GUARDIANS OF THE BALLOT: CONSTITUTIONAL COURTS, ELECTORAL RIGHTS, AND THE COMPLAINT PATHWAY TO JUSTICE

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Abstract

The protection of electoral rights for Indonesian citizen lies at the core of constitutional democracy, serving as both the foundation of political legitimacy and the safeguard of representative governance. The absence of effective judicial remedies for violations of these rights constitutes far more than a procedural deficiency; it is a structural breach in the constitutional order that undermines the integrity of the electoral process and erodes the legitimacy of democratic governance. Lacking a constitutional complaint mechanism, individuals are denied a direct justiciable remedy for violations of their fundamental political rights, leaving those rights vulnerable to diminution through administrative arbitrariness or political instrumentalization. In the Republic of Indonesia, this institutional gap is particularly pronounced. The Constitutional Court's jurisdiction is narrowly confined to adjudicating disputes over election results and conducting abstract constitutional review, offering no forum to address individual grievances rooted in rights violations. This lacuna constrains accountability, perpetuates structural inequities, and diminishes public confidence in the democratic system. Rectifying this deficiency is therefore not a matter of procedural refinement but a democratic imperative—one that demands reimagining the judiciary's role as both guardian of constitutional legality and guarantor of meaningful political participation. This article advances the normative argument for recognizing constitutional complaints as an essential mechanism for ensuring electoral justice, employing a normative juridical research approach that emphasizes the examination of constitutional principles and doctrinal interpretations relevant to the safeguarding of electoral rights. It contends that constitutional courts must serve not only as interpreters of constitutional norms but also as institutional guarantors of democratic participation through their adjudicative authority. Drawing on comparative legal experiences, the paper examines how constitutional complaint procedures, when designed with electoral justice in mind, can bridge the gap between formal electoral rules and the substantive protection of political rights. In conclusion, it underscores the urgency of reform in jurisdictions lacking such mechanisms, highlighting the potential for greater accountability, inclusivity, and democratic resilience.

Keywords: *constitutional complaint; electoral justice; constitutional court; political rights; democratic*

A. Introduction

Elections constitute the cornerstone of democratic constitutional orders, providing both the primary mechanism for legitimizing governmental authority and the principal vehicle for the realization of popular sovereignty.[1] Within modern constitutional

[1] Richard Albert, *Constitutional Amendments: Making, Breaking, and Changing Constitutions* (Oxford: Oxford University Press, 2019), 112.

democracies, electoral processes transcend mere procedural formality; they embody the very essence of the social contract, articulating and operationalizing the collective will of the people.[2] Accordingly, the protection of electoral rights such as the right to vote, the right to be elected, and the right to participate in free and fair elections constitutes a crucial subset of fundamental rights that demand robust and effective judicial protection.[3] Consequently, the protection of electoral rights forms an indispensable component of fundamental rights, necessitating robust and effective judicial safeguards. The integrity of these rights is intrinsically linked to the legitimacy of democratic governance, and any infringement upon them risks eroding public trust, weakening the rule of law, and undermining the democratic project itself.

Despite the centrality of elections to democratic governance, many jurisdictions continue to exhibit substantial normative and institutional voids in providing effective remedies for individual violations of electoral rights. In numerous legal systems, traditional electoral dispute resolution mechanisms are primarily designed to safeguard collective outcomes, such as the validation of election results, rather than addressing individual grievances like the denial of voter registration, disenfranchisement of specific groups, unlawful restrictions on candidacy, or procedural barriers to political participation often fall outside the scope of existing adjudicatory frameworks.[4]

In Indonesia, for example, Indigenous communities—such as those in forested regions across Sumatra, Kalimantan, Papua, and Maluku—have experienced **mass** *disenfranchisement*, unable to register as voters due to administrative and procedural barriers like unrecognized residential status and exclusionary e-KTP requirements. Even when the Constitutional Court authorized temporary remedies (e.g., substitute certificates), these proved inadequate to resolve the deeper systemic issues. Incidents such as the Kajang community's headband dispute or the refusal to issue e-KTPs to adherents of local religions like Marapu highlight how formal election procedures can clash with cultural and statutory protections, ultimately sidelining individual participation rights in the absence of robust constitutional complaint mechanisms[5][6] Similar patterns of disenfranchisement have also affected Indonesian migrant workers abroad, many of whom

[2] Bruce Ackerman, *We the People: Foundations* (Cambridge, MA: Harvard University Press, 1991), 6.
[3] Tom Ginsburg and Rosalind Dixon, *Comparative Constitutional Law* (Cheltenham: Edward Elgar, 2011), 452.
[4] Samuel Issacharoff, *Fragile Democracies: Contested Power in the Era of Constitutional Courts* (Cambridge: Cambridge University Press, 2015), 87.

[6] Electoral paradoxes: Balancing procedural norms and Indigenous rights in Indonesia (accessed on August 19, 2025, 23.12 WIB)

were unable to exercise their voting rights due to delayed or incomplete voter registration lists (DPT), logistical failures in overseas polling stations, and lack of coordination between the election commission and diplomatic representatives. In the 2019 elections, for instance, reports from Malaysia and Hong Kong documented long queues, ballot shortages, and administrative disorganization that prevented thousands of eligible citizens from casting their votes. Likewise, poor urban communities living in informal settlements around Jakarta and Surabaya have also faced systematic exclusion, as the absence of formal housing documents disqualified them from voter registration, thereby perpetuating a cycle of political marginalization.

The protracted displacement of communities from Nduga Regency since the 2018-armed conflict underscores a critical intersection between humanitarian crises and the erosion of democratic rights in Indonesia. Despite being recognized as citizens with equal constitutional entitlements, many internally displaced persons (IDPs) were effectively disenfranchised during the 2024 general elections due to the government's decision to centralize polling stations in Kenyam, the regency capital. This administrative measure, while justified on grounds of security, disproportionately excluded refugees scattered across Wamena, Lanny Jaya, and Timika, thereby undermining the principle of universal suffrage. The testimonies of displaced individuals, alongside critiques from civil society actors such as the Alliance for Democracy in Papua (ALDP) and the Advocacy Network for Papua (YKKMP), highlight how structural barriers to political participation perpetuate a sense of marginalization and reinforce systemic discrimination against Papuan communities. From a legal perspective, the situation raises fundamental questions regarding the state's compliance with constitutional guarantees of political rights and its obligations under international human rights law to ensure non-discriminatory access to democratic participation.[7]

Individual voters are often the most directly affected by electoral injustices—such as erroneous exclusion from voter registration lists, voter intimidation, or exposure to electoral fraud. Unfortunately, the Indonesian legal framework provides limited avenues for them to seek redress. Under current constitutional arrangements, individual voters lack standing to bring claims before the Constitutional Court of the Republic of Indonesia (Mahkamah Konstitusi RI), as electoral result disputes may only be initiated by political parties or candidates and must pertain to outcome-altering irregularities. This creates a

[7] Pemilu 2024: Nestapa pengungsi Nduga yang hak suaranya 'direnggut paksa' - 'Apakah kami bukan bagian dari negara Indonesia?' - BBC News Indonesia (Accessed on Sunday, 24 August 2025)

significant legal void in the protection of electoral rights, effectively denying individuals access to judicial remedies for violations of their fundamental rights. The 2019 general elections in Indonesia provide a salient example, where numerous reports emerged regarding inaccuracies in the *Daftar Pemilih Tetap* (Permanent Voter List), logistical failures, and even the death of hundreds of election officials due to excessive workload. Despite these serious irregularities and their impact on the electorate, ordinary citizens lacked a direct legal mechanism to challenge such infringements. The procedural limitations imposed by the Constitutional Court's jurisdiction meant that only those able to prove a material impact on election outcomes could proceed, thereby excluding individual claims that, while not outcome-determinative, nonetheless compromised the principles of electoral fairness and democratic legitimacy.This structural bias towards outcome-oriented disputes reflects a historical prioritization of electoral stability over the vindication of personal political rights. However, the absence of effective remedial mechanisms for individual violations risks not only compromising the substantive enjoyment of these rights but also undermining the integrity of the electoral process as a whole. Left unaddressed, such deficiencies erode public trust in democratic institutions, weaken the rule of law, and jeopardize the normative legitimacy of constitutional democracy by creating a perception that rights exist more in theory than in practice.[8]

To situate this discussion within a broader constitutional context, recent electoral cycles across both established and emerging democracies have exposed systemic vulnerabilities in safeguarding individual electoral rights, including instances of unlawful candidate disqualification, arbitrary voter registration removal, and procedural restrictions that disproportionately affect marginalized groups.[9] These challenges underscore the urgency of developing judicial mechanisms capable of addressing individual grievances, rather than focusing solely on validating collective electoral outcomes.

Within this framework, the constitutional complaint (*Verfassungsbeschwerde*) emerges as a particularly compelling legal remedy. In its most widely recognized form, it allows individuals to directly petition a constitutional court to review alleged violations of their fundamental rights—electoral rights included—by state authorities.[10] As such, it

[8] International IDEA, *The Global State of Democracy 2022: Forging Social Contracts in a Time of Discontent* (Stockholm: International Institute for Democracy and Electoral Assistance, 2022), 78–82.
[9] Donald P. Kommers and Russell A. Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany*, 3rd ed. (Durham: Duke University Press, 2012), 157–159.
[10] David Bilchitz, *Fundamental Rights and the Constitutional Complaint* (Pretoria: Pretoria University Law Press, 2017), 41.

operates at the intersection of constitutional adjudication and democratic participation, providing a direct avenue for the substantive enforcement of political rights when other remedies prove inadequate.

Structurally, this article proceeds as follows. Part I outlines the conceptual and normative foundations of electoral rights as integral components of constitutional democracy. Part II examines comparative experiences with constitutional complaint mechanisms in electoral contexts. Part III advances a normative proposal for the institutionalization of such mechanisms in jurisdictions where individual electoral remedies remain underdeveloped. Finally, Part IV offers concluding reflections on the potential of constitutional complaints to strengthen electoral justice, judicial legitimacy, and democratic resilience.[11]

B. Research Method

This study employs a normative legal research method, focusing on the examination of legal norms, constitutional principles, and institutional frameworks governing the protection of electoral rights in Indonesia. It applies three approaches: the statutory approach, the conceptual approach, and the comparative approach[12]. The statutory approach examines relevant constitutional provisions, electoral legislation, and regulations concerning the protection and enforcement of political rights in Indonesia. The conceptual approach explores the theoretical foundations of constitutional complaints (*Verfassungsbeschwerde*), constitutional justice, electoral justice, and the role of constitutional courts in safeguarding democratic participation. Meanwhile, the comparative approach analyzes constitutional complaint mechanisms in selected jurisdictions to identify relevant legal principles and institutional practices that may inform the development of a similar mechanism within the Indonesian legal system.

The study relies on secondary legal materials, consisting of primary legal materials, including constitutional provisions and legislation; secondary legal materials, including scholarly books, journal articles, and legal research; and tertiary legal materials, including legal dictionaries and relevant reference sources. These materials are collected through library research and analyzed qualitatively using descriptive-analytical and prescriptive methods. The analysis is directed toward assessing the adequacy of existing electoral rights

[11] Alec Stone Sweet, *Governing with Judges: Constitutional Politics in Europe* (Oxford: Oxford University Press, 2000), 71–73..
[12] Mauro Cappelletti, "Judicial Review in Comparative Perspective," *California Law Review* 58, no. 5 (1970): 1020.

protection mechanisms, identifying the normative and institutional requirements for introducing constitutional complaints, and formulating recommendations for an effective judicial remedy against individual violations of electoral rights in Indonesia.

C. Discussion

1. Electoral Rights and the Constitutional Function of the Judiciary

Electoral rights constitute a fundamental pillar of constitutional democracy, encompassing the right to vote, the right to be elected, and the right to participate in electoral affairs. These rights are widely recognized under both domestic constitutional provisions and international human rights instruments. For instance, Article 25 of the International Covenant on Civil and Political Rights (ICCPR) affirms that every citizen shall have the right and opportunity, without unreasonable restrictions, to take part in the conduct of public affairs, to vote and to be elected in genuine periodic elections, and to have access to public service on general terms of equality.[13] At the domestic level, constitutions across democratic jurisdictions enshrine these entitlements as the core expression of popular sovereignty, thereby mandating the state to respect, protect, and fulfill electoral rights as part of its constitutional obligations.[14]

The concept of electoral justice emerges as a holistic framework aimed at safeguarding the full spectrum of electoral rights before, during, and after the conduct of elections. This framework requires mechanisms that not only prevent violations but also provide effective remedies in cases of disenfranchisement or other forms of electoral injustice. As articulated in the Inter-American Democratic Charter and further elaborated by the Venice Commission, electoral justice represents the "sum total of mechanisms, means, and institutions responsible for ensuring the integrity of electoral processes and the protection of electoral rights."[15] This conception underscores that the right to vote and to be elected is meaningful only when supported by a robust enforcement architecture that guarantees accountability for violations and the rectification of harm. Comparative constitutional practice and international human rights jurisprudence—such as Article 25 of the *International Covenant on Civil and*

[13] United Nations, *International Covenant on Civil and Political Rights*, December 16, 1966, 999 U.N.T.S. 171, art. 25.
[14] Yaniv Roznai, *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers* (Oxford: Oxford University Press, 2017), 54.
[15] Organization of American States (OAS), *Inter-American Democratic Charter*, September 11, 2001, art. 3; European Commission for Democracy through Law (Venice Commission), *Report on Electoral Law and Electoral Administration in Europe* (Strasbourg: Council of Europe, 2006), 12.

Political Rights (ICCPR) and General Comment No. 25 of the UN Human Rights Committee further reinforce the principle that the protection of electoral rights must be continuous and not confined to the electoral period alone. In the absence of such guarantees, the mere enactment of electoral laws or periodic elections risks degenerating into a formalistic exercise devoid of substantive democratic value, thereby eroding public confidence and diminishing the legitimacy of the constitutional order.[16]

The 1945 Constitution of the Republic of Indonesia explicitly guarantees electoral rights as a cornerstone of democracy. Article 1 paragraph (2) affirms that sovereignty rests with the people, while Article 22E paragraph (1) mandates that elections be conducted in a direct, general, free, confidential, honest, and fair manner every five years. Furthermore, Article 27 paragraph (1) guarantees equality before the law, and Article 28D paragraph (3) ensures that every citizen has the right to equal opportunities in government. In addition, Article 28I paragraph (2) emphasizes protection from discriminatory treatment, reinforcing the universal and inclusive nature of electoral participation. Taken together, these provisions establish the constitutional framework that upholds the right to vote (*hak pilih*) and the right to be elected (*hak dipilih*) as fundamental entitlements of citizenship.[17]

Before examining the specific role of constitutional courts, it is important to distinguish between electoral justice and electoral dispute resolution. Electoral justice refers to the overarching guarantee that electoral processes comply with the law and respect fundamental rights, encompassing both preventive measures to avoid violations and corrective measures to address them. In contrast, electoral dispute resolution denotes the narrower set of procedures aimed at adjudicating specific complaints or conflicts arising during the electoral process. This distinction is critical because the judiciary's constitutional function extends beyond resolving isolated disputes—it includes upholding the integrity of the entire electoral framework and ensuring the continuous protection of political rights.

Within this architecture, constitutional courts hold a uniquely pivotal role. Traditionally tasked with norm control reviewing the constitutionality of legislation and government actions these courts increasingly act as protectors of individual democratic entitlements, especially in contexts where statutory electoral bodies lack

[16] Pippa Norris, *Strengthening Electoral Integrity* (Cambridge: Cambridge University Press, 2017), 23.
[17] UUD 1945

effective remedial authority.[18] Through judicial review and, where available, constitutional complaint procedures, constitutional courts can adjudicate violations of voting rights, candidacy rights, and equal participation in political life, thereby bridging the gap between abstract constitutional norms and their concrete application to individuals.[19]

This dual function has given rise to the widely recognized conception of the constitutional court as a "guardian of the ballot."[20] In this capacity, such courts not only safeguard the integrity of the electoral process by ensuring its consistency with constitutional principles, but also guarantee that each citizen's right to democratic participation is meaningfully protected. By exercising this role, constitutional courts contribute to reinforcing both the formal legitimacy of elections and the substantive fairness of democratic governance, thereby sustaining public trust in the broader constitutional order and the rule of law.[21]

Moreover, the characterization of constitutional courts as guardians of the ballot underscores their pivotal role in mediating the tension between majority rule and the protection of fundamental rights. In contexts where electoral disputes risk undermining political stability, these courts serve as neutral arbiters that can reconcile procedural legality with substantive justice. Their interventions not only prevent electoral outcomes from being delegitimized by irregularities but also ensure that democratic competition unfolds within a framework of constitutional guarantees. In this way, the constitutional court operates as both a stabilizing institution in times of political contestation and as a normative anchor that affirms the enduring principles of constitutional democracy.

The notion of the court as a guardian of the ballot stems from its constitutional mandate to uphold the supremacy of the constitution in all aspects of governance, including elections. Elections are not merely administrative processes but constitutionally entrenched mechanisms for realizing popular sovereignty. Thus, when constitutional courts intervene in electoral disputes, they act to safeguard the foundational principle that political power must derive from the will of the people, exercised under conditions of fairness and legality. In this sense, judicial review over

[18] Issacharoff, *Fragile Democracies*, 90.
[19] Alec Stone Sweet, *Governing with Judges: Constitutional Politics in Europe* (Oxford: Oxford University Press, 2000), 133.
[20] Sujit Choudhry, "Judicial Review and the Protection of Political Rights," *International Journal of Constitutional Law* 11, no. 3 (2013): 578.
[21] Bilchitz, *Fundamental Rights and the Constitutional Complaint*, 65.

electoral matters ensures that the procedures and outcomes of elections comply with constitutional guarantees of political rights, equality, and non-discrimination.

2. The Constitutional Complaint as a Pathway to Electoral Justice

An effective system of electoral justice requires not only the recognition of substantive electoral rights but also accessible, credible, and enforceable pathways for complaints and remedies. Such a system must ensure that violations are not merely acknowledged in principle but can be effectively challenged and rectified in practice. In many jurisdictions, however, traditional electoral dispute resolution mechanisms are designed primarily to protect the collective validity and legitimacy of elections, ensuring that the outcome as a whole reflects the will of the electorate, rather than to secure the individual enjoyment and enforcement of electoral rights.[22] These mechanisms, often administered by election commissions, special electoral tribunals or administrative bodies, typically focus on adjudicating disputes related to vote-counting accuracy, candidate eligibility and registration, boundary delimitation, or procedural irregularities that could affect the overall results.[23] While these functions are crucial for maintaining electoral integrity, they often operate within a narrow mandate and lack both the authority and institutional design to address personal grievances. As a result, individual voters who suffer disenfranchisement, coercion, unequal access to the electoral process, or other forms of rights violations may find themselves without an effective remedy. This structural limitation creates a protection gap: even when an electoral process is deemed valid in aggregate terms, it may still fail to guarantee that every citizen's political rights are respected and enforced on an individual level.

This institutional gap has prompted legal scholars to advocate for the integration of constitutional complaint mechanisms as part of the electoral justice framework. A constitutional complaint is defined as a legal remedy that allows individuals not only political parties to directly petition the constitutional court when they believe that a public authority has violated their fundamental rights, including electoral rights.[24] Its core features include direct access to a constitutional court, a focus on rights-based adjudication, and the ability to address violations that might not affect the overall

[22] Norris, *Strengthening Electoral Integrity*, 102.
[23] José Antonio Cheibub, "Electoral Dispute Resolution and Democratic Stability," *Journal of Democracy* 29, no. 4 (2018): 45.
[24] Mauro Cappelletti, *The Judicial Process in Comparative Perspective* (Oxford: Clarendon Press, 1989), 211.

election result but still harm individual rights.[25] By providing this avenue, the complaint mechanism complements traditional electoral dispute procedures and ensures that constitutional guarantees are not merely theoretical but practically enforceable for every citizen.[26]

In the context of electoral rights, constitutional complaints can address concrete violations such as: (1) disenfranchisement or exclusion from the voter list due to improper registration procedures, (2) candidate disqualification based on unconstitutional or discriminatory grounds, and (3) arbitrary election regulations that create unequal participation opportunities. These examples show that such mechanisms directly protect the substance of democratic participation, not merely its procedural form.

Comparative experiences highlight the transformative potential of such mechanisms. In Germany, the Federal Constitutional Court (*Bundesverfassungsgericht*) recognizes the *Wahlprüfungsbeschwerde* (electoral complaint) as a vehicle through which citizens can challenge infringements of their voting rights, ensuring both the procedural integrity and substantive equality of elections.[27] Similarly, in South Korea, the Constitutional Court provides direct recourse to individuals through constitutional complaints, contributing to public confidence in the electoral process and reinforcing the judiciary's role as the guardian of political participation.[28] These examples illustrate how the constitutional complaint pathway strengthens democratic resilience by linking the protection of individual rights with the legitimacy of the entire electoral process.[29]

Normatively, the adoption of constitutional complaints for electoral matters aligns with the principle of effective legal remedies as enshrined in international law. Article 2(3) of the ICCPR obliges states to ensure that individuals have an effective remedy when their rights are violated, and the UN Human Rights Committee has repeatedly emphasized that such remedies must be accessible, independent, and capable of resulting in enforceable decisions. Therefore, establishing a constitutional

[25] Cappelletti, *The Judicial Process in Comparative Perspective*, 72.
[26] Kommers and Miller, *Constitutional Jurisprudence*, 301.
[27] Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases* (Cambridge: Cambridge University Press, 2003), 198.
[28] Choudhry, "Elections and Constitutional Democracy," 586.
[29] United Nations Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, May 26, 2004, para. 15.

complaint pathway for electoral rights not only enhances domestic constitutional order but also fulfils international obligations in protecting democratic participation.

In this regard, constitutional complaints in electoral matters also serve as a crucial bridge between domestic constitutional guarantees and international human rights standards. By granting individuals direct access to challenge violations of their political rights, constitutional courts reinforce the justiciability of rights that might otherwise remain abstract or unenforceable. This mechanism ensures that constitutional promises of universal suffrage, equality, and political participation are translated into concrete protections. Furthermore, the availability of such remedies signals a state's commitment to the rule of law and democratic accountability, thereby enhancing its legitimacy both domestically and in the eyes of the international community.

Beyond safeguarding individual rights, the availability of constitutional complaint mechanisms signals a state's broader dedication to the rule of law and democratic accountability. When individuals are afforded accessible, impartial, and enforceable channels to seek redress, the state conveys its legitimacy—both to its citizens and the international community. This alignment with international law norms is echoed in UN guidance, which underscores the necessity of judicial review or equivalent processes to maintain elector confidence in the fairness and transparency of the electoral process.[30]

3. Procedural Elements for Electoral Constitutional Complaints

The adjudication of Electoral Constitutional Complaints (*Perselisihan Hasil Pemilihan Umum* – PHPU) before the Constitutional Court of the Republic of Indonesia is regulated under Law No. 24 of 2003 concerning the Constitutional Court (as amended), complemented by relevant procedural regulations issued by the Court. This process is designed to provide a judicial forum for resolving disputes concerning the validity of election results, thereby safeguarding the constitutional right to participate in free and fair elections.

The mechanism for submitting an Electoral Constitutional Complaint to the Constitutional Court of the Republic of Indonesia is governed by strict procedural and substantive requirements. The process commences with the lodging of a written

[30] UN OHCHR provisions on electoral remedies under Article 25

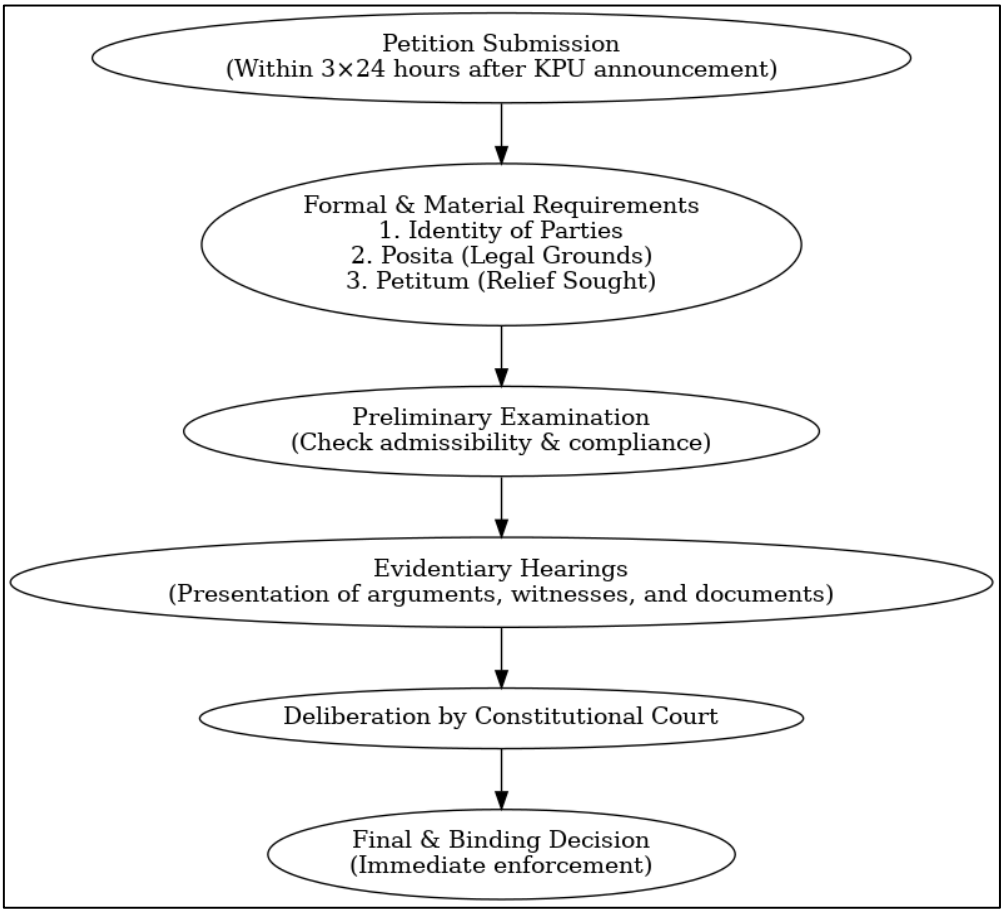
petition by the applicant, which must explicitly set forth the factual circumstances and supporting evidence indicating errors in the vote count conducted by the General Elections Commission (*Komisi Pemilihan Umum* – KPU). The petition must further include an unequivocal request for the annulment of the election results in question. Procedural timeliness is imperative, as the application must be filed within a maximum period of three times twenty-four hours from the official announcement of the election results by the KPU.[31]

According to Article 31 paragraph (1) of Law No. 24 of 2003 concerning the Constitutional Court, the petition must satisfy both formal and material requirements, comprising three principal elements. First, it must provide the identity of the parties, namely the applicant (*pemohon*) and the respondent (*termohon*), to establish the proper legal standing of the parties to the dispute. Second, it must present the *posita* or *fundamentum petendi*, encompassing the factual narrative and the legal grounds upon which the claim is based. Third, it must articulate the *petitum*, namely, the specific relief sought from the Court.[32] These procedural requirements are essential to ensure that constitutional petitions are clearly structured, legally substantiated, and procedurally admissible, thereby enabling the Court to efficiently assess the legitimacy and substance of the constitutional claims brought before it.

Failure to comply with these requirements, particularly in relation to the accurate identification of the parties, may result in an *error in persona*. Such procedural defects carry the consequence that the petition will be declared *inadmissible* (*niet ontvankelijk verklaard*) by the Court. This stringent adherence to procedural formality reflects the Constitutional Court's function in safeguarding the integrity of electoral dispute resolution and ensuring that only petitions meeting established legal standards proceed to substantive adjudication.

The following chart shows the procedure of electoral constitutional complaints in the current Criteria for admissibility:

[31] Afifah, Dashilfa, et al. "ANALISIS PROSEDUR PENYELESAIAN SENGKETA PEMILIHAN UMUM DALAM HUKUM ACARA MAHKAMAH KONSTITUSI." *Hukum Dinamika Ekselensia* 7.2 (2025).
[32] Indonesia. Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi. Lembaran Negara Republik Indonesia Tahun 2003 Nomor 98, Tambahan Lembaran Republik Indonesia Nomor 4316. Sekretariat Negara. Jakarta. Pasal 31 ayat (1)



Electoral disputes, by their very nature, demand expeditious resolution in order to uphold democratic legitimacy and prevent prolonged periods of political uncertainty. In recognition of this imperative, Indonesian legislation has established strict procedural timelines for the adjudication of PHPU. For instance, Law No. 24 of 2003 concerning the Constitutional Court, together with its implementing procedural norms, requires that petitions be formally submitted within three times twenty-four hours following the official announcement of results by the KPU. Within this framework, the Constitutional Court is vested with exclusive jurisdiction as both the first and final adjudicative body, thereby ensuring that electoral controversies are resolved with finality, authority, and in a manner consistent with constitutional principles.33

Procedural fairness in electoral adjudication inherently demands that all parties—petitioners and respondents alike—receive equitable treatment and access. The principle of equality of arms, drawn from international human rights standards (e.g., ICCPR Article 14), mandates that neither side enjoys procedural advantage during

[33]https://en.mkri.id/download/constitution/constitution_2_1625426527_5513ffab79ee0e68cd8d.pdf

hearings. Additionally, respecting confidentiality is crucial when sensitive evidence is at issue. The Electoral Justice Handbook by International IDEA emphasizes transparency, institutional independence, and procedural integrity as foundational to maintaining legitimacy in electoral adjudication. The IPU's criteria for free and fair elections reinforce the necessity of legal remedies and fair trial assurances in political and electoral disputes.34

Procedural safeguards are meaningful only if supported by robust institutional capacity. This includes having adequately trained justices, efficient case management systems, and administrative resources to process petitions swiftly and fairly. The effectiveness of the Constitutional Court in resolving electoral disputes is essential not only for justice but also for political stability and public trust. Without such capacity, even well-designed fast-track procedures and safeguards may fail in practice.

While procedural rigor is indispensable to maintaining the integrity of electoral dispute resolution, excessive formalism may sometimes hinder access to substantive justice. The rigid three-day filing deadline, for instance, raises concerns about whether petitioners—particularly candidates with limited resources—can realistically gather sufficient evidence within such a compressed timeframe. This procedural strictness, while designed to promote legal certainty and political stability, may inadvertently undermine the constitutional right to effective remedies as guaranteed under Article 28D of the Indonesian Constitution and Article 2(3) of the ICCPR. Thus, the balance between procedural efficiency and substantive justice remains a critical point of reflection in the Indonesian model of electoral constitutional complaints.

The Constitutional Court's jurisprudence illustrates the practical implications of these procedural requirements. In the 2014 and 2019 presidential election disputes, the Court strictly enforced the admissibility criteria, rejecting several petitions for failing to meet formal requirements such as timeliness or proper identification of parties. Similarly, in the 2020 regional election disputes, the Court emphasized the principle of error in persona as grounds for inadmissibility. These cases demonstrate that while the Court plays a central role in safeguarding electoral integrity, its adherence to formal admissibility thresholds often results in substantive claims being left unexamined. This tension underscores the ongoing challenge of ensuring that the

[34] https://www.idea.int/sites/default/files/publications/electoral-justice-handbook.pdf

procedural framework not only preserves legal order but also facilitates meaningful protection of electoral rights.

4. Strengthening Democracy Through Electoral Remedies

The jurisprudence of the United Nations Human Rights Committee, particularly in its General Comment No. 25 on Article 25 of the International Covenant on Civil and Political Rights (ICCPR), underscores that states are under a legal obligation to provide "effective, impartial and timely" remedies for electoral violations to guarantee the full enjoyment of political rights. This principle is echoed in the Venice Commission's Code of Good Practice in Electoral Matters, which stresses that the absence of credible adjudicative mechanisms risks delegitimizing the entire electoral process, regardless of the substantive merits of the election results.35

From a broader sociopolitical perspective, the availability and effective judicial remedies contribute to the cultivation of public trust in democratic governance through at least three interrelated mechanisms. First, they embody and project institutional accountability by ensuring that electoral management bodies, political parties, and candidates remain subject to impartial legal scrutiny, thereby reinforcing the perception that no actor—*regardless of political influence or institutional position*—is above the law. Second, they function as a credible deterrent against future violations by signalling both to political elites and the electorate at large, that breaches of electoral law will trigger enforceable and proportionate consequences. This deterrent effect not only safeguards the integrity of the electoral process but also fosters a culture of legal compliance. Third, they offer a structured, lawful, and transparent avenue for the resolution of dispute, which in turn diminishes the likelihood of electoral outcomes being contested through extra-legal or violent contestation of results, including political unrest or violent mobilization. Comparative scholarship on electoral dispute resolution in both consolidated democracies and emerging democratic systems demonstrates that jurisdictions with robust judicial oversight mechanisms experience a significantly lower incidence of post-election instability, underscoring the integral role of judicial remedies in maintaining democratic legitimacy.[36]

[35] European Commission for Democracy through Law (Venice Commission), *Code of Good Practice in Electoral Matters*, CDL-AD(2002)023rev2-cor, 2021
[36] Redish, Martin H. "Constitutional Remedies as Constitutional Law." *BCL Rev.* 62 (2021): 1865.

Beyond their role in safeguarding procedural fairness, judicial remedies are indispensable for promoting inclusivity in the electoral process. Marginalized communities—including ethnic minorities, persons with disabilities, and geographically isolated populations—often face structural barriers to both participation in elections and access to post-election legal redress. Without deliberate measures to accommodate these groups, electoral dispute resolution systems risk perpetuating systemic inequalities. Ensuring that judicial remedies are physically accessible, linguistically inclusive, and procedurally adapted to the realities of marginalized voters is therefore not merely a matter of legal formality but a democratic imperative.

Moreover, beyond formal judicial remedies, hybrid mechanisms—such as alternative dispute resolution (ADR) tailored for electoral contexts—can significantly enhance inclusivity, especially for marginalized communities that face cultural, linguistic, or logistical obstacles to engaging with conventional court systems. For instance, practitioner-focused studies have found that ADR mechanisms in electoral disputes—when thoughtfully designed to reflect local legal traditions and culturally appropriate practices—can foster greater engagement from women, youth, and other underrepresented groups, while also reducing the burden on formal courts and increasing the accessibility and timeliness of resolutions. Embedding such inclusive adaptations—like community-based mediation, linguistically inclusive outreach, and culturally informed dispute handling—alongside judicial remedies ensures that justice is not only formally available, but meaningfully accessible to those most marginalized within the democratic process.[37]

International best practices, as reflected in the work of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the International IDEA, emphasize that the legitimacy of elections is strengthened when all voters—regardless of socioeconomic status, cultural background, or physical ability—are assured that their grievances will be heard and adjudicated on equal terms. This requires proactive judicial outreach, legal aid mechanisms for underrepresented groups, and procedural safeguards that prevent the intimidation or disenfranchisement of vulnerable populations. By embedding inclusivity into the architecture of electoral justice, states

[37] https://www.ifes.org/publications/alternative-dispute-resolution-elections-practitioner-brief

not only comply with their human rights obligations but also foster a deeper, more resilient form of public trust in democratic institutions.

Conversely, where judicial remedies are inaccessible, unduly delayed, or biased, citizens may come to perceive the electoral process as inherently flawed or manipulated. Such perceptions can erode political legitimacy, depress voter turnout in subsequent elections, and, in extreme cases, trigger systemic political instability. As the International IDEA Electoral Justice Handbook notes, the credibility of elections rests "not only on how votes are cast and counted but also on how disputes are resolved in a manner that is transparent, fair, and timely.

In short, effective judicial remedies are not a procedural luxury but a constitutional necessity. They form a critical link between the formal legality of electoral procedures and the substantive legitimacy of democratic governance, making them central to building and maintaining public trust in elections.

The central contribution of judicial remedies lies in their ability to restore and maintain public confidence in the electoral process. When citizens believe that disputes can be adjudicated, they are more likely to accept electoral outcomes—even when those outcomes are unfavorable to their preferred candidates. By contrast, the absence of credible remedies often fuels suspicion that the system is rigged or biased. Comparative evidence from both established democracies and transitional states shows that robust mechanisms of electoral justice reduce the likelihood of post-election boycotts, delegitimization campaigns, and even violent mobilization. Thus, effective remedies act not merely as corrective measures but as preventive safeguards of political trust.

Equally important, judicial remedies serve as a bulwark against impunity in cases of electoral manipulation or administrative negligence. Without the prospect of enforceable legal sanctions, political elites may perceive electoral violations as low-risk, high-reward strategies. Judicial oversight, by contrast, introduces a credible threat of accountability, ensuring that malpractices are neither ignored nor repeated. The Indonesian Constitutional Court's jurisprudence illustrates this deterrent function: in several cases, electoral management bodies and candidates have been sanctioned or subjected to annulment of results when violations were proven. These interventions not only rectify specific disputes but also send a powerful message that the law is supreme over political expediency.

Access to electoral justice must also be understood through the lens of inclusivity. Marginalized groups—such as ethnic minorities, women, persons with disabilities, and geographically isolated voters—face systemic obstacles both in electoral participation and in accessing judicial forums. The failure to accommodate these barriers risks reproducing structural inequalities within democratic systems. To counter this, best practices suggest embedding inclusive adaptations such as accessible complaint procedures, provision of translation or interpretation services, and legal aid for disadvantaged groups. Moreover, alternative dispute resolution mechanisms, rooted in local culture and practice, may offer supplementary pathways to justice where formal judicial remedies prove intimidating or inaccessible. By embracing inclusivity, electoral justice systems reinforce the democratic principle that every vote and every grievance is equally valued.

Finally, judicial remedies enhance the legitimacy and accountability of electoral management bodies. Electoral commissions often operate under intense political pressure and public scrutiny; without judicial oversight, their decisions may be perceived as partial or politically motivated. Independent adjudication by courts provides an external check that strengthens the credibility of electoral institutions and ensures their compliance with constitutional and legal standards. In Indonesia, the Constitutional Court's authority as the final arbiter of electoral disputes has been central to legitimizing the work of the KPU, demonstrating how judicial oversight fortifies not only individual rights but also institutional trustworthiness.

In sum, the role of judicial remedies extends far beyond the resolution of technical disputes. They constitute a democratic necessity that integrates trust-building, accountability, inclusivity, and institutional legitimacy into a single framework. By embedding these principles into both law and practice, states not only uphold their constitutional and international obligations but also secure the resilience of democratic governance against the recurring strains of electoral competition.

5. The Urgency of Legal Reform in the Indonesian Constitutional Court

The current framework of Indonesia's electoral dispute resolution remains narrowly confined to adjudicating disputes over election results, as stipulated in the constitutional mandate of the Constitutional Court. This limitation means that the MK does not possess jurisdiction to address individual violations of electoral rights, such

as unjust denial of voter registration, arbitrary disqualification of candidates, or procedural obstacles that hinder political participation. As a result, the legal architecture prioritizes the protection of collective electoral outcomes over the enforcement of individual rights, creating a systemic gap that undermines both the substantive enjoyment of electoral rights and the legitimacy of democratic governance.[38]

This institutional shortcoming is compounded by the absence of a formal constitutional complaint mechanism, an avenue through which individuals could directly petition the MK when alleging violations of their constitutional rights. Article 24C of the 1945 Constitution does not explicitly provide such authority, thereby leaving the MK without a clear legal basis to adjudicate individual grievances of this nature. Empirical observations reveal that, although some petitions for judicial review have substantively mirrored the characteristics of constitutional complaints, these cases are typically rejected on procedural grounds because the MK's jurisdiction is rigidly defined. Consequently, constitutional guarantees of political rights often remain aspirational, lacking the enforceable remedies necessary to give them practical effect.[39]

Legal scholarship, both in comparative and domestic contexts has consistently underscored the pressing and ongoing urgency of comprehensive reform aimed at narrowing and ultimately bridging the persistent gap between normative constitutional commitments which articulate fundamental rights and principles and the availability of concrete, enforceable remedies capable of giving those commitments practical effect in real-world legal disputes. Expanding the Constitutional Court's jurisdiction to formally include the adjudication of constitutional complaints would represent a significant doctrinal and institutional development. Such an expansion would operate to transform fundamental political rights, currently framed in many instances as aspirational or declaratory provisions into concrete and actionable legal entitlements capable of direct enforcement. In doing so, it would not only enhance the practical justiciability of constitutional guarantees but also fortify the MK's institutional position as the ultimate and authoritative guardian of the Constitution, entrusted with ensuring that the normative promises enshrined in the constitutional text are meaningfully realized in the lived experience of rights-holders. As argued by

[38] Layyin Mahfiana and Lisma Lisma, "Quo Vadis Constitutional Complaint in Indonesia: Authority and Discretion of Constitutional Judges," *De Jure: Jurnal Hukum dan Syar'iah* 13, no. 1 (2021): 115–16.
[39] Andri Setiawan, "Urgensi Penerapan Constitutional Complaint di Indonesia: Suatu Kajian Hak Asasi Manusia," *PUSKAPSI Law Review* 1, no. 2 (2021).

Vicko Taniady and Laili Furqoni, this reform would align Indonesia with constitutional systems such as those of Germany and South Korea, where constitutional complaint mechanisms operate as effective safeguards for individual rights and democratic participation.[40] Moreover, Achmad Edi Subiyanto emphasizes that the constitutional complaint functions as a judicial remedy of last resort, available only after all other legal avenues have been exhausted, thereby ensuring that it complements rather than supplants existing adjudicative processes.[41]

Importantly, this reform does not necessarily require an amendment to the Constitution. Scholars such as Rahmat Muhajir Nugroho contend that the constitutional complaint mechanism could be incorporated through legislative reform specifically via amendments to the MK Law thus providing the MK with explicit statutory authority to adjudicate such petitions without altering the constitutional text.[42] Nonetheless, for a more entrenched and enduring institutional reform, an amendment to Article 24C could be considered to codify this jurisdiction within the Constitution itself. Whether implemented through statutory revision or constitutional amendment, the integration of an individual complaint mechanism into Indonesia's judicial architecture would not only enhance access to justice but also fortify the credibility of the electoral process, ensuring that political rights are protected both in principle and in practice. The integration of electoral complaints within judicial architecture can be designed in multiple ways, depending on constitutional traditions and institutional capacities. One prominent model is the constitutional court model, in which electoral disputes are placed under the exclusive jurisdiction of the constitutional court. This approach underscores the constitutional character of elections by ensuring that questions concerning electoral validity and the protection of political rights are adjudicated by the highest guardian of the constitution. Indonesia illustrates this model through the PHPU mechanism, whereby the Constitutional Court acts as both the first and final adjudicative body in election result disputes.[43] A similar arrangement exists in Germany, where the Federal Constitutional Court has authority over electoral

[40] 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).
[41] Achmad Edi Subiyanto, "Perlindungan Hak Konstitusional Melalui Pengaduan Konstitusional," *Jurnal Konstitusi* 8, no. 5 (2011).
[42] Rahmat Muhajir Nugroho, "Urgensi Pengaturan Perkara Constitutional Complaint dalam Kewenangan Mahkamah Konstitusi," *Jurnal Hukum Novelty* 7, no. 3 (2016).
[43] Susi Dwi Harijanti and Tim Lindsey, Indonesian Constitutional Reform 1999–2002: An Evaluation of Constitution-Making in Transition (Asian Law Review 2020) 16–18.

complaints concerning the Bundestag.[44] While this model enhances the uniformity of interpretation and the legitimacy of outcomes, it also risks burdening constitutional courts with disputes that are often highly politicized and procedurally complex.

Another pathway is the ordinary judiciary model, in which electoral disputes are integrated into the jurisdiction of the regular court system, typically at the level of High Courts or appellate divisions. India's legal framework exemplifies this arrangement: the Representation of the People Act, 1951 channels election petitions directly to designated High Courts, with the possibility of further appeal to the Supreme Court.[45] The advantage of this model lies in its dispersal of cases across multiple courts, thereby reducing institutional overload and relying on the established authority of the judiciary. However, the system also presents challenges, as different courts may develop inconsistent approaches unless harmonized by a supreme judicial instance.

A third model emphasizes specialized electoral tribunals, which are either independent institutions or specialized chambers within the judiciary. Mexico's Electoral Tribunal of the Federal Judiciary (TEPJF) provides a prominent example, widely recognized for its expertise in electoral law and its capacity to issue timely and technically sound rulings.[46] The benefit of this model lies in specialization and efficiency, though it requires strong safeguards of independence and adequate resources to avoid politicization or ineffectiveness.

In addition to these dominant approaches, some countries adopt hybrid or complementary systems, which combine multiple institutions to distribute the responsibility for electoral complaints. South Korea, for example, involves both the Constitutional Court and the National Election Commission in electoral oversight, with the Constitutional Court required to issue rulings on presidential election disputes within thirty days.[47] Several European states also implement a layered structure, directing procedural disputes—such as candidate registration or campaign finance irregularities—to administrative courts, while reserving constitutional courts for

[44] Bundesverfassungsgericht (German Federal Constitutional Court), 'Types of Proceedings: Electoral Complaints' (2023) https://www.bundesverfassungsgericht.de/EN/TheFederalConstitutionalCourt/TypesOfProceedings/ElectoralComplaints/electoralcomplaints_node.html.

[45] Representation of the People Act, 1951 (India), s 81–86. See also Supreme Court of India, Rajendra Singh Rana v Swami Prasad Maurya (2007) 4 SCC 270

[46] Electoral Tribunal of the Federal Judiciary (TEPJF, Mexico), Annual Report 2021. See also E. Magar, 'Mexico's Electoral Tribunal and Democratic Consolidation' (2018) Electoral Studies 55, 67–74

[47] Constitution of the Republic of Korea (1987, as amended 2020), art 68(2). See also Constitutional Court of Korea, Decision 2017Hun-Na1 (impeachment of President Park Geun-hye)

matters implicating fundamental political rights.[48] This hybrid approach reflects a pragmatic effort to align institutional competence with the nature of the dispute, ensuring both efficiency and constitutional protection.

Taken together, these models demonstrate that while institutional designs vary, the underlying objective remains consistent: electoral complaints must be resolved by judicial or quasi-judicial bodies that combine independence, accessibility, and expeditiousness. Comparative experiences confirm that no single model is universally superior, but that effectiveness depends on the capacity of institutions to balance the technical demands of electoral adjudication with the overarching imperative of maintaining democratic legitimacy.

While comparative experiences demonstrate a wide spectrum of institutional models, the Indonesian context presents unique challenges that demand careful calibration. The constitutional court model would align naturally with the current architecture, given that the MK already functions as the final arbiter in electoral disputes. However, this approach risks further burdening the Court with an ever-expanding caseload, particularly if individual complaints are formally recognized. Conversely, a hybrid model—where administrative courts or specialized electoral tribunals handle procedural disputes, while the MK retains ultimate authority over fundamental rights violations—may better distribute institutional responsibilities while safeguarding constitutional guarantees.

Beyond institutional design, the integration of a constitutional complaint mechanism carries profound political consequences. Providing individuals with direct access to judicial remedies would not only reinforce the principle of equality before the law but also foster deeper public trust in democratic institutions. It would signal to voters that the state takes their grievances seriously, thereby reducing the appeal of extra-legal or violent avenues of contestation. At the same time, such reform would help legitimize the decisions of electoral management bodies by subjecting them to impartial judicial review, thereby strengthening both accountability and democratic stability.

In practical terms, a phased approach to reform may be the most feasible. An initial step could involve amending the Constitutional Court Law (UU MK) to provide statutory authority for the MK to hear constitutional complaints, even if on a limited

[48] Venice Commission, Code of Good Practice in Electoral Matters (Council of Europe, 2020 revised edition)

basis—such as violations of political rights during electoral processes. This would create a testing ground for institutional capacity and public reception without necessitating immediate constitutional amendment. Over time, should this mechanism prove effective and manageable, a constitutional amendment to Article 24C could be pursued to entrench the jurisdiction permanently. Such a staged pathway ensures that reform is both responsive to immediate democratic needs and sustainable in the long term.

Ultimately, the choice of model should reflect Indonesia's constitutional tradition, institutional strengths, and democratic vulnerabilities. A purely comparative transplant is unlikely to succeed without adaptation to local realities, including the highly politicized nature of elections and the limited resources of judicial institutions. The most viable pathway may therefore lie in a hybrid system that combines the MK's constitutional guardianship with the technical capacity of specialized or ordinary courts. This approach would allow Indonesia to bridge the gap between normative constitutional commitments and enforceable remedies, while avoiding the pitfalls of institutional overload and politicization.

6. Synthesis and Critical Reflections

While Indonesia's electoral dispute resolution framework demonstrates a commitment to maintaining electoral stability, its outcome-oriented design raises serious concerns about substantive justice. By prioritizing disputes that materially affect election results, the system systematically excludes claims that, while not outcome-determinative, nevertheless represent fundamental rights violations. This imbalance reveals a deeper structural issue: the protection of electoral integrity is treated as synonymous with safeguarding collective legitimacy, while individual justice is sidelined. Such a design risks entrenching a perception of "majoritarian constitutionalism," where the will of the majority is shielded at the expense of protecting minority voices and individual entitlements.

Comparative experience underscores the urgency of reform. In Germany, the *Wahlprüfungsbeschwerde* has enabled citizens to directly challenge infringements of electoral rights, creating a jurisprudence that balances stability with rights enforcement. Similarly, South Korea's constitutional complaint mechanism has enhanced trust in democratic institutions by ensuring that even minor violations

receive judicial attention. Indonesia's absence of such a mechanism not only isolates it from these best practices but also places it at odds with its international obligations under the ICCPR, particularly Article 2(3), which obliges states to ensure accessible and effective remedies. The contrast illustrates that constitutional complaint mechanisms are not merely procedural innovations but hallmarks of mature constitutional democracies.

From a theoretical standpoint, compliance theory suggests that citizens' willingness to accept electoral outcomes is closely tied to the availability of credible judicial remedies. When individuals perceive that their grievances can be adjudicated, compliance with even unfavourable results is enhanced, thereby strengthening democratic resilience. Conversely, empirical evidence from Indonesia's 2019 elections—where logistical failures and inaccuracies in voter lists left many without meaningful redress—demonstrates the dangers of excluding individuals from judicial protection. Unresolved grievances, left to fester outside formal legal channels, risk escalating into political unrest or undermining public trust in democratic institutions. Thus, reforming Indonesia's constitutional adjudication system to incorporate individual complaints is not only normatively imperative but pragmatically necessary to safeguard democratic stability.

D. Closing

Constitutional courts are entrusted not only with safeguarding the supremacy of the constitution but also with ensuring that the democratic process remains meaningful, participatory, and inclusive. This dual mandate positions constitutional courts as vital guardians of both constitutional order and democratic legitimacy. In fulfilling this role, they are called upon to adopt a proactive stance in the protection of electoral rights, particularly in contexts where statutory or procedural frameworks fall short in offering effective remedies for individual violations. The right to vote, the right to stand for election, and the right to participate in genuine, periodic elections are not merely formal entitlements; they constitute the very foundation of representative democracy. Consequently, electoral justice must extend beyond the narrow scope of procedural integrity—such as ballot distribution or vote counting—and embrace substantive guarantees that ensure equal and meaningful participation for all citizens.

Despite this constitutional imperative, many legal systems remain plagued by structural deficiencies. Restrictive standing doctrines, delayed adjudication, and weak enforcement mechanisms often undermine substantive protections, leaving individuals without adequate recourse when their electoral rights are infringed. In such circumstances, constitutional courts must fill the remedial gap through expansive interpretations of standing, judicial innovation, or by compelling legislative reform. Their intervention is particularly crucial in transitional democracies or hybrid regimes, where electoral procedures may formally exist but are often distorted by authoritarian practices that marginalize dissenting voices and suppress genuine political competition.

The legitimacy of democratic governance, therefore, is inextricably tied to the perception that electoral institutions are fair, accountable, and accessible to all. Without robust judicial safeguards, disenfranchised individuals remain without remedy, systemic irregularities persist, and public trust in democratic institutions deteriorates. Against this backdrop, the role of constitutional courts is not merely adjudicative but fundamentally constitutional and democratic: reinforcing the rule of law while safeguarding the political agency of every citizen.

One way to institutionalize such protection is through the establishment of a constitutional complaint mechanism. Properly designed, this mechanism provides individuals with a direct pathway to seek redress when electoral rights are violated, thereby enhancing access to justice, strengthening judicial legitimacy, and reinforcing democratic resilience. Comparative experiences from jurisdictions that have embraced this mechanism demonstrate its capacity to bridge the gap between constitutional ideals and practical enforcement.

For countries like Indonesia, the absence of an individual constitutional complaint mechanism has left a significant protection gap. Moving toward legal reform in this area is not merely desirable but imperative. By integrating such a mechanism into the jurisdiction of the Constitutional Court—whether through statutory revision or constitutional amendment—the protection of electoral rights can be effectively institutionalized, ensuring that democratic participation is preserved both in principle and in practice.

Jurisdictions that currently lack effective mechanisms for the judicial protection of electoral rights should therefore undertake comprehensive legal reforms. Without access to constitutional adjudication, rights such as voting, candidacy, and participation in free and fair elections risk becoming symbolic rather than enforceable. Embedding their protection within the constitutional order and empowering judicial institutions with both authority and independence are essential steps to strengthen electoral integrity and foster greater public confidence in democratic processes.

Constitutional courts must play a proactive role in protecting the democratic process. Electoral justice cannot be confined to procedural regularity alone; it requires substantive legal remedies that safeguard individual rights against violations. The establishment of a well-designed constitutional complaint mechanism enhances access to justice, strengthens judicial legitimacy, and bolsters democratic resilience. Jurisdictions that lack such mechanisms, including Indonesia, should therefore move toward comprehensive legal reform to institutionalize the protection of electoral rights through constitutional adjudication. By doing so, states not only uphold constitutional supremacy but also secure the democratic agency of every citizen.

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