



Redistribusi Kekuasaan Kehakiman di Indonesia

Pasca Amandemen UUD NRI 1945

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INTISARI

Setelah amandemen UUD NRI 1945, sistem ketatanegaraan Indonesia mengalami perubahan yang sangat fundamental khususnya dalam bidang kekuasaan kehakiman. Reformasi kekuasaan kehakiman dilakukan baik dari segi kelembagaan, wewenang, tugas dan fungsinya. Pasca amandemen UUD 1945, pelaku kekuasaan kehakiman tidak lagi hanya dilaksanakan oleh Mahkamah Agung, tetapi juga dilaksanakan oleh dua lembaga baru yang dibentuk yaitu Mahkamah Konstitusi dan Komisi Yudisial. Dalam menjalankan tugas, fungsi, dan wewenangnya sering terjadi konflik atau polemik antar ketiga lembaga tersebut. Sehingga pelaksanaan kekuasaan kehakiman tidak dapat berjalan secara efektif dikarenakan adanya konflik wewenang antara ketiga pelaku kekuasaan kehakiman dalam menjalankan tugas dan fungsinya.

Ada 2 (dua) rumusan masalah yang menjadi fokus kajian dalam penulisan ini, yaitu: 1) Bagaimanakah distribusi kekuasaan kehakiman yang berlaku di Indonesia?; 2) Bagaimanakah seharusnya redistribusi kekuasaan kehakiman di Indonesia?.

Metode penelitian yang digunakan pada penelitian ini adalah normatif empiris, dengan pendekatan secara teori, doktrin dan peraturan perundang-undangan yang berhubungan serta didukung dengan wawancara nara sumber.

Berdasarkan hasil penelitian, penulis memperoleh jawaban atas permasalahan yang ada, bahwa distribusi kekuasaan kehakiman setelah amandemen UUD 1945, pelaku kekuasaan kehakiman dilaksanakan oleh Mahkamah Agung dan Mahkamah Konstitusi sebagai *main organ*, serta Komisi Yudisial merupakan *supporting organ* dari kekuasaan kehakiman. Namun, dalam hal melakukan fungsi pengawasan terhadap hakim (semua hakim), Komisi Yudisial merupakan *main organ*, sedangkan Mahkamah Agung dan Mahkamah Konstitusi merupakan *supporting organ* dalam hal pengawasan terhadap hakim. Redistribusi kekuasaan kehakiman dibagi menjadi: *pertama*, hak uji materiil atau *judicial review* di bawah satu atap Mahkamah Konstitusi, *kedua*, penyelesaian sengketa Pemilu oleh Mahkamah Agung, *ketiga*, larangan pengujian Perppu oleh Mahkamah Konstitusi, *keempat*, penguatan kewenangan pengawasan Komisi Yudisial dalam rangka penegakan Kode Etik dan/atau Pedoman Perilaku Hakim.

Kata Kunci : *Redistribusi, Kekuasaan Kehakiman di Indonesia.*

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Redistribution of Judicial Power in Indonesia After The Amendment of The 1945 Constitution of Republic Indonesia

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Abstract

After the amendment of The 1945 Constitutional of Republic of Indonesia, the constitutional system in Indonesia had experienced some fundamental changes, especially in the field of judicial power. The reformation of judicial power had been done in terms of institutional, authority, duty and its function. After the amendment, judicial power is not only carried out by The Supreme Court, but also by two contemporary institutions, namely The Constitutional Court and The Judicial Commission. In performing their duties and functions, conflicts might just happened oftentimes among those three institutions. Therefore, the implementation of judicial power could not work effectively because of the conflicts of authority among those three in doing their duty and functions.

There are two questions that will be the focus of this study, they are: 1) How is the distribution of judicial power that applied in Indonesia?; 2) How should the redistribution of judicial power be in Indonesia?.

This study was done using normative-empiric approach, by using theory, doctrine, and legislation that related with this research. Moreover, it is also supported by interview with the interviewees.

Based on the result of this study, the author found that the distribution of judicial power after the amendment of The 1945 Constitutional of Republic of Indonesia, judicial power were carried out by The Supreme Court and The Constitutional Court as the main organs, while The Judicial Commission acted as the supporting organ. However, in supervising the judges (all judges), The Judicial Commission acted as the main organ, while The Supreme Court and The Constitutional Court acted as the supporting ones. Redistribution of judicial power is as follows: *first*, the rights to judicial review is under The Constitutional Court only; *second*, the dispute settlement on the election of the head of each district by The Supreme Court; *third*, the prohibition of the trial on Government Regulation in Lieu of Law (Perppu) by The Constitutional Court; and the last is the strengthening of the supervisory authority of The Judicial Commission in order to enforce the Ethical Code and/or the Judicial Code.

Key words: *Redistribution, Judicial Power in Indonesia.*

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