized: national law, customary law, and Islamic law.³⁶

Regarding citizens' rights, it is important to note that the rights and obligations of every citizen are governed by legal regulations. In the case of Aceh, which has been granted special autonomy, it has the authority to regulate the rights of its citizens in accordance with national law, regional law, or Islamic law. Consequently, it is the duty of every citizen and community member to comply with the existing laws in order to ensure that their rights are protected by the law, including Islamic law, which is considered binding and must be adhered to. Therefore, the regulations in place are willingly accepted without any

³⁵Suud Sarim Karimullah, "Humanity and Justice: Exploring Human Rights in the Context of Islamic Law," *Tajdid* 30, No. 2 (2024), p. 166.

³⁶ Arlis Arlis, "The Concept of Legal Intensity: Harmonizing God's Rule within Constitutional Law," *Walisongo Law Review (Walrev)* 5, No. 2 (2023), p. 245-274.

perception of rights being unduly limited, as they are strictly in accordance with the law.³⁷

The Islamic law indeed upholds individual rights in a clear and unequivocal manner. However, if these rights are violated, the matter must be resolved through a judicial decision, specifically by the Constitutional Court (MK). When making decisions, the Constitutional Court must consider constitutional values and rely on the beliefs and faith of a Constitutional Judge. Consequently, human rights in Islamic law are closely tied to the concept of equality, which is firmly and explicitly regulated.³⁸

Human rights encompass the rights that every individual possesses by virtue of their humanity. Failure to advocate for and protect these inherent rights, such as the rights to life, freedom, religion, justice, education, property, and freedom of expression, can lead to complex humanitarian issues. Furthermore, the right to vote and participate in politics is considered a human right, specifically the freedom of expression.³⁹

The Islamic law, viewed from a broader perspective, does not differentiate between individuals based on their gender. To address discrimination, the solution lies in promoting gender equality. Gender equality entails ensuring that men and women have equal access to opportunities and rights as human beings. This includes the ability to participate in political, legal, economic, socio-cultural, educational, national defense, and security activities, as well as enjoying the benefits of development. Gender equality also involves eradicating discrimination and structural injustices faced by both men and women. Achieving gender justice requires a fair and equitable treatment of both genders.⁴⁰

The Islamic law upholds the rights of every citizen, as it goes against Islamic teachings to diminish or curtail these rights. The fulfilment of citizens' rights, as mandated in the Qur'an, is a duty that must be carried out. Similarly, the constitution safeguards the rights of citizens. Both the Islamic law and the constitution, established by the government, share the common objective of preserving and safeguarding the rights of all citizens.⁴¹

The rights of non-Muslim citizens in Indonesia are equal to those of Muslims. Non-Muslims are entitled to their rights, even in cases where they

³⁷Interview with Adwani, the Professor at the Faculty of Law Universiats Syiah Kuala, January 20, 2024.

³⁸Interview with Syarifuddin Hasyim, the Professor at the Faculty of Law Universitas Syiah Kuala, January 20, 2024.

³⁹Y. Sonafist, "Epistemology of Islamic Law Concerning Human Rights," *Hikmatuna: Journal for Integrative Islamic Studies* 9, No. 1 (2023), p. 64-77.

⁴⁰Interview with Rusjdi Ali Muhammad, the Professor of the Islamic Law at UIN Ar-Raniry Banda Aceh, January 25, 2024.

⁴¹Interview with Syahrizal Abbas, the professor of the Islamic law at UIN Ar-Raniry Banda Aceh, January 27, 2024.

have legal obligations. For example, they can receive inheritance from Muslim relatives through a mandatory will, and they can provide *waqf* assistance to Muslims. This promotes harmony and peace among different religions in Indonesia. It is important to note that the concept of *rahmatan lil 'alamīn* extends beyond human rights and includes the rights of other creatures such as animals, plants, and the environment. The Islamic law regulates and pays attention to all living creatures in the universe. Therefore, it logically acknowledges the importance of living creatures, including non-Muslims, as the most noble beings in Allah's creation.⁴²

The Islamic law upholds equality among citizens, regardless of gender, religion, social status, cultural background, language, or customs. It recognizes the equal worth of all individuals before Allah, irrespective of their religious beliefs. Consequently, safeguarding the constitutional rights of citizens is imperative, as it reflects the commitment to uphold human rights in Islamic law.⁴³

In accordance with this condition, the central government has granted full political and legal rights through special autonomy. This allows for the establishment of institutions related to the Islamic law, such as the *Sharia* Court, Islamic Sharia Service (*Dinas Syariat Islam/DSI*), Independent Voters Commission, Wilayatul Hisbah (*Wilayatul Hisbah/WH*), Baitul Mal, Aceh Traditional Council (*Majelis Adat Aceh/MAA*), and the Ulama Consultative Council (*Majelis Permusyawaratan Ulama/MPU*). Consequently, citizens in Aceh are able to freely practice Islamic *Sharia*. When it comes to selecting our future leaders, it is crucial that we choose individuals who are trustworthy and deeply committed to their faith in Allah SWT. Those who abstain from voting will suffer consequences for the next five years. Therefore, it is advisable for the authorities to consistently provide guidance on this matter.⁴⁴

Therefore, it is the duty of judges to apply the Islamic law in safeguarding the constitutional rights of citizens. This obligation is rooted in the religious and social aspects of the society, as the pursuit of justice and truth (*haq*) is a highly esteemed virtue. The Qur'an contains numerous verses that can serve as guidance for judges in their quest for ultimate truth, free from any

⁴²Mursyid Djawas, et.al., "The Position of Non-Muslims in the Implementation of Islamic Law in Aceh, Indonesia," *Ahkam: Jurnal Ilmiah Syariah* 23, No. 1 (2023). Adil Hussain Bhat, "Analyzing the Islamist and New-Islamist Discourse on Minorities in an Islamic State," *International Journal of Islamic Thought* 23, No. 1 (2023).

⁴³Fatimi Hanafi, et.al., "Human Rights and Women's Participation in Politics in Malaysia," *Journal of Tamaddun* 11, No. 1 (2016). Angraini binti Ramli and Radwan Jamal Elatrash, "Woman Participation in Politics: Toward an Ideal Model in the Perspective of Siyasa al-Shar'iyya," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 21, No. 1 (2021).

⁴⁴Interview with Iman Jauhari, Academic at Faculty of Law Universitas Syiah Kuala, January 22, 2024. Undang-Undang Republik Indonesia Nomor 11 Tahun 2006 tentang Pemerintahan Aceh.

political interference. This approach embodies the pursuit of truth and the enforcement of law and human rights based on the principles of Islamic law. It serves as a crucial reference for the implementation of law enforcement in the Indonesian legal system, which is currently highly anticipate.

With regards to citizen participation in general elections, the Islamic law adheres to the principle of "realizing benefit and avoiding harm."⁴⁵ This implies that it is of greater significance for individuals to exercise their right to vote in a general election rather than abstaining from voting. This is because if all morally upright individuals refrain from voting, there is a higher likelihood that the elected members, representatives, or leaders may lack credibility.

Conclusion

As a legal state, Indonesia has reformed the constitutional system in the political system. The state exists to protect and guarantee citizens the exercise of their constitutional rights, for example the right to freedom of opinion, freedom of religion, the right to get work for everyone fairly and non-discriminatorily. All of these rights are guaranteed by the constitution and statutory regulations. The state has provided legal protection and fulfilled the constitutional rights of citizens by guaranteeing them in law. Constitutional rights are part of human rights, namely the right to vote or be elected in general elections. In the state administration system in Indonesia, especially when an election dispute occurs, citizens have the right to report it to parties who have authority and have it processed legally in the Constitutional Court Institution. According to the Islamic law, there is no conflict between law enforcement and the protection of citizens' rights as part of human rights. Moreover, in Aceh, as a region that implements special autonomy and the *Sharia*, no citizen's rights are discriminated against, either because of differences in gender or because of differences in religion. However, in the context of Islamic law, although voting or being elected is a right, not an obligation, participating in voting is more important and contains benefits and can avoid *mafsadat*.

⁴⁵ Aslati and Afrizal, "Al-Qawa'id Al-Maqashidiah Yang Terkait Dengan Mashlahat Dan Mafsadat (Studi Pemikiran Abd al-Rahman Ibrahim al-Kailani)," *Jurnal An-Nida: Jurnal Pemikiran Islam* 42, No. 1 (2017). Akbar Sarif and Ridzwan Ahmad, "Konsep Maslahat dan Mafsadah menurut Imam al-Ghazali," *Tsaqafah: Jurnal Pemikiran Islam* 13, No. 2 (2017).

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