

POTENSI IMPLIKASI PENGADOPSIAN MEKANISME CONSTITUTIONAL COMPLAINT DI INDONESIA

INTISARI

Penelitian ini bertujuan untuk mengkaji dan menganalisis potensi implikasi dari pengadopsian mekanisme *constitutional complaint* terhadap kelembagaan dan pelaksanaan wewenang Mahkamah Konstitusi Republik Indonesia (MK RI), para pencari keadilan, serta peningkatan akuntabilitas pemerintah. Penelitian ini akan mengkaji urgensi dan relevansi, peluang, serta tantangan pengadopsian mekanisme *constitutional complaint* di Indonesia. Penelitian ini merupakan penelitian *factual instrumental* dengan menggunakan pendekatan konseptual dan pendekatan perbandingan. Hasil penelitian menunjukkan bahwa: (1) MK RI seharusnya memiliki kewenangan mengadili perkara pengaduan konstitusional atau *constitutional complaint*, sehingga MK RI dapat melindungi hak-hak konstitusional warga negara secara optimal. Peluang melembagakan kewenangan pengaduan konstitusional dapat dilakukan dengan penambahan kewenangan MK RI melalui amandemen konstitusi, perluasan kewenangan MK RI melalui undang-undang, maupun melalui penafsiran lembaga kehakiman yang dilakukan oleh Hakim Konstitusi. Pemberian wewenang mengadili perkara pengaduan konstitusional kepada MK RI akan berimplikasi pada kelembagaan MK RI, adanya lonjakan perkara yang masuk ke MK RI, pergeseran fungsi MK RI sebagai pengadilan *judex juris* menjadi pengadilan *judex factie*, serta perubahan dalam hukum acara MK RI. (2) Permasalahan akses masyarakat terhadap keadilan seringkali disebabkan oleh adanya keputusan maupun tindakan badan atau pejabat publik yang mencederai hak-hak dasar warga negara. Mekanisme keluhan publik melalui pengaduan konstitusional yang diajukan ke MK RI dapat menjadi upaya untuk mengatasi permasalahan tersebut. Penerapan mekanisme pengaduan konstitusional ini akan menimbulkan potensi meningkatnya kasus-kasus tertentu yang berasal dari kasus pelanggaran hak dasar yang tidak dapat diselesaikan melalui lembaga-lembaga perlindungan hak asasi manusia yang lain. Tantangan-tantangan para pencari keadilan dalam menggunakan mekanisme pengaduan konstitusional yakni kemudahan akses para pencari keadilan untuk mengajukan permohonan pengaduan konstitusional, serta pemahaman para pencari keadilan terkait konsep hak konstitusional dan klasifikasi pelanggaran hak konstitusional yang dapat diajukan permohonan pengaduan konstitusional ke MK RI. (3) Pengadopsian mekanisme pengaduan konstitusional erat relevansinya dengan diterapkannya *rule of law* di Indonesia, serta sebagai upaya dalam mewujudkan dan menjaga akuntabilitas pemerintahan. Adanya mekanisme pengaduan konstitusional dapat dijadikan sebuah peluang untuk menyelesaikan persoalan ketidakpatuhan badan atau pejabat publik terhadap putusan pengadilan. Di sisi lain, persoalan ketidakpatuhan ini pun dimungkinkan terjadi terhadap putusan MK RI terkait pengaduan konstitusional, terlebih pengaduan konstitusional erat kaitannya dengan hubungan antara pemerintah dan warga negara.

Kata kunci: Hak Konstitusional, Pengaduan Konstitusional, Akses terhadap Keadilan, Negara Hukum, Akuntabilitas Pemerintah.

POTENTIAL IMPLICATIONS OF ADOPTING THE CONSTITUTIONAL COMPLAINT MECHANISM IN INDONESIA

ABSTRACT

*This research aims to examine and analyze the potential implications of the adoption of the constitutional complaint mechanism on the institutions and implementation of the authority of the Constitutional Court of the Republic of Indonesia, justice seekers, and increasing government accountability. This research will examine the urgency and relevance, opportunities, and challenges of adopting the constitutional complaint mechanism in Indonesia.. This research is an instrumental factual research using a conceptual approach and a comparative approach. The research results show that: (1) The Indonesian Constitutional Court should have the authority to adjudicate constitutional complaints, so that the Indonesian Constitutional Court can optimally protect the constitutional rights of citizens. Opportunities to institutionalize the authority for constitutional complaints can be carried out by increasing the authority of the Constitutional Court of the Republic of Indonesia through constitutional amendments, expanding the authority of the Constitutional Court of the Republic of Indonesia through law, or through interpretation of the judiciary carried out by Constitutional Judges. Granting the authority to adjudicate constitutional complaint cases to the Constitutional Court of the Republic of Indonesia will have implications for the institution of the Constitutional Court of the Republic of Indonesia, a surge in cases coming to the Constitutional Court of the Republic of Indonesia, a shift in the function of the Constitutional Court of the Republic of Indonesia as a *judex juris* court to a *judex factie* court, as well as changes in the procedural law of the Constitutional Court of the Republic of Indonesia. (2) Problems with public access to justice are often caused by decisions or actions of public bodies or officials, this results in the violation of the basic rights of citizens. Efforts to overcome this problem can be made by implementing a public complaints mechanism through constitutional complaints submitted to the Indonesian Constitutional Court. The implementation of this constitutional complaints mechanism will give rise to the potential for an increase in certain cases originating from cases of violations of basic rights that cannot be resolved through other human rights protection institutions, as well as justice seekers who do not understand the classification of basic rights violations that can be filed a petition for constitutional complaint. (3) The adoption of a constitutional complaints mechanism is closely relevant to the implementation of the rule of law in Indonesia, as well as an effort to realize and maintain government accountability. The existence of a constitutional complaints mechanism can be used as an opportunity to resolve the issue of non-compliance by public bodies or officials with court decisions. On the other hand, this problem of non-compliance is also possible with the Indonesian Constitutional Court's decision regarding constitutional complaints, especially as constitutional complaints are closely related to the relationship between the government and citizens.*

Keywords: Constitutional Rights, Constitutional Complaint, Access to Justice, Rule of Law, Government Accountability.