

INTISARI

IMPLIKASI PUTUSAN BERSYARAT DALAM PENGUJIAN UNDANG-UNDANG TERHADAP SIFAT FINAL DAN MENGIKATNYA PUTUSAN MAHKAMAH KONSTITUSI

Oleh:
Faiz Rahman¹

Penelitian ini bertujuan untuk mengetahui karakteristik putusan bersyarat baik secara konstitusional bersyarat (*conditionally constitutional*) atau inkonstitusional bersyarat (*conditionally unconstitutional*) dalam perkara pengujian Undang-Undang terhadap Undang-Undang Dasar, serta untuk mengetahui implikasi putusan bersyarat dalam pengujian Undang-Undang terhadap Undang-Undang Dasar terhadap sifat final dan mengikatnya putusan Mahkamah Konstitusi. Penelitian ini merupakan penelitian hukum normatif, yang mana Penulis hanya menggunakan data sekunder sebagai sumber data dalam penelitian. Data sekunder yang digunakan berupa bahan hukum primer, bahan hukum sekunder, dan bahan hukum tersier. Dikarenakan penelitian ini berfokus pada pembahasan putusan bersyarat, maka bahan hukum primer yang utama digunakan Penulis adalah putusan Mahkamah Konstitusi yang bersifat bersyarat, yang mana Penulis dapatkan dari direktori putusan Mahkamah Konstitusi. Dari hasil penelusuran Penulis, terdapat 103 putusan Mahkamah Konstitusi yang termasuk putusan yang sifatnya bersyarat, yang mana 17 putusan merupakan putusan konstitusional bersyarat, dan 86 putusan merupakan putusan inkonstitusional bersyarat.

Hasil dari penelitian ini menunjukkan terdapat 5 (lima) karakteristik putusan konstitusional bersyarat, yaitu (1) Mahkamah memberikan tafsir atau syarat tertentu agar ketentuan yang diuji tetap konstitusional sepanjang dilaksanakan sesuai syarat yang ditentukan Mahkamah Konstitusi; (2) mensyaratkan adanya pengujian kembali; (3) didasarkan pada amar putusan menolak; (4) klausula konstitusional bersyarat dapat ditemukan hanya pada pertimbangan Mahkamah, atau dapat ditemukan pada pertimbangan dan amar putusan; (5) mendorong adanya *legislative review*. Terkait putusan inkonstitusional bersyarat, terdapat 4 (empat) karakteristik, yaitu (1) dalam amar putusannya pasti mencantumkan klausula inkonstitusional bersyarat; (2) amar putusan bersyarat dapat berupa pemaknaan atau penafsiran terhadap suatu norma, atau memberikan syarat-syarat inkonstitusional norma tersebut; (3) didasarkan pada amar putusan mengabulkan baik sebagian atau seluruhnya; (4) secara substansial tidak berbeda dengan klausula konstitusional bersyarat. Berkaitan dengan implikasi putusan bersyarat terhadap sifat final dan mengikatnya putusan Mahkamah Konstitusi, berdasarkan pendekatan formil tidak berimplikasi apapun, sedangkan secara substantif melalui penjatuhan putusan bersyarat Mahkamah Konstitusi telah menggeser fungsinya sebagai *negative legislator* menjadi *positive legislator* melalui tafsir atau pemberian syarat-syarat konstitusionalitas norma yang diuji.

Kata kunci: Mahkamah Konstitusi, pengujian undang-undang, putusan bersyarat, konstitusional bersyarat, inkonstitusional bersyarat, *conditionally constitutional*, *conditionally unconstitutional*, final dan mengikat

¹ Mahasiswa Strata-1 (S-1) Fakultas Hukum Universitas Gadjah Mada.

ABSTRACT

IMPLICATION OF CONDITIONALLY DECISION IN REVIEWING LAWS TOWARD FINAL AND BINDING CHARACTER OF THE CONSTITUTIONAL COURT'S DECISION

**by:
Faiz Rahman¹**

The aim of this research is to know the characteristics of conditionally decision, in conditionally constitutional or conditionally unconstitutional way in reviewing laws against the Constitution, and also to know the implication of conditionally decision in reviewing laws toward final and binding character of the Constitutional Court's Decision. This legal research is a normative legal research, which is the author only use the secondary data as data source in this legal research. Secondary data used in the form of primary legal materials, secondary legal materials, and tertiary legal materials. Due to this research focuses on the discussion of a conditionally decision, so that source of primary laws that used by the author is the conditionally decision by Constitutional Court, which is the author got from the conditionally decision by Constitutional Court. From the research done by the author, there are 103 decisions that considered as conditionally decision, consist of 17 conditionally constitutional decisions and 86 conditionally unconstitutional decisions

The result of this legal research is to show that there are 5 characteristics of conditionally constitutional decision, those are (1) Court gives interpretation or certain requirements in order to remain constitutional provisions tested throughout implemented according to the specified requirements of the Constitutional Court; (2) conditionally constitutional decision require rejudicial review if the norm is not in line with the interpretation of the Constitutional Court; (3) based on the rejected verdict; (4) a conditionally constitutional clause can be found only on the consideration of the Court, or can be found on the judgment and injunction; (5) encouraging legislative review. Regarding the conditionally unconstitutional decision, there are 4 characteristics, those are (1) the verdict certainly include a conditionally unconstitutional clauses; (2) a conditionally verdict can be the meaning or interpretation of a norm, or give the terms of the norm is unconstitutional; (3) based on the granted verdict either partially or completely; (4) does not substantially different from the conditionally constitutional clause. Regarding the implication of conditionally decision toward the final and binding characteristic of constitutional court decision, from the formal approach there is no implication at all, but in substantively through the imposition of a conditionally decision of the Constitutional Court have shifted its functions as a negative legislator into a positive legislator through interpretation or administration of the terms of the constitutionality of the norm being tested.

Keywords: Constitutional Court, reviewing laws, conditionally decision, conditionally constitutional decision, conditionally unconstitutional decision, final and binding

¹ Undergraduate Student of Law Universitas Gadjah Mada