

Implikasi Putusan Mahkamah Konstitusi terhadap konstruksi penerapan asas *audi et alteram partem* dan persidangan terbuka untuk umum dalam Hak Uji Materiil di Mahkamah Agung

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Intisari

Penelitian ini bertujuan untuk menganalisis, mengetahui dan memahami bagaimana implikasi Putusan Mahkamah Konstitusi Nomor 30/PUU-XIII/2015 dan Putusan Mahkamah Konstitusi Nomor 85/PUU-XVI/2018 terhadap konstruksi penerapan asas *audi et alteram partem* dan persidangan terbuka untuk umum dalam Hak Uji Materiil di Mahkamah Agung. Penelitian ini menggunakan metode penelitian yuridis normatif, dengan hasil penelitian terkait implikasi Putusan MK tersebut terhadap konstruksi penerapan asas *audi et alteram partem* dan persidangan terbuka untuk umum dalam Hak Uji Materiil di Mahkamah Agung yang menggunakan pendekatan undang-undang, pendekatan historis, pendekatan kasus, dan pendekatan konseptual.

Hasil Penelitian menunjukkan pengaturan hukum acara Hak Uji Materiil (HUM) Mahkamah Agung RI telah berkembang sejak masa awal kemerdekaan hingga pasca reformasi telah diatur secara rigid mengenai Hak Uji Materiil (HUM) Mahkamah Agung RI. Namun implementasi persidangan terbuka untuk umum dan *asas audi et alteram partem* memiliki bentuk yang berbeda dalam kaitannya pelaksanaan Hak Uji Materiil (HUM), terutama jika diperbandingkan dengan hukum acara Mahkamah Agung Amerika Serikat, Mahkamah Agung Korea Selatan dan Mahkamah Konstitusi RI pada konteks *judicial review*. Hal ini dapat membuat para pihak terkendala dalam menyampaikan haknya dalam persidangan.

Sehingga kemudian atas polemik hukum tersebut didapatkan penyelesaian yuridis melalui Putusan MK Nomor 30/PUU-XIII/2015 dan Putusan MK Nomor 85/PUU-XVI/2018 yang pada pokoknya menghasilkan implikasi bahwa konstruksi hukum acara tersebut yang terkendala batas waktu persidangan merupakan open legal policy dan juga hal ini menimbulkan paradigma baru dalam hukum acara *judicial review* umumnya dan pengaturan Hak Uji Materiil secara khusus. Meskipun begitu substansi Putusan MK *a quo* juga telah menghasilkan alternatif hukum di masa depan.

Kata Kunci: *Hak Uji Materiil, Implikasi Putusan MK, Open Legal Policy*

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Implications of The Constitutional Court's Decision on the construction of the application of The Principle of Audi et Alteram Partem and The Principle of Open Court in Judicial Review at Supreme Court of Indonesia

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Abstract

The objectives of this research are to review, find out, and understand implications of The Constitutional Court's Decision number 30/PUU-XIII/2015 and number 85/PUU-XVI/2018 on the construction of the application of the Principle of Audi et Alteram Partem and The Principle of Open Court in Judicial Review at Supreme Court. This research used a normative legal research, with the results of research related to Implications of The Constitutional Court's Decision on the construction of the application of The Principle of Audi et Alteram Partem and The Principle of Open Court in Judicial Review at Supreme Court which used conceptual approach, statutory approach, historical approach, and case approach.

The result of the research show that the procedural law of judicial review of The Supreme Court of Republic Indonesia have developed since the beginning era of independence to post-reformation era and have been rigidly regulated regarding judicial review of the Supreme Court of Republic Indonesia. However, the implementation of The Principle of Audi et Alteram Partem and The Principle of Open Court in Judicial Review at Supreme Court takes a different construction in related to the implementation of judicial review, especially when compared to the procedural law of the US Supreme Court, South Korean Supreme Court, and the Constitutional Court of Republic Indonesia in the context of judicial review. This case may constrain the parties in conveying their rights in court.

In order that later on the legal polemic, any legal solution was obtained through the Constitutional Court Decision a quo, which basically resulted the implication that the procedural law construction which was constrained by the trial time limitation was an open court policy. and also this has created a new paradigm in judicial review procedural law in general and the regulation of the Judicial Review in particular. Even so, the substance of the a quo Constitutional Court Decision has also produced legal alternatives in the future.

Keywords : *Judicial Review, Implications of the Constitutional Court Decision, Open Court*

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