

INTISARI

Penelitian ini berfokus untuk mengupas dua hal yaitu (1) pengaturan dan pelaksanaan pengangkatan hakim konstitusi oleh Presiden ditinjau dari prinsip transparansi, partisipatif, obyektif dan akuntabel (2) desain pengaturan prinsip pengangkatan hakim konstitusi oleh Presiden agar dapat memenuhi prinsip transparansi, partisipatif, obyektif dan akuntabel. *pertama*, pengaturan mekanisme seleksi hakim konstitusi oleh Presiden mengalami kekosongan hukum. Hal tersebut disebabkan tidak tegasnya pengaturan yang terdapat dalam UUD 1945 dan UU MK. Dalam ketentuan Pasal 24 C ayat (6) UUD 1945 mendelegasikan pengaturan tentang seleksi hakim konstitusi pada UU MK. Namun, dalam perkembangan pembentukan UU MK kembali mendelegasikan pengaturan yang seharusnya menjadi materi muatan UU tersebut diatur dalam peraturan masing-masing lembaga pengusul. Hal inilah yang menyebabkan adanya pembangkangan oleh lembaga pengusul, termasuk oleh Presiden yang tidak mengindahkan Pasal 20 ayat (2) UU MK untuk mengatur mekanisme seleksi hakim konstitusi lebih lanjut dalam peraturan internalnya. Implikasi dari adanya kekosongan hukum mekanisme pengisian jabatan hakim konstitusi oleh Presiden mengakibatkan mekanisme seleksi dan pengangkatan hakim konstitusi berbeda-beda. Pengisian jabatan hakim konstitusi sendiri terbagi menjadi dua, ada yang ditunjuk secara langsung oleh Presiden dan ada pula yang diseleksi dan diangkat oleh Presiden dengan menerapkan prinsip transparansi, partisipatif, obyektif dan akuntabel walaupun tidak dilaksanakan secara sempurna oleh Presiden. Adapun pengisian jabatan hakim konstitusi yang mencerminkan prinsip transparansi, partisipatif, obyektif dan akuntabel diselenggarakan pada tahun 2003, 2008, 2013, 2017, 2018, 2019. *Kedua*, desain pengaturan pengisian jabatan hakim konstitusi yang mencerminkan prinsip transparansi, partisipatif, obyektif dan akuntabel yaitu perlu membentuk peraturan presiden untuk mengatur dan mencantumkan secara positif hal – hal sebagai berikut, yaitu (1) penyusunan indikator prinsip seleksi hakim konstitusi; (2) pembentukan panitia seleksi hakim konstitusi; (3) menyusun mekanisme seleksi hakim konstitusi yang transparan, partisipatif, obyektif dan akuntabel.

Kata Kunci : mekanisme seleksi hakim konstitusi, indikator prinsip pengangkatan hakim konstitusi, kekuasaan Presiden.

ABSTRACT

This research focuses on discussing two things, namely (1) the regulation and implementation of filling the position of constitutional judge by the President in terms of the principles of transparency, participation, objectivity and accountability (2) the design of the principles for appointing constitutional judges to fulfill the principles of transparency, participatory, objective and accountable. first, the regulation of the mechanism for selecting constitutional judges by the President is experiencing a legal vacuum. This is due to the lack of strict regulatory regulations contained in the 1945 Constitution and the Constitutional Court Law. In the provisions of Article 24 C paragraph (6) of the 1945 Constitution, regulations regarding the selection of constitutional judges are delegated to the Constitutional Court Law. However, in the development of the formation of the Law, the Constitutional Court again delegated regulations that should have been the content of the Law to be regulated in the regulations of each proposing institution. This is what has led to defiance by the proposing institutions, including by the President who did not heed Article 20 paragraph (2) of the Constitutional Court Law to further regulate the selection mechanism for constitutional judges in its internal regulations. The implications of the legal vacuum in the mechanism for filling the position of constitutional judge by the President result in different mechanisms for the selection and appointment of constitutional judges. The position of constitutional judge is divided into two, some are appointed directly by the President and others are selected and appointed by the President by applying the principles of transparency, participation, objectivity and accountability, although not implemented perfectly by the President. The filling of constitutional judge positions that reflect the principles of transparency, participation, objectivity and accountability was held in 2003, 2008, 2013, 2017, 2018, 2019. Second, the design of arrangements for filling the positions of constitutional judge that reflect the principles of transparency, participation and accountability is necessary to follow-up is needed through a presidential regulation to regulate and positively include the following matters, namely (1) preparation of principle indicators for the selection of constitutional judges; (2) formation of a selection committee for constitutional judges; (3) develop a mechanism for selecting constitutional judges that is transparent, participatory, objective and accountable.

Keywords: mechanism for selecting constitutional judges, indicators of principles for appointing constitutional judges, powers of the President

