

**THE IMPLEMENTATION OF CONSTITUTIONAL COURT DECISION
NO. 130/PUU-XIII/2015 AFFECT ON THE NOTIFICATION OF
COMMENCEMENT OF INVESTIGATION**

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ABSTRACT

On 30 October 2015, Constitutional Court has decided the Constitutional Court Decision Number 130/PUU-XIII/2015, regarding the judicial review on Article 109 of Criminal Procedural Code. Previously in the implementation of the investigation most of the time the submission of Notice of Commencement of Investigation letter to the public prosecutor is delayed, moreover there is also no clear limits of time regarding when notification of the commencement of the investigation shall be submitted in Article 109 paragraph (1) of the Criminal Procedure Code which causing legal uncertainty for all parties concerned in the criminal case. By virtue of this law, now the Notice of Commencement of Investigation letter not only required to submit to Public Prosecutor but also to suspect and victim. This legal research purposed to examine the rationale of the Constitutional Court in reviewing Article 109 paragraph (1) regarding Notice of Commencement of Investigation letter and examine the difference of the implementation of the investigation process before and after this Constitutional Court decision. A normative-empirical method was used in examining the consideration of the Constitutional Court in accordance with the Criminal Code, the provisions which were in effect.

The result of the analysis showed that, first, Notice of Commencement of Investigation must be submitted to the suspect, victim, and the public prosecutor no later than 7 (seven) days so that victim and suspect can be updated regarding the case and may prepare in accordance to their needs in such case, and for public prosecutor so they are not losing their supervising function in a criminal case. The rationale of the Constitutional Court in reviewing Article 109 paragraph (1) of the Criminal Procedural Code is that first its compliance with the national criminal law principle and to protect the fulfillment of human rights in the criminal justice system. The Constitutional Court showed consistency in the system of crime, which put forward the principle of functional differentiation between the investigator and the prosecutor as the integrated criminal justice system.

Keywords: SPDP, Criminal Procedural Law, Article 109 paragraph (1) Criminal Procedural Code, Constitutional Court

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IMPLEMENTASI PUTUSAN MAHKAMAH KONSTITUSI NO. 130 / PUU- XIII / 2015 MENGENAI SPDP

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INTISARI

Pada tanggal 30 Oktober 2015, Mahkamah Konstitusi telah mengeluarkan Putusan Mahkamah Konstitusi Nomor 130 / PUU-XIII / 2015, tentang peninjauan kembali terhadap Pasal 109 ayat (1) KUHP. Sebelumnya dalam pelaksanaan investigasi pada kasus pidana sebagian besar penyampaian Surat Pemberitahuan Dimulainya Investigasi kepada jaksa penuntut umum tertunda, karena tidak ada batasan waktu yang jelas mengenai kapan pemberitahuan dimulainya penyidikan harus disampaikan dalam Pasal 109 ayat (1) KUHP yang menyebabkan ketidakpastian hukum bagi semua pihak yang terkait dalam kasus pidana. Berdasarkan putusan ini, sekarang SPDP tidak hanya wajib untuk disampaikan kepada Jaksa Penuntut Umum tetapi juga untuk tersangka dan korban. Penelitian hukum ini bertujuan untuk menguji dasar pemikiran Mahkamah Konstitusi dalam mengkaji Pasal 109 ayat (1) tentang SPDP dan memeriksa perbedaan pelaksanaan proses investigasi sebelum dan sesudah putusan Mahkamah Konstitusi ini. Metode yuridis normatif-empiris digunakan untuk memeriksa pertimbangan Mahkamah Konstitusi sesuai dengan KUHP, ketentuan yang berlaku.

Hasil analisis menunjukkan bahwa, pertama, SPDP harus diserahkan kepada tersangka, korban, dan jaksa penuntut umum selambat-lambatnya 7 (tujuh) hari sehingga korban dan tersangka dapat mengetahui kabar terbaru mengenai kasus ini dan dapat mempersiapkan sesuai dengan kebutuhan mereka dalam kasus tersebut, dan untuk jaksa penuntut umum agar mereka tidak kehilangan fungsi pengawasan mereka dalam kasus pidana. Dasar pemikiran Mahkamah Konstitusi dalam meninjau Pasal 109 ayat (1) KUHP adalah bahwa pertama, adalah terkait pemenuhan dengan prinsip hukum pidana nasional dan untuk melindungi pemenuhan hak asasi manusia dalam sistem peradilan pidana. Mahkamah Konstitusi menunjukkan konsistensi dalam sistem pidana, yang mengedepankan prinsip diferensiasi fungsional antara penyidik dan jaksa penuntut sebagai sistem peradilan pidana terintegrasi.

Kata Kunci: *SPDP, Hukum Acara Pidana, Pasal 109 ayat (1) KUHP, Mahkamah Konstitusi.*

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