

Kedudukan norma konkret dalam pengujian Undang-Undang terhadap Undang-Undang Dasar 1945 = The status of concrete norms in judicial review of laws against the 1945 Constitution Of The Republic Of Indonesia

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Abstrak

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Pengujian norma konkret dalam putusan pengujian undang-undang terhadap Undang-Undang Dasar 1945 pada dasarnya tidak menjadi kewenangan MK. Pengujian terhadap norma secara teoritis haruslah bertitiktolak dari norma abstrak sebagai implikasi kedudukan MK yang menjadi pengadilan norma dan mengujinya terhadap konstitusi. Untuk menilai konstiusionalitas norma undang-undang, maka norma abstraklah yang seharusnya ditafsirkan oleh MK. Sedangkan norma konkret lebih menitikberatkan implementasi atau penerapan dari norma itu sendiri. Penerapan norma tidak dapat dilepaskan dari legalitas norma, sedangkan konstiusionalitas norma adalah menguji kebersesuaian norma tersebut dengan konstitusi. Apabila landasan pengujian norma adalah Undang-Undang Dasar 1945 maka norma abstrak yang seharusnya menjadi materi utama untuk diuji. Sebaliknya ketika norma konkret yang akan diuji, maka yang harus dipertimbangkan juga adalah penerapan dari norma tersebut yang sudah sudah masuk dalam kasus konkret yang terjadi. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan kasus (case approach) yaitu 15 (lima belas) putusan Mahkamah Konstitusi sepanjang 2003-2013 dalam pengujian undang-undang terhadap Undang-Undang Dasar 1945 secara materiil yang memfokuskan pada ratio decidendi hakim konstitusi dalam menentukan konstiusionalitas norma. Hasil penelitian ini menunjukkan bahwa MK dalam menguji undang-undang terhadap Undang-Undang Dasar 1945 tidak memisahkan secara dikotomis antara norma abtrak dan norma konkret. Dalam upaya melindungi hak-hak konstiusional warga negara, tidak adanya upaya hukum lanjutan yang akan ditempuh oleh Pemohon, serta untuk memberikan kepastian hukum yang adil, MK mengabulkan pengujian norma konkret. Meskipun MK tetap tegas menyatakan bahwa hal tersebut adalah norma konkret, sehingga permohonan pemohon hanya dikabulkan sebagian pada pengujian norma abstraknya saja. Sedangkan dalam hal putusan MK yang menolak pengujian norma konkret karena norma yang diujikan bukanlah persoalan konstiusionalitas norma melainkan penerapan norma dan permintaan putusan provisi (putusan sela) yang tidak relevan dengan pokok perkara. Pengujian norma konkret dalam putusan menolak adalah bentuk kehati-hatian MK agar tidak mengadili perkara yang menjadi kewenangan peradilan lain yaitu Mahkamah Agung serta peradilan di bawahnya. Adapun terkait putusan yang menyatakan tidak dapat diterima, MK menyatakan bahwa Pemohon tidak memiliki kedudukan hukum serta MK tidak memiliki kewenangan untuk menguji norma tersebut. Akhirnya, ke depan MK dalam perlu menegaskan perihal kedudukan norma sebelum melakukan pemeriksaan lebih mendalam terhadap permohonan yang diajukan. Di samping itu MK perlu diberikan kewenangan pengaduan konstiusional (constitutional complaint) atau pertanyaan konstittusional (constitutional question) sehingga terciptanya harmonisasi penafsiran berdasarkan konstitusi.

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ABSTRACT

The review of concrete norms in the decision of judicial review of laws against the 1945 Constitution of the Republic of Indonesia basically does not constitute authority of the Constitutional Court. Theoretically, norms review should be starting from abstract norms as the implications of the Constitutional Court authority. In order to review the constitutionality of laws, norms and abstract norms should be interpreted by the Constitutional Court. While concrete norms focus more on the implementation or application of the norm itself. The application of norms cannot be separated from the legality of the norms, while constitutionality of norms is related to its coherence with the Constitution. If the basis of norms review is the 1945 Constitution of the Republic of Indonesia then abstract norms should be the main subject matter to be reviewed. Otherwise, when concrete norms are the subject matters to be reviewed, then the implementation of the norms that have been applied in concrete cases. This research is using normative juridical method with case approach in which 15 (fifteen) verdicts of the Constitutional Court of Republic of Indonesia over the period of 2003-2013 in judicial review of laws against the 1945 Constitution are analyzed. The focus is on the ratio decidendi of the Constitutional Court judges in determining the constitutionality of norms. The result of this research shows that, the Constitutional Court, in the judicial review of laws against the 1945 Constitution of the Republic of Indonesia does not separate abstract norms and concrete norms dichotomously. In an attempt to protect the constitutional rights of citizens, the absence of legal remedies that can be further pursued by the applicant, as well as to provide legal certainty, the Constitutional Court, granted, in its decision, the review of concrete norms. Even though the Constitutional Court remains firm in stating that it is a concrete norm, the applicant's petition is granted in part which is concerning the review the abstract norms only. Whereas, with respect to the verdict of the constitutional court that rejected the review of concrete norms, it is because the review is not on the constitutionality of norms but the application of the norms and also concerns a petition for an interlocutory decision which is irrelevant to the subject matter of the case. The review of concrete norms in a rejecting ruling is a form of prudence by the Constitutional Court in order not to prosecute the matters which constitute the authority the other judicial bodies, namely the Supreme Court and the lower courts. As for the ruling which declared a petition inadmissible, the Constitutional Court stated that the applicant has no legal standing and the Constitutional Court does not have the authority to test these norms. Finally, in the future, the Constitutional Court needs to affirm the status of norms before further examining in depth the petition filed. In addition, the Constitutional Court should be conferred with the authority to hear constitutional complaint and constitutional question in order to create the harmonization of interpretation based on the Constitution.

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