

Analisis Putusan Mahkamah Konstitusi Nomor 30/PUU-XVI/2018 Terkait Pencalonan Anggota Dewan Perwakilan Daerah di Indonesia = Analysis of Constitutional Court Decision Number 30/PUU-XVI/2018 Regarding the Nomination of Members of Regional Representative Council in Indonesia

Achmad Alif Nurbani, author

Deskripsi Lengkap: <https://lib.ui.ac.id/detail?id=9999920527572&lokasi=lokal>

Abstrak

Penelitian ini dilatar belakangi oleh adanya putusan Mahkamah Konstitusi Nomor 30/PUU-XV/2018 terhadap Kelembagaan Dewan Perwakilan Daerah, serta urgensi keanggotaan DPD RI yang berasal dari unsur partai politik akibat putusan Mahkamah Konstitusi Nomor 30/PUU-XV/2018. Metode yang digunakan kualitatif dengan pendekatan Yuridis Normatif. Temuan pada penelitian ini adalah: Mahkamah Konstitusi dalam putusannya menegaskan bahwa frasa "pekerjaan lain" dalam Pasal 182 huruf i UU Pemilu bertentangan dengan UUD 1945 dan tidak mempunyai kekuatan hukum mengikat secara bersyarat sepanjang tidak dimaknai mencakup pula pengurus partai politik (parpol). Putusan MK tersebut berdampak pada larangan pencalonan anggota DPD dari unsur pengurus parpol. DPD tidak dapat diisi oleh pengurus parpol, "Pengurus parpol" struktur organisasi parpol yang bersangkutan. MK mengakui bahwa Pasal 182 huruf i UU Pemilu memang tidak secara tegas melarang pengurus parpol mencalonkan diri menjadi calon anggota DPD. Sikap MK berdasarkan putusan-putusan sebelumnya selalu menegaskan bahwa calon anggota DPD tidak boleh berasal dari anggota parpol. Sehingga, secara otomatis pasal tersebut bertentangan dengan UUD 1945 apabila tidak dimaknai melarang pengurus parpol mencalonkan diri menjadi anggota DPD. Mahkamah Konstitusi memiliki kewenangan untuk melakukan pengujian undang-undang terhadap konstitusi, memutus sengketa lembaga negara, memutus pembubaran partai politik, dan memutus perselisihan hasil pemilihan umum pada tingkat pertama dan terakhir. Putusan Mahkamah Konstitusi bersifat final artinya mencakup juga kekuatan mengikat (binding). Putusan Mahkamah Konstitusi memiliki kekuatan mengikat, kekuatan pembuktian, dan kekuatan eksekutorial. Putusan Mahkamah Konstitusi Nomor 30/PUU-XVI/2018 pada pelaksanaannya telah terjadi problematika mengenai berlakunya putusan tersebut yang dianggap berlaku surut. Mahkamah Agung yang membatalkan PKPU Nomor 26 Tahun 2018 karena berpendapat bahwa Putusan Mahkamah Konstitusi Nomor 30/PUU-XVI/2018 berlaku surut. Namun Putusan Mahkamah Konstitusi Nomor 30/PUU- XVI/2018 tetap harus dilaksanakan, sehingga timbul ketidakpastian hukum. Mahkamah Agung dinilai telah mengabaikan putusan Mahkamah Konstitusi. Dalam kasus pelaksanaan Putusan Mahkamah Konstitusi Nomor 30/PUU-XVI/2018, penafsiran dari Mahkamah Konstitusi yang harus dijadikan pedoman dan dilaksanakan.

.....The background of this research is the existence of the Constitutional Court decision Number 30/PUU-XV/2018 against the Institution of the Regional Representatives Council, as well as the urgency of DPD RI membership originating from political parties as a result of the Constitutional Court decision Number 30/PUU-XV/2018. The method used in this study is to use a qualitative method with a normative juridical approach. The findings of this study are: The Constitutional Court in its decision emphasized that the phrase "other work" in Article 182 letter i of the Election Law is contrary to the 1945 Constitution and does not have conditionally binding legal force as long as it is not interpreted to include administrators of political

parties (political parties). The Constitutional Court's decision had an impact on the ban on the candidacy of DPD members from elements of political party management. So, the DPD cannot be filled by political party officials. The "administrators of political parties" in this decision are administrators starting from the central level to the lowest level according to the organizational structure of the political party concerned. The Constitutional Court acknowledged that Article 182 letter i of the Election Law does not explicitly prohibit political party officials from nominating themselves as candidates for DPD members. Even though the Constitutional Court's stance based on previous decisions always emphasized that candidates for DPD members could not come from members of political parties. Thus, this article automatically contradicts the 1945 Constitution if it is not interpreted as prohibiting political party officials from nominating themselves to become members of the DPD. The Constitutional Court has the authority to review laws against the constitution, decide on disputes over state institutions, decide on the dissolution of political parties, and decide on disputes over the results of general elections at the first and last levels. The decision of the Constitutional Court is final, meaning that it includes binding powers. Decisions of the Constitutional Court have binding power, evidentiary power, and executorial power. In its implementation, there have been problems regarding the validity of the decision which is considered retroactive. The Supreme Court canceled PKPU Number 26 of 2018 because it was of the opinion that the Constitutional Court Decision Number 30/PUU-XVI/2018 was retroactive. However, the Constitutional Court Decision Number 30/PUU-XVI/2018 must still be implemented, resulting in legal uncertainty. The Supreme Court is considered to have ignored the decision of the Constitutional Court. In the case of the implementation of the Constitutional Court Decision Number 30/PUU-XVI/2018, it is the interpretation of the Constitutional Court that must be used as a guideline and implemented.