

Urgensi pengaturan lebih lanjut ketentuan pasal 11 ayat (1) UUD tahun 1945 tentang pernyataan perang ditinjau dari teori kedaulatan dan pembagian kekuasaan = The urgency of the provision of derived regulation under article 11 paragraph (1) constitution of 1945 concerning declaration of war based on theory of sovereignty and division of power

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Abstrak

[ABSTRAK

Tesis ini membahas perkembangan penerapan tindakan pernyataan perang (declaration of war) oleh suatu negara dalam rangka memulai permusuhan dengan negara lain dikaitkan dengan adanya ketentuan Pasal 2 ayat (4) Piagam PBB yang menentukan "negara-negara dilarang melakukan suatu tindakan yang tergolong dalam kategori "ancaman kekerasan" di dalam melakukan hubungan internasionalnya jika ditinjau dengan teori kedaulatan dan pembagian kekuasaan. Tujuan penelitian ini adalah untuk mengkaji dan menganalisis konstruksi pengaturan yang ideal berkaitan dengan kewenangan legislatif dan eksekutif untuk adanya tindakan pernyataan perang di Indonesia. Hasil penelitian menunjukkan pernyataan perang dapat dilakukan dalam kerangka self defence dimana Pasal 51 Piagam PBB dijadikan sebagai alasan pembenar karena adanya hak melekat suatu negara untuk melakukan pertahanan kolektif maupun individu (self-defense) jika ada serangan bersenjata dari negara lain. Lebih lanjut diketahui bahwa dalam prakteknya pada beberapa negara telah terjadi pergeseran kewenangan lembaga negara dalam menyatakan perang dimana perkembangan tersebut mengarah pada kewenangan menyatakan pernyataan perang ada pada lembaga eksekutif dengan persetujuan lembaga legislatif. Di Indonesia, ketentuan ini telah diatur dalam Pasal 11 ayat (1) Undang-Undang Dasar Tahun 1945 dan diperlukan ketentuan lebih lanjut yang secara tegas mendefinisikan kewenangan lembaga legislatif dan lembaga eksekutif dalam mengambil keputusan untuk menyatakan perang.

ABSTRACT

This thesis discusses the recent development of the implementation of war declaration by a state to initiate hostilities with other countries related to the provision of Article 2 paragraph (4) of the UN Charter that determines that "countries are prohibited from doing an act which belongs in the category of ' violent threat ' in international relations` if it is reviewed with the theory of sovereignty and the Division of power?. The purpose of this research is to examine and analyze the construction of law ideally regarding legislative authority and executive authority concerning the existence of the act of war declaration in Indonesia. The results of this research shows that the declaration of war can be made within the framework of self defense in which Article 51 of the UN as justified by the inherent right of a country to defend itself (self-defense) individually and collectively (with other countries) if there is an attack by armed forces of another country. Furthermore, it is known that in practice, some countries have changed the authority in

declaring war that currently belongs to the executive after obtaining the approval of the legislative. In Indonesia, this provision is regulated by article 11 paragraph (1) of the Constitution of 1945 and it is necessary to have a derived provision that explicitly defines the authority of the executive and the legislative in taking a decision to declare war to other country; This thesis discusses the recent development of the implementation of war declaration by a state to initiate hostilities with other countries related to the provision of Article 2 paragraph (4) of the UN Charter that determines that 'countries are prohibited from doing an act which belongs in the category of ' violent threat ' in international relations` if it is reviewed with the theory of sovereignty and the Division of power'. The purpose of this research is to examine and analyze the construction of law ideally regarding legislative authority and executive authority concerning the existence of the act of war declaration in Indonesia. The results of this research shows that the declaration of war can be made within the framework of self defense in which Article 51 of the UN as justified by the inherent right of a country to defend itself (self-defense) individually and collectively (with other countries) if there is an attack by armed forces of another country. Furthermore, it is known that in practice, some countries have changed the authority in declaring war that currently belongs to the executive after obtaining the approval of the legislative. In Indonesia, this provision is regulated by article 11 paragraph (1) of the Constitution of 1945 and it is necessary to have a derived provision that explicitly defines the authority of the executive and the legislative in taking a decision to declare war to other country, This thesis discusses the recent development of the implementation of war declaration by a state to initiate hostilities with other countries related to the provision of Article 2 paragraph (4) of the UN Charter that determines that 'countries are prohibited from doing an act which belongs in the category of ' violent threat ' in international relations` if it is reviewed with the theory of sovereignty and the Division of power'. The purpose of this research is to examine and analyze the construction of law ideally regarding legislative authority and executive authority concerning the existence of the act of war declaration in Indonesia. The results of this research shows that the declaration of war can be made within the framework of self defense in which Article 51 of the UN as justified by the inherent right of a country to defend itself (self-defense) individually and collectively (with other countries) if there is an attack by armed forces of another country. Furthermore, it is known that in practice, some countries have changed the authority in declaring war that currently belongs to the executive after obtaining the approval of the legislative. In Indonesia, this provision is regulated by article 11 paragraph (1) of the Constitution of 1945 and it is necessary to have a derived provision that explicitly defines the authority of the executive and the legislative in taking a decision to declare war to other country]