



Digitalization of Evidence in the Constitutional Court: Opportunities and Requisite

Muhammad Fauzan¹, Handar Subhandi Bakhtiar²

¹ Faculty of Law, Universitas Pembangunan Nasional Veteran Jakarta, E-mail: fauzanbasir24@gmail.com

² Faculty of Law, Universitas Pembangunan Nasional Veteran Jakarta, Email: handar_subhandi@yahoo.com

ARTICLE INFO	ABSTRACT
<p>Keywords: Constitutional Court; Digitalization; Proof; Evidence; Constitutional Law</p> <p>How to cite: Fauzan, M., & Bakhtiar, H. S. (2022). Digitalization of Evidence in the Constitutional Court: Opportunities and Requisite. <i>Veteran Law Review</i>. 6 Special Issues 1 – 14.</p> <p>Received: 2023-08-15 Revised: 2023-02-14 Accepted: 2023-04-17</p>	<p>Digitization has spread to people's live, it is also necessary to reform the judiciary for the efficiency and effectiveness of evidence in procedural law. Legalization rather than the use of digitalized evidence is also needed for legal certainty in proceedings. The research method used in this study is a normative legal method with a historical approach and statutory approach. The historical approach is used to analyze the background of constitutional cases in the past and is connected to current conditions related to evidence. A statutory approach is needed to analyze the legality of using digital evidence when taking proceedings at the Constitutional Court. The results of this study are found that the history of constitutional cases that have relevance to the existence of the Constitutional Court is the background for the occurrence of evidence in the institution that guards the constitution. The use of digital evidence has proven necessary to realize the principle of fast, easy and cheap process. In addition, its practical use is only limited to the administrative affairs of the court clerks, not to the evidentiary process in the Procedural Law of the Constitutional Court. So that it is necessary to adapt the court to digitalization to get to the proof stage by carrying out legal formulations in the form of changes to the procedural law of the Constitutional Court which will provide space for evidence in digital form in proceedings at the Constitutional Court.</p>

1. Introduction

In the implementation of the constitution, there needs to be an institution that has the main task of protecting the constitution so that there is no violation and injustice.¹ The beginning of the idea of protecting the constitution came from the power of the United States Supreme Court in reviewing the legislation (judicial review) in 1803 in

¹ Asdhie, B., & Ista, E. (2019). Kewenangan Mahkamah Konstitusi Dalam Perlindungan Hak Konstitusional Warga Negara Melalui Konstitusional Complaint. *De Lega Lata: Jurnal Ilmu Hukum*, 4(2), 160-174. See also, Konstitusi, M. (2009). Mengawal Demokrasi Menegakkan Keadilan Substantif. *Jakarta: Laporan Tahunan MK*. See also, Nugraha, X., Frisa Katherina, A. M., Ramadhanty, S. N., & Tanbun, E. P. (2019). Constitutional Question: Alternatif Baru Pelindungan Hak Konstitusional Warga Negara Melalui Concrete Review di Indonesia (Constitutional Question: New Alternative to Protect Citizen's Constitutional Right From Concrete Review in Indonesia). *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan. Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan*, 10.

which the US Supreme Court issued a decision in the case of *Marbury v Madison*.² In that case, the U.S. Supreme Court overturned a provision of the Judiciary Act of 1789 because it was deemed a violation of Article 3, Section 2 of the U.S. Constitution.³ Although there are no written arrangements relating to the power of the Supreme Court in reviewing laws on the constitution, they argue that it is a constitutional obligation through their oath to uphold and maintain the integrity of the constitution.⁴

The presence of the U.S. Supreme Court in its constitutional system creates a checks and balances that places all state institutions in the same position so as to create a balance in the practice of state administration.⁵ When juxtaposed with Indonesia, Indonesia has a Constitutional Court which has the power to examine laws on the Constitution.⁶ Similar to the Supreme Court in US, the presence of the Indonesian Constitutional Court makes all state institutions in Indonesia in the same row and parallel⁷, so as to minimize the occurrence of unfair practices in the preparation of laws.⁸ However, what distinguishes it from the United States Supreme Court, the

² Whittington, K. E. (2020). Reconsidering the History of Judicial Review. *Constitutional commentary*, 35(1), 1-12. See also, Araújo, L. H. D. (2020). Constitutional Law around the globe: judicial review in the United States and the "writ of certiorari". *Revista de Investigações Constitucionais*, 7, 189-204. See also, Siahaan, M. (2016). Uji Konstitusionalitas Peraturan Perundang-Undangan Negara Kita: Masalah dan Tantangan. *Jurnal Konstitusi*, 7(4), 009-048. See also, Doni Silalahi, S. A. (2016). Kewenangan Yudisial Review Mahkamah Agung Terhadap Peraturan Perundang-Undangan di Bawah Undang-Undang. *Jurnal Nestor Magister Hukum*, 3(3), 209848.

³ Wrzozszyk, M. (2019). The idea of judicial review in the United States of America: the context of creating and early judgments of the Supreme Court. *Orbis Idearum*, 7(2). See also, Prakash, S. B., & Yoo, J. C. (2003). The origins of judicial review. *The University of Chicago Law Review*, 70(3), 887-982.

⁴ Engel, G. (2020). Power to the People: The Supreme Court's Confirmation of State Power in the Wake of Faithless Electors. *U. Miami L. Rev.*, 75, 620. See also, Driesen, D. M. (2020). The Unitary Executive Theory in Comparative Context. *Hastings LJ*, 72, 1. See also, Ackerman, B. (2020). The emergency constitution. *J. Const. L.*, 9.

⁵ Faqih, M. (2016). Nilai-Nilai Filosofi Putusan Mahkamah Konstitusi Yang Final dan Mengikat. *Jurnal Konstitusi*, 7(3), 097-118. See also, Fudin, H. (2021). Legal justice in presidential impeachment practice between Indonesia and the United States of America. *Jurnal Hukum dan Peradilan*, 9(3), 465-504. See also, Marzuki; Sitompul, Roswita. (2020). The Existence of People's Consultative Assembly in Indonesian State System in the Pancasila Democracy Perspective. *J. Advanced Res. L. & Econ.*, 11, 947. See also, Kmezić, M. (2020). Rule of law and democracy in the Western Balkans: addressing the gap between policies and practice. *Southeast European and Black Sea Studies*, 20(1), 183-198.

⁶ Siregar, A. R. M. (2018). Kewenangan Mahkamah Konstitusi Dalam Pengujian Undang-Undang Terhadap Undang-Undang Dasar Tahun 1945. *Jurnal Hukum Responsif*, 5(5), 100-108. See also, Isra, S. (2015). Titik Singgung Wewenang Mahkamah Agung dengan Mahkamah Konstitusi. *Jurnal Hukum dan Peradilan*, 4(1), 17-30. See also, Nurhidayatulloh, N. (2016). Dilema Pengujian Undang-Undang Ratifikasi Oleh Mahkamah Konstitusi Dalam Konteks Ketetaneagaan RI. *Jurnal Konstitusi*, 9(1), 113-134.

⁷ Anggono, B. D. (2016). Konstitusionalitas dan Model Pendidikan Karakter Bangsa Pasca Putusan Mahkamah Konstitusi. *Jurnal Konstitusi*, 11(3), 492-514. See also, Febriyanti, S. (2022). Analisis Yuridis Penetapan Peraturan Pemerintah Pengganti Undang-Undang (Perppu) Oleh Presiden Berdasarkan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. *Limbago: Journal of Constitutional Law*, 2(1), 123-135. See also, Andalas, P. S. K. F. (2016). Perkembangan pengujian perundang-undangan di Mahkamah Konstitusi. *Jurnal Konstitusi*, 7(6), 147-224.

⁸ Mochtar, Z. A. (2015). Antinomi dalam Peraturan Perundang-undangan di Indonesia. *Hasanuddin Law Review*, 1(3), 316-336. See also, Hastuti, E., Wantu, F., & Tijow, L. M. (2020). Penyelesaian Disharmoni Peraturan Perundang-Undangan Melalui Mediasi. *Gorontalo Law Review*, 3(2), 137-152. See also, Faiz, P. M. (2017). Memperkuat Prinsip Pemilu yang Teratur, Bebas, dan Adil melalui

authority of the Constitutional Court of the Republic of Indonesia is regulated textually and concretely in the 1945 Constitution.⁹ The powers of the Constitutional Court under the 1945 Constitution are to examine the unconstitutional provisions of laws, adjudicate disputes concerning the powers of state organs empowered by the Constitution, adjudicate the dissolution of political parties, and resolve disputes over the results of general elections.¹⁰

In exercising its authority to hear cases, the Constitutional Court has provisions in the proceedings or it can be called the Procedural Law of the Constitutional Court.¹¹ The provisions of the Constitutional Court procedure are contained in Law Number 24 of 2003 concerning the Constitutional Court, to be precise in CHAPTER V Article 28 to Article 85. The chapter contains the entirety of the procedural provisions of the Constitutional Court which are related to the power of the Constitutional Court as contained in Article 24C Paragraph (1) of the 1945 Constitution. This procedural law has the function of enforcing its material law, that is part of the constitutional law which is the authority of the Constitutional Court.¹²

The practice of exercising the powers of the Constitutional Court can be seen in the last few years. As in the 2019 Presidential Election Dispute which was decided by the Constitutional Court Decision Number 01/PHPU-PRES/XVII/2019, at which time the president and vice president candidates, namely Prabowo Subianto and Sandiaga Uno filed a constitutional lawsuit relating to the election against Election Commission to the Constitutional Court.¹³ There are so many files that were given to the Constitutional Court as evidence to support the lawsuit, it was even said that up to 11 vehicles were only needed to carry evidence.¹⁴ It's the same with the General

Penguujian Konstitusionalitas Undang-Undang (Strengthening the Principle of Regular, Free and Fair Elections Through Constitutional Review). *Jurnal Konstitusi*, 14(3), 672-700.

⁹ Palguna, I., & Gede, D. (2017). Constitutional Complaint and the Protection of Citizens the Constitutional Rights. *Const. Rev.*, 3, 1. See also, Chandranegara, I. S. (2021, August). Alternative Scenarios for The Quasi-Judicial Administration to Provide Access to Justice under Public Health Emergencies. In *International Conference on Economics, Business, Social, and Humanities (ICEBSH 2021)* (pp. 511-516). Atlantis Press. see also, Sajó, A., & Uitz, R. (2017). *The constitution of freedom: an introduction to legal constitutionalism*. Oxford University Press.

¹⁰ Gaffar, J. M. (2009). Kedudukan, Fungsi dan Peran Mahkamah Konstitusi dalam Sistem Ketatanegaraan Republik Indonesia. *Jurnal Mahkamah Konstitusi, Jakarta*. See also, Darmadi, N. S. (2020). Kedudukan dan Wewenang Mahkamah Konstitusi dalam Sistem Hukum Ketatanegaraan Indonesia. *Jurnal Hukum*, 28(2), 1088-1108. Sutiyoso, B. (2016). Pembentukan Mahkamah Konstitusi Sebagai Pelaku Kekuasaan Kehakiman di Indonesia. *Jurnal Konstitusi*, 7(6), 025-050. See also, Widiarto, A. E. (2019). Implikasi Hukum Pengaturan Hukum Acara Mahkamah Konstitusi dalam Bentuk Peraturan Mahkamah Konstitusi. *Jurnal Konstitusi*, 16(1), 23-42.

¹¹ Konstitusi, T. P. H. A. M. (2010). *Hukum Acara Mahkamah Konstitusi*. Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi.

¹² Sumadi, A. F. (2016). Hukum Acara Mahkamah Konstitusi dalam Teori dan Praktik. *Jurnal Konstitusi*, 8(6), 849-880.

¹³ Winata, M. R. (2020). Judicial Restraint dan Constitutional Interpretation Terhadap Kompetensi Mengadili Pelanggaran Pemilihan Umum Terstruktur, Sistematis, dan Masif. *Jurnal Legislasi Indonesia*, 17(4), 423-436. See also, Jamil, J. (2020). Evaluasi Penyelesaian Sengketa Proses Pemilihan Umum dalam Perspektif Konstruksi Hukumnya. *Perspektif*, 25(1), 12-19. See also, Al Araf Assadallah Marzuki, S. H. (2020). Penguatan demokrasi cyber di Indonesia pasca pemilu 2019. *Masyarakat Indonesia*, 45(1), 33-46.

¹⁴ Putri, B.U. (2019). Dokumen Bukti Sengketa Pilpres Prabowo Tak Jadi Sampai 12 Truk. *Tempo.co*. <https://nasional.tempo.co/read/1215295/dokumen-bukti-sengketa-pilpres-prabowo-tak-jadi-sampai-12-truk/full&view=ok>

Elections Commission (KPU) which submitted a lot of supporting documents as evidence for the lawsuits filed against them.¹⁵

In addition, contained in Article 24C of the 1945 Constitution, The Constitutional Court also has the power to review laws that violate the Constitution. This authority is the main authority of the constitutional courts in various countries. This authority is the spirit of the existence of the Constitutional Court.¹⁶ Judicial Review itself is an authority obtained by the Constitutional Court to examine the Law on the Constitution if there is a violation, both formally and materially the content of the law.¹⁷ This of course has its own procedures and the determination of evidence in submitting a judicial review request to the Constitutional Court.

Based on the data, the Constitutional Court has made 3331 decisions which are dominated by the Judicial Review of 1491 decisions (45%), then PHPUKADA with 1135 decisions (34%), PHPU with 676 decisions (20%), and SKLN with 29 decisions (1%).¹⁸ The number of decisions of the Constitutional Court regarding PUU is due to the proximity of the Indonesian political arena and it is related to Law Number 7 of 2017 concerning General Elections. The thing that is often asked is the material review of Article 222 of the Law which is suspected of violating the constitution. The trial process is carried out using procedural law according to the type of case. The proof In general, the regulation regarding the evidence used to file an application that is still within the realm of the Constitutional Court to follow up is in Article 36 Paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court. It is explained that the evidence is: a. letters or writings; b. witness testimony; c. expert testimony; d. statement of the parties; e. instruction; f. other evidence in the form of information that is spoken, sent, received, or stored electronically by means of optical or similar means.¹⁹ Although in general it is regulated that way, the arrangement of evidence in each constitutional case is of course different, depending on the substance and type of case that is the authority of the Constitutional Court to adjudicate.²⁰

The evidence that is prepared for a constitutional case is very large and costs a lot of money. In addition, the times that are always changing and developing always

¹⁵ Sindonews. (2019). KPU Serahkan Bukti Sengketa Pemilu ke MK. <https://photo.sindonews.com/gallery/32570/kpu-serahkan-bukti-sengketa-pemilu-ke-mk>

¹⁶ Borman, M. S. (2017). Independensi Kekuasaan Kehakiman dari Pengaruh Kekuasaan di Indonesia. *Lex Journal: Kajian Hukum & Keadilan*, 1(1).

¹⁷ Madalina, M., Laxamana, M. I., & Aldian, K. Penegakan Hukum Progresif Dalam Perkara Judicial Review: Telaah Pancasila Sebagai Batu Uji Pengujian Undang-Undang Terhadap Undang-Undang Dasar. *Jurnal Majelis*, 1. See also, Ali, M. M. (2016). Konstitusionalitas dan Legalitas Norma dalam Pengujian Undang-Undang Terhadap Undang-Undang Dasar 1945. *Jurnal Konstitusi*, 12(1), 172-195. See also, Ramadhan, M. F. (2018). Menggagas Penerapan Constitutional Complaint di Mahkamah Konstitusi. *Padjadjaran Law Review*, 6. See also, Ambarsari, R. (2022). Hukum Acara dalam Pengujian Undang-Undang di Indonesia. *Cerdika: Jurnal Ilmiah Indonesia*, 2(5), 607-613.

¹⁸ Mahkamah Konstitusi Republik Indonesia. (2022). Rekapitulasi Putusan. *Mkri.id*. <https://www.mkri.id/index.php?page=web.Putusan&id=1&kat=1&menu=5>

¹⁹ Indonesia, *Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi sebagaimana telah diubah dalam Undang-Undang Nomor 8 Tahun 2011 tentang Perubahan Atas Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi*, Pasal 36 Ayat (1).

²⁰ Siahaan, M. (2022). *Hukum Acara Mahkamah Konstitusi Republik Indonesia (edisi kedua)*. Jakarta: Sinar Grafika. See also, Librayanto, R., Riza, M., Ashri, M., & Abdullah, K. (2019). Penataan Kewenangan Mahkamah Konstitusi dalam Memperkuat Independensi Kekuasaan Kehakiman. *Amanna Gappa*, 43-66.

change the pattern of people's lives and generally lead to efficiency.²¹ The development of this era also needs to be reformed in the proceedings in the Constitutional Court. Efficiency when conducting a trial and proceeding will certainly make it easier and bring the court closer to people who want to seek justice.²² In addition, digitization in the provision of evidence will certainly have a good impact on the proceedings at the Constitutional Court. From the description above, it can be seen that there is a need for further studies regarding the urgency in digitizing evidence when litigating in the Constitutional Court.

2. Method

The research method is an effort to investigate and find a problem by using scientific methods carefully and thoroughly to collect, examine, analyze data and draw conclusions systematically and objectively in order to solve a problem or test hypotheses to obtain knowledge and knowledge that is useful for human life.²³ The method that will be used in this research is a normative legal research method using a statutory approach and a historical approach. The normative legal research method is a research process to examine and examine law as norms, rules, legal principles, legal principles, legal doctrines, legal theories and other literature to answer the legal problems under study.²⁴ The data acquisition technique used in this study uses a literature study that is adapted to a normative legal approach which can also be called library research.²⁵ Literary research is the study of written information about law that comes from a variety of sources and is widely used and needed in normative legal research.²⁶ This literature study analyzes secondary data and uses a statutory and qualitative approach.

3. Results & Analysis

The power of judicial review must be held by the highest court in a country because it relates to the protection of the constitution against acts of government irregularities in drafting a law. As is well known, laws are products of democracy or products of the will of the people that are approved by the House of Representative together with the President, then later ratified by the President and promulgated accordingly.²⁷ In addition, the Act is also a legal product that is political because it is formed by officials elected by the people, so that a law must represent the interests of the people as a whole and do not include personal interests or groups of officials in a law. So in this case, the power of the highest court to review the law may not be given to other courts, or even interfered with by other parties for mere political interests.

²¹ Rohida, L. (2018). Pengaruh era revolusi industri 4.0 terhadap kompetensi sumber daya manusia. *Jurnal Manajemen Dan Bisnis Indonesia*, 6(1), 114-136.

²² Ali, M. H. (2022). *Peradilan Sederhana Cepat & Biaya Ringan menuju Keadilan Restoratif*. Bandung: Penerbit Alumnus.

²³ Abubakar, R. (2021). *Pengantar Metodologi Penelitian*. Yogyakarta: SUKA-Press, hlm. 1.

²⁴ Muhaimin. (2020). *Metode Penelitian Hukum*. Mataram: Mataram University Press.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ Asshiddiqie, J. (2006). *Pengantar Ilmu Hukum Tata Negara Jilid I*. Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, hlm. 335.

From the point of view of national law, judicial power is exercised by the Supreme Court and its subordinate courts: public court, religious court, military court, state administrative court and Constitutional Courts.²⁸ The Constitutional Court has an equal position with the Supreme Court and other state institutions regulated in the 1945 Constitution. Its powers are provided for in Article 24C Paragraph (1) of the 1945 Constitution jo. Article 29 (1) of Law No. 48 Year 2009 on Judicial Power that the decision on the settlement of constitutional cases at the first and last level is final: a. investigate a law that violates the Constitution of the Republic of Indonesia by judicial review;.....dst. So that it can be interpreted that the decision of the Constitutional Court is final, binding and has permanent legal force. There are no other legal remedies that justice seekers can take.

Talking about the evidence commonly used in constitutional cases, there are letters that are the subject of the case, especially in cases of judicial review and PPHU. When connected to the national law of the Republic of Indonesia, the use of evidence in constitutional cases is regulated in Article 36 paragraph (1) letters a - f of Law Number 24 of 2003 concerning the Constitutional Court, it is stated that evidence is:

- a. letter or writing;
- b. witness testimony;
- c. expert testimony;
- d. information of the parties;
- e. hint; dan
- f. other evidence.

Evidence regulated in Law no. 24 of 2003 differs from the evidence commonly used in other judicial processes. According to Maruarar Siahaan, these differences include, First, no evidence of the parties' confessions and knowledge of the judges applicable to the Administrative Court's procedural law, or what in civil procedural law is called "suspect", confessions, and oaths, as well as in criminal procedural law called the defendant's statement. The acknowledgment of the litigating parties is considered irrelevant in the Constitutional Procedural Law because it does not eliminate the obligation of constitutional judges to seek the truth considering that the case being examined and will be decided is related to the public interest and will bind all citizens, not only the litigants.²⁹

In the Procedural Law of the Constitutional Court, all categories of written evidence that apply in all kinds of legal disciplines also apply, even more broadly according to the type of case being handled. As in the case of Election Result Dispute Resolution (PPHU), what is called an authentic deed is the decision of the electoral body authorized to issue it, in this case, the General Elections Commission on the results of the votes or a summary of the results of the votes.. This decision is very necessary in the process of examining the PPHU case. Then in judicial review cases where the benchmark for assessing evidence, in this case a law is an authentic deed is a copy of an authentic law, namely the law as contained in the state gazette and an additional

²⁸ Indonesia, *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, Pasal 24 Ayat (2).

²⁹ Siahaan, M. (2006). *Hukum Acara Mahkamah Konstitusi Republik Indonesia*. Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI.

state sheet so that the norms regulated in it is a norm that is currently in force and binding for the community.

In terms of providing written evidence, its implementation is more difficult and inefficient. This is because the provision of evidence is carried out in physical form for the smooth running of the proceedings. Although the implementation of evidence in the case of the Constitutional Court is placed in the interests of the litigating parties, obtaining evidence and its delivery to the Court does not reflect the efficiency or the mandate in Article 2 Paragraph (4) of Law Number 48 of 2009 concerning Judicial Power, which is explained that the Judiciary is carried out fast, easy and cheap process. In the explanation of the article, what is meant by "light fees" are court fees that are affordable by the community. In this case, light costs are meant in terms of court administrative costs only, not covering the provision of evidence as well as efficiency in the delivery and accessibility of justice seekers when in the process of finding evidence.

In its development, there are cases that are large and involve many parties in it. For example, in this case, the Dispute over the 2019 General Election Results between the Petitioners, namely the President and Vice President Candidates, Prabowo Subianto and Sandiaga Uno, and the Respondent, namely the General Election Commission (KPU). The background of this case is the suspicion of Candidate Pair Number 2 in the general election procession that there are many vote counting frauds, the insecurity of KPU servers so that they are easy to be tapped and misused. In addition, the Petitioners also postulated that the fraud committed in the 2019 General Election occurred in a systematic, structured and massive manner, and involved all kinds of elements in the government. Because of this, Candidate Pair Number 2 filed a case to the Constitutional Court.

The case was decided on Monday, June 24, 2019 with the registration number Decision 01/PHPU-PRES/XVII/2019. The decision stated that the Court rejected the Petitioner's application in its entirety because the arguments presented by the Petitioner were largely unfounded according to law. However, in this case, the evidence contained in this Decision is very large and is contained on page 240. There are 190 pieces of evidence marked with evidence P-1 to evidence P-190 which essentially strengthens the Petitioners' petition and indications of fraud in the 2019 Election.³⁰

The entirety of the evidence must be made in 12 copies which will be distributed to the Constitutional Court Justices and related parties. The parties in this case are the General Election Commission (as the Respondent), Candidate Pair Number 1 (as the Related Party), and the Election Supervisory Agency. This of course makes the case inefficient. Of course, it doesn't seem like a fast, simple and low-cost trial.

Courts that are fast, simple and low-cost have benchmarks are used based on the size of the time limit, simplicity and low cost of cases in the judicial process. Time in this context is the length of time the trial continues. In the case of the Constitutional Court, this is certainly not a problem because the Court resolves cases at the first and last level. The size of the length of the trial of cases in the Court of course does not take

³⁰ Putusan Mahkamah Konstitusi Nomor 01/PHPU-PRES/XVII/2019 (diakses di https://www.mkri.id/public/Risalah/5390_Risalahpdf_Putusan%201.Pilpres.2019%2027.06.19.pdf)

long because in the procedural law of the Constitutional Court there is no term appeal or cassation. Beside of that, because the Constitutional Court adjudicates at the first and final level with the nature of its decisions being final and binding in general, it can speed up the process of seeking justice. Simple processes are intended to ensure efficiency and effectiveness in reviewing and resolving cases. So that in the examination of evidence, administrative affairs, and the conduct of the trial is carried out simply and applicable to procedural law. In this case, the Constitutional Court does not fulfill this because the evidence system is still in conventional form or in hard copy so that the fulfillment of evidence is troublesome for the applicant, especially in the case of Disputes over General Election Results (PHPU). Low costs have room for litigation costs, not accumulation in the conduct of the trial which is handled by the litigating parties. In addition, the provision of digitalization is very much needed to create a Court based on that.

If it is related to the 2019 General Election Dispute case which is the Court's authority to adjudicate, this does not reflect a low-cost court. The provision of evidence is still in the form of hard copies and looks like it is not neatly arranged so that it will make it difficult for the Court to seek truth and justice in the trial procession. Even though from the evidence there is digital evidence such as the SITUNG site and so on, this is not proportional to the amount of physical evidence. This is the impact of the Court's procedural law which still adheres to the conventional system in terms of evidence.

From this case, it was found that the provision of digital evidence is certainly highly expected by those who wish to file a case in the Constitutional Court. The dominance of the evidence used, of course, is in the documentary evidence, which in the hierarchy of evidence is at the top. This can be interpreted that all written evidence can be submitted to the *a quo* petition, as long as it has good relevance and has a causal relationship with the object in question.

At the stage of submitting an application to the Constitutional Court, the submission of evidence is also included in the application file. In addition to the application file being provided in hard copy, in practice the applicant is also asked to submit an application in soft copy or file form. After that, the clerk examines the applicant's application. The examination carried out by the clerk is administrative in nature, not the substance of the application. Administrative examination includes the number of duplicate applications, power of attorney (if using a lawyer), clarity of identity, as well as a list of evidence.³¹ The contents of the application will be examined by a constitutional judge consisting of at least three constitutional judges after an administrative examination of the case is carried out by the clerk.³² At the trial, the judge examined the completeness and clarity of the application material, which included: the identity of the applicant, the authority of the Constitutional Court, the legal position of the applicant, the principal of the petition, provide advice to the Petitioner regarding his application, and the matters requested to be decided.³³

³¹ Soeharno. (2014). Hukum Acara Mahkamah Konstitusi Penegak Hukum dan Pengadilan. *Jurnal LPPM Bidang EkoSosBudKum*. 1(2), 16.

³² Indonesia, *Peraturan Mahkamah Konstitusi Nomor 2 Tahun 2021 tentang Tata Beracara dalam perkara Pengujian Undang-Undang*, Pasal 39 Ayat (2).

³³ *Ibid.* Pasal 41 Ayat (1)

From the explanation above, the use of technology in this case evidence is only used in the administrative affairs of the clerk's office, not to the implementation of procedural law. The Procedural Law of the Constitutional Court places great emphasis on the principle of authentication in which every law being tested (in cases of judicial review) must be a copy of the original law and come from an authorized institution so that it can be legally accepted. Therefore, the use of evidence whose form has been changed to digital to the stage of the proceedings is not possible at this time. However, it does not mean that changes in the form of evidence cannot be made.

When referring to the regulation regarding digital evidence, it can be seen in Article 36 Paragraph (4) of the Constitutional Court Law which explains that the Court has the right to determine whether an item of evidence is valid or not in a trial. Then in the previous paragraph it is explained that in the event that the evidence referred to in paragraph (1) letter (in this case a letter or writing) cannot be legally accounted for, it cannot be used as legal evidence. So in this case it can be said that if the documentary evidence is not obtained from a legally valid institution, then the evidence does not have legal validity either. Referring to digital evidence, if the acquisition is legally valid and the form is changed to digital and the judge declares it legally valid, then the digital evidence already has legal standing from the judge and can be used when proceeding at the Constitutional Court.

Referring to Article 1 Paragraph (3) of the 1945 Constitution stipulates that the State of Indonesia is a country governed by the law, the regulation regarding the use of digital evidence in proceedings must be in the laws and regulations, especially in the Constitutional Court Rules itself for legal certainty in litigating. Further regulation regarding digital evidence on the implementation of evidence in the procedural law of the Constitutional Court does not exist in any regulations. However, further arrangements regarding evidence in the trial for testing laws and regulations, for example, are contained in Articles 58 - 65 of the Constitutional Court Rules Number 2 of 2021 concerning Proceedings in Cases of Judicial Review. In it there is only an arrangement of evidence without further rules regarding its form. So the interpretation is the physical form or hard copy used in the proceedings. In addition, the hard copy form makes it easier for applicants to take care of clerkship administration such as file verification and so on. But on the other hand, the procurement of evidence causes significant expenditures for justice seekers.

Therefore, digitization is needed in the evidentiary process at the Constitutional Court. The digitization of evidence can be done by way of the formulation of laws and regulations, namely the addition of information in the provisions of the rules of each procedural law regulated in the Constitutional Court Regulation as the implementing regulation of the Act. As in Constitutional Court Regulation Number 2 of 2021. In that regulation, Article 60 can be added regarding digital evidence in the process of proving before a judge.

In addition to Article 60 of the Regulation of the Constitutional Court Number 2 of 2021, provisions for adding paragraphs can be made to the Regulation of the Constitutional Court which regulates other procedural provisions. Here are the rules:

- Article 37 Constitutional Court Rules Number 4 of 2018 on Guidelines for Proceeding in Disputes on the Results of the Presidential and Vice Presidential Elections;
- Article 42 of the Constitutional Court Rules Number 6 of 2020 on Procedures for Disputes Concerning Election Results for Governors, Regents and Mayors;
- Article 17 of the Constitutional Court Rules Number 8 of 2006 on Guidelines for Proceedings in Disputes Concerning the Constitutional Powers of State Bodies;
- Article 7 of the Constitutional Court Rules Number 12 of 2008 on Guidelines for Proceeding for Dissolution of Political Parties. The provisions regarding evidence are not even separated in this Constitutional Court Rules which, if seen in the Constitutional Court Rules which regulates procedural law which is still within the power of the Constitutional Court, provisions regarding independent evidence in certain chapters. As in Article 60 of Constitutional Court Rules Number 2 of 2021, the provisions for evidence are included in Chapter V concerning Trials and in a separate section, namely in Part Five concerning Evidence and Evidence;
- Article 6 of the Constitutional Court Rules Number 21 of 2009 on Procedural Guidelines for Determining House Opinions on Alleged Violations of the President and/or Vice President.

4. Conclusion

Digitalization in litigating at the constitutional court is needed to make a simple and low-cost court in providing trial evidence. So far, the use of written evidence in digital form has only reached the fulfillment of the administrative requirements of the clerk, not to the proving procedure at trial. Moreover, the procedural law for election result dispute resolution still uses a lot of physical evidence and even the evidence has to be duplicated up to 12 copies, which in this case does not reflect the simple constitutional court in providing evidence.

Even so, Constitutional Court Law actually allows the use of evidence that is converted into digital form when proceeding at the Constitutional Court. This can be seen in Article 36 Paragraph (4) of the Constitutional Court Law which essentially allows the Court to determine whether or not evidence is legal. So in this case, the use of evidence that is converted to digital in proceedings at the Constitutional Court (especially written evidence) can be carried out. However, in accordance with Article 1 Paragraph (3) of the 1945 Constitution stipulates that the State of Indonesia is a country governed by the law, it is necessary to have a legal formulation in the form of changes to regulations that are closely related to the implementation of the power of the court. In this case, it is the Constitutional Court Rules which contains the procedural law of each court's power as regulated in the Article 24C Paragraph (1) and (2) 1945 Constitution. So that when the use of written evidence that is converted into digital is included in every regulation of the constitutional court, it can make it easier for justice seekers when they want to file an application to the court.

References

Abubakar, R. (2021). *Pengantar Metodologi Penelitian*. Yogyakarta: SUKA-Press.

- Al Araf Assadallah Marzuki, S. H. (2020). Penguatan Demokrasi Cyber di Indonesia Pasca Pemilu 2019. *Masyarakat Indonesia*, 45(1), 33-46.
- Ali, M. M. (2016). Konstitusionalitas dan Legalitas Norma dalam Pengujian Undang-Undang Terhadap Undang-Undang Dasar 1945. *Jurnal Konstitusi*, 12(1), 172-195.
- Ambarsari, R. (2022). Hukum Acara dalam Pengujian Undang-Undang di Indonesia. *Cerdika: Jurnal Ilmiah Indonesia*, 2(5), 607-613.
- Andalas, P. S. K. F. (2016). Perkembangan pengujian perundang-undangan di Mahkamah Konstitusi. *Jurnal Konstitusi*, 7(6), 147-224.
- Anggono, B. D. (2016). Konstitusionalitas dan Model Pendidikan Karakter Bangsa Pasca Putusan Mahkamah Konstitusi. *Jurnal Konstitusi*, 11(3), 492-514.
- Araújo, L. H. D. (2020). Constitutional Law around the globe: judicial review in the United States and The "Writ of Certiorari". *Revista de Investigações Constitucionais*, 7, 189-204.
- Asshiddiqie, J. (2006). *Pengantar Hukum Tata Negara Jilid I*. Jakarta: Sekretariat jenderal dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia.
- Bawembang, N. (2019). Beban Pembuktian dan Alat Bukti dalam Hukum Acara Mahkamah Konstitusi. *Lex Administratum*, 7(4), 61-70.
- Borman, M. S. (2017). Independensi Kekuasaan Kehakiman dari Pengaruh Kekuasaan di Indonesia. *Lex Journal: Kajian Hukum & Keadilan*, 1(1).
- Chandranegara, I. S. (2021, August). Alternative Scenarios for The Quasi-Judicial Administration to Provide Access to Justice under Public Health Emergencies. In *International Conference on Economics, Business, Social, and Humanities (ICEBSH 2021)* (pp. 511-516).
- Darmadi, N. S. (2020). Kedudukan dan Wewenang Mahkamah Konstitusi dalam Sistem Hukum Ketatanegaraan Indonesia. *Jurnal Hukum*, 28(2), 1088-1108.
- Doni Silalahi, S. A. (2016). Kewenangan Yudisial Review Mahkamah Agung Terhadap Peraturan Perundang-Undangan di Bawah Undang-Undang. *Jurnal Nestor Magister Hukum*, 3(3).
- Driesen, D. M. (2020). The Unitary Executive Theory in Comparative Context. *Hastings LJ*, 72, 1.
- Engel, G. (2020). Power to the People: The Supreme Court's Confirmation of State Power in the Wake of Faithless Electors. *U. Miami L. Rev.*, 75, 620.
- Faiz, P. M. (2017). Memperkuat Prinsip Pemilu yang Teratur, Bebas, dan Adil melalui Pengujian Konstitusionalitas Undang-Undang (Strengthening the Principle of Regular, Free and Fair Elections Through Constitutional Review). *Jurnal Konstitusi*, 14(3), 672-700.
- Faqih, M. (2016). Nilai-Nilai Filosofi Putusan Mahkamah Konstitusi Yang Final dan Mengikat. *Jurnal Konstitusi*, 7(3), 097-118.
- Fatkurohman & Sjuhad, M. (2010). Memahami Pemberhentian Presiden (Impeachment) di Indonesia (Studi Perbandingan Pemberhentian Presiden

- Soekarno dan Presiden Abdurrahman Wahid). *Jurnal Konstitusi*, 3(2), 165-184.
- Febriyanti, S. (2022). Analisis Yuridis Penetapan Peraturan Pemerintah Pengganti Undang-Undang (Perppu) Oleh Presiden Berdasarkan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. *Limbago: Journal of Constitutional Law*, 2(1), 123-135.
- Fudin, H. (2021). Legal Justice in Presidential Impeachment Practice Between Indonesia and the United States of America. *Jurnal Hukum dan Peradilan*, 9(3), 465-504.
- Gaffar, J. M. (2009). Kedudukan, Fungsi dan Peran Mahkamah Konstitusi dalam Sistem Ketatanegaraan Republik Indonesia. *Jurnal Mahkamah Konstitusi, Jakarta*.
- Hasani, I (Eds). (2013). *Dinamika Perlindungan Hak Konstitusional Warga: Mahkamah Konstitusi sebagai Mekanisme Nasional Baru Kemajuan dan Perlindungan HAM*. Jakarta: Pustaka Masyarakat Setara.
- Hastuti, E., Wantu, F., & Tijow, L. M. (2020). Penyelesaian Disharmoni Peraturan Perundang-Undangan Melalui Mediasi. *Gorontalo Law Review*, 3(2), 137-152.
- Ilham, M.H. (2019). Kajian atas Asas Peradilan Cepat, Sederhana, dan Biaya Ringan Terhadap Pemenuhan Hak pencari Keadilan (Studi Putusan Mahkamah Agung Nomor 246 K/Pid/2017). *Jurnal Verstek*, 7(3), 212-219.
- Isra, S. (2015). Titik Singgung Wewenang Mahkamah Agung dengan Mahkamah Konstitusi. *Jurnal Hukum dan Peradilan*, 4(1), 17-30.
- Jamil, J. (2020). Evaluasi Penyelesaian Sengketa Proses Pemilihan Umum dalam Perspektif Konstruksi Hukumnya. *Perspektif*, 25(1), 12-19.
- Johansyah. (2021). Putusan Mahkamah Konstitusi Bersifat Final dan Mengikat (*Binding*). *Solusi*, 19(2), 165-182.
- Konstitusi, M. (2009). Mengawal Demokrasi Menegakkan Keadilan Substantif. *Jakarta: Laporan Tahunan MK*.
- Librayanto, R., Riza, M., Ashri, M., & Abdullah, K. (2019). Penataan Kewenangan Mahkamah Konstitusi dalam Memperkuat Independensi Kekuasaan Kehakiman. *Amanna Gappa*, 43-66.
- Madalina, M., Laxamana, M. I., & Aldian, K. Penegakan Hukum Progresif Dalam Perkara Judicial Review: Telaah Pancasila Sebagai Batu Uji Pengujian Undang-Undang Terhadap Undang-Undang Dasar. *Jurnal Majelis*, 1.
- Mahkamah Konstitusi Republik Indonesia. (2021). *Sejarah dan Perkembangan*. Retrieved April 17, 2022, from <https://www.mkri.id/index.php?page=web.ProfilMK&id=1&menu=2>
- Mahkamah Konstitusi Republik Indonesia. (2022). *Rekapitulasi Putusan*. Retrieved April 10, 2022, from <https://www.mkri.id/index.php?page=web.Putusan&id=1&kat=1&menu=5>
- Muhaimin. (2020). *Metode Penelitian Hukum*. Mataram: Mataram University Press.

- Nugraha, X., Frisa Katherina, A. M., Ramadhanty, S. N., & Tanbun, E. P. (2019). Constitutional Question: Alternatif Baru Pelindungan Hak Konstitusional Warga Negara Melalui Concrete Review di Indonesia (Constitutional Question: Alternatif Baru Pelindungan Hak Konstitusional Warga Negara Melalui Concrete Review di Indonesia). *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan*, 10.
- Nurhidayatulloh, N. (2016). Dilema Pengujian Undang-Undang Ratifikasi Oleh Mahkamah Konstitusi Dalam Konteks Ketetaneagaan RI. *Jurnal Konstitusi*, 9(1), 113-134.
- Palguna, I., & Gede, D. (2017). Constitutional Complaint and the Protection of Citizens the Constitutional Rights. *Const. Rev.*, 3, 1.
- Peraturan Mahkamah Konstitusi Nomor 2 Tahun 2021 tentang Tata Beracara Dalam Perkara Pengujian Undang-Undang,
- Prakash, S. B., & Yoo, J. C. (2003). The Origins of Judicial Review. *The University of Chicago Law Review*, 70(3), 887-982.
- Putri, B.U. (2019). *Dokumen Bukti Sengketa Pilpres Prabowo Tak Jadi Sampai 12 Truk*. Tempo.co. Retrieved April 13, 2022, from <https://nasional.tempo.co/read/1215295/dokumen-bukti-sengketa-pilpres-prabowo-tak-jadi-sampai-12-truk/full&view=ok>
- Rahman, A. (2016). Impeachment dalam UUD 1945 Pasca Amandemen. *Jurnal Hukum Diktum*, 14(1), 89-105.
- Ramadhan, M. F. (2018). Menggagas Penerapan Constitutional Complaint di Mahkamah Konstitusi. *Padjadjaran Law Review*, 6.
- Sajó, A., & Uitz, R. (2017). *The Constitution of Freedom: an Introduction to Legal Constitutionalism*. Oxford University Press.
- Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia. (2010). *Hukum Acara Mahkamah Konstitusi*. Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia.
- Siahaan, M. (2006). *Hukum Acara Mahkamah Konstitusi Republik Indonesia*. Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI.
- Siahaan, M. (2016). Uji Konstitusionalitas Peraturan Perundang-Undangan Negara Kita: Masalah dan Tantangan. *Jurnal Konstitusi*, 7(4), 009-048.
- Siregar, A. R. M. (2018). Kewenangan Mahkamah Konstitusi Dalam Pengujian Undang-Undang Terhadap Undang-Undang Dasar Tahun 1945. *Jurnal Hukum Responsif*, 5(5), 100-108.
- Soeharno. (2014). Hukum Acara Mahkamah Konstitusi Penegak Hukum dan Pengadilan. *Jurnal LPPM Bidang EkoSosBudKum*. 1(2), 16
- Sumadi, A. F. (2016). Hukum Acara Mahkamah Konstitusi dalam Teori dan Praktik. *Jurnal Konstitusi*, 8(6), 849-880.
- Sutiyoso, B. (2016). Pembentukan Mahkamah Konstitusi Sebagai Pelaku Kekuasaan Kehakiman di Indonesia. *Jurnal Konstitusi*, 7(6), 025-050.
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

- Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi (Lembaran Negara Republik Indonesia Tahun 2003 Nomor 98, Tambahan Lembaran Negara Republik Indonesia Nomor 4316).
- Wajdi, F & Andryan. (2019). Sifat Putusan Mahkamah Konstitusi Terhadap Status Hukum Presiden dan/atau Wakil Presiden. *Jurnal Penelitian Hukum*, 20(3), 301-314.
- Whittington, K. E. (2020). Reconsidering the History of Judicial Review. *Constitutional commentary*, 35(1), 1-12.
- Widiarto, A. E. (2019). Implikasi Hukum Pengaturan Hukum Acara Mahkamah Konstitusi dalam Bentuk Peraturan Mahkamah Konstitusi. *Jurnal Konstitusi*, 16(1), 23-42.
- Winata, M. R. (2020). Judicial Restraint dan Constitutional Interpretation Terhadap Kompetensi Mengadili Pelanggaran Pemilihan Umum Terstruktur, Sistematis, dan Masif. *Jurnal Legislasi Indonesia*, 17(4), 423-436.
- Wiryanto. (2019). *Mahkamah Konstitusi dalam Sistem Ketatanegaraan RI* (Powerpoint). Pusat Pendidikan Pancasila dan Konstitusi Mahkamah Konstitusi Republik Indonesia. Retrieved April 10, 2022, from https://pusdik.mkri.id/materi/materi_30_MK%20Dalam%20Sistem%20Ketatanegaraan%20RI.pdf
- Wrzozczyk, M. (2019). The Idea of Judicial Review in the United States of America: The Context of Creating and Early Judgments of the Supreme Court. *Orbis Idearum*, 7(2).