

INTISARI

Pertentangan Penerapan Asas *Nemo Judex Idoneus In Propria Causa* dengan Asas *Ius Curia Novit* dalam Pengujian Peraturan Perundang-undangan di Mahkamah Agung

Oleh: Felix Juanardo Winata

Penelitian ini bertujuan untuk mengetahui bagaimana pengaturan asas *nemo judex idoneus in propria causa* dan asas *ius curia novit* dalam peraturan perundang-undangan di Indonesia, serta untuk mengetahui bagaimana pertentangan penerapan asas *nemo judex idoneus in propria causa* dengan asas *ius curia novit* dalam pengujian peraturan perundang-undangan di Mahkamah Agung. Penelitian ini merupakan penelitian hukum normatif yang dilakukan dengan cara meneliti bahan-bahan pustaka atau data sekunder belaka. Data sekunder tersebut terdiri dari bahan hukum primer, bahan hukum sekunder, dan bahan hukum tersier. Adapun hasil dari penelitian ini menyatakan bahwa pengaturan mengenai asas *nemo judex idoneus in propria causa* dan asas *ius curia novit* sama-sama tertuang dalam peraturan perundang-undangan yang berlaku di Indonesia. Selain itu, hasil dari penelitian ini juga menyatakan bahwa pertentangan penerapan asas *nemo judex idoneus in propria causa* dengan asas *ius curia novit* dapat diselesaikan dengan mengesampingkan keberlakuan dari asas *nemo judex idoneus in propria causa* dan mengutamakan asas *ius curia novit*. Pengutamaan asas *ius curia novit* didasarkan atas argumentasi bahwa: (1) asas *ius curia novit* harus diutamakan agar setiap pencari keadilan dapat memiliki akses terhadap keadilan melalui institusi pengadilan; (2) asas *ius curia novit* juga harus diutamakan karena kewenangan pengujian peraturan perundang-undangan di bawah undang-undang terhadap undang-undang hanya dimiliki oleh 1 (satu) lembaga saja, yakni Mahkamah Agung; (3) asas *ius curia novit* juga harus diutamakan karena asas *nemo judex idoneus in propria causa* yang berlaku dalam hukum positif Indonesia hanya merujuk hakim secara individual, bukan Mahkamah Agung secara institusional.

Kata Kunci: *Nemo Judex Idoneus In Propria Causa, Ius Curia Novit, Pengujian Peraturan Perundang-undangan, Mahkamah Agung*

ABSTRACT

Contradiction on the Application of Nemo Judex Idoneus In Propria Causa Principle with Ius Curia Novit Principle in Judicial Review at the Supreme Court

By: Felix Juanardo Winata

This research aims to discover the regulation of nemo judex idoneus in propria causa and ius curia novit principle in Indonesian laws and regulations and discover the contradiction on the application of nemo judex idoneus in propria causa and ius curia novit principle in the judicial review at the Supreme Court. This research is a normative legal research that is done by researching mere literature materials or secondary data. That secondary data consists of primary legal material, secondary legal material, and tertiary legal material. This research stated that the regulation regarding nemo judex idoneus in propria causa and ius curia novit principle are mentioned in Indonesia's laws and regulations. Moreover, this research also stated that the contradiction on the application of nemo judex idoneus in propria causa and ius curia novit principle can be solved by setting aside the enforceability of nemo judex idoneus in propria causa principle and prioritizing the ius curia novit principle. Prioritizing the principle of ius curia novit is based under the argument of: (1) ius curia novit principle must be prioritized in order for every justice seeker can own access to justice through court institutions; (2) ius curia novit principle must also be prioritized because the authority of reviewing regulations under the law against the law (regulatory review) only owned by 1 (one) institution, which is the Supreme Court; (3) ius curia novit principle must also be prioritized because the nemo judex idoneus in propria causa principle applied in Indonesian positive law only refers to the judge individually, not to the Supreme Court as an institution.

Keywords: *Nemo Judex Idoneus In Propria Causa, Ius Curia Novit, Judicial Review, Supreme Court*