

INTISARI

IMPLIKASI YURIDIS PUTUSAN MAHKAMAH KONSTITUSI NOMOR 21/PUU-XII/2014 TERHADAP PEMENUHAN ASAS KEPASTIAN HUKUM DAN ASAS KEADILAN DALAM MEWUJUDKAN PRINSIP *DUE PROCESS OF LAW*

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Tujuan penelitian ini adalah, *pertama*, Untuk mengetahui dan menganalisis dasar dikabulkannya *judicial review* terhadap Pasal 1 angka 14 *juncto* Pasal 17 *juncto* Pasal 21 ayat (1) dan Pasal 77 huruf (a) KUHAP. *Kedua*, Untuk mengetahui dan menganalisis implikasi yuridis putusan Mahkamah Konstitusi Nomor 21/PUU-XII/2014 terhadap pemenuhan asas kepastian hukum dan asas keadilan dalam mewujudkan prinsip *due process of law*.

Jenis penelitian ini dilakukan melalui penelitian yuridis normatif, pendekatan normatif digunakan untuk menganalisis berbagai peraturan perundang-undangan terkait dengan permasalahan hukum yang diteliti, pengumpulan data dilakukan melalui penelitian kepustakaan dan studi dokumen. Selanjutnya, data yang telah dikumpulkan dari penelitian kepustakaan dianalisis secara kualitatif dengan metode deskriptif disesuaikan dengan rumusan permasalahan dalam penelitian ini dan didasarkan pada kerangka teori yang telah disusun hingga akhirnya mendapatkan kesimpulan dan saran.

Hasil penelitian ini menunjukkan, *pertama*, Dasar dikabulkannya *judicial review* terhadap Pasal 1 angka 14 *juncto* Pasal 17 *juncto* Pasal 21 ayat (1) dan Pasal 77 huruf (a) KUHAP adalah Mahkamah menafsirkan dengan berlandaskan pada prinsip *due process of law*, yaitu Mahkamah mengedepankan hak-hak tersangka dilindungi dan dianggap sebagai bagian dari hak-hak warga negara (*civil right*). Hal tersebut terlihat dari penafsiran Mahkamah dalam Putusan MK No. 21/PUU-XII/2014 tersebut bahwa istilah “bukti”, “bukti permulaan”, dan “alat bukti”, sebagaimana dimaksud dalam Pasal 1 angka 2 dan angka 14, Pasal 17 dan Pasal 21 ayat (1), serta Pasal 184 KUHAP, secara substansial tidak lagi memiliki perbedaan makna. *Kedua*, Putusan MK No. 21/PUU-XII/2014 tersebut telah berimplikasi pada pemenuhan asas kepastian hukum dan asas keadilan serta mewujudkan prinsip *due process of law* dalam proses Penegakan Hukum Pidana seorang Tersangka. hal tersebut berarti sekarang prosedur mekanisme penetapan tersangka oleh Lembaga Polri dan Kejaksaan telah sesuai dengan Lembaga KPK yang mana telah terlebih dahulu menegaskan dalam Pasal 44 ayat (2) UU Nomor 30 Tahun 2002 tentang Komisi Pemberantasan Korupsi yang terlebih dahulu memaknai bahwa “bukti permulaan yang cukup” adalah sekurang-kurangnya dua alat bukti.

Kata kunci: putusan, *judicial review*, *due process of law*, implementasi

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ABSTRACT

JURIDICAL IMPLICATIONS OF CONSTITUTIONAL COURT DECISION No. 21 / PUU-XII / 2014 TOWARD THE FULFILLMENT OF LEGAL CERTAINTY AND PRINCIPLES OF JUSTICE IN EMBODYING THE PRINCIPLE OF DUE PROCESS OF LAW

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The purpose of this research is, first, to identify and analyze the basis of the granting of judicial review of Article 1 number 14 and Article 17 in conjunction with Article 21 paragraph (1) and Article 77 (a) Indonesian Criminal Procedure Code. Second, to determine and analyze the juridical implications of the Constitutional Court Number 21 / PUU-XII / 2014 toward the fulfillment of legal certainty and the principles of justice embodying the principle of due process of law.

The research process is conducted through juridical normative research, normative approach used to analyze a wide range of legislation related to the legal issues under study, data collection conducted through literature research and document research. Furthermore, data that have been collected from the research literature analyzed qualitatively using descriptive methods, adapted to the formulation of the problems in this study and is based on a theoretical framework that has been prepared to finally achieve the conclusions and suggestions.

The results of this study indicate, first, Basic granting a judicial review of Article 1 number 14 and Article 17 in conjunction with Article 21 paragraph (1) and Article 77 (a) Indonesian Criminal Procedure Code is the interpretation of the Court were referred on the principles of due process of law, the Court emphasized the protection of the suspect's rights and considered as part of the rights of citizens (civil rights). It is perceived from the interpretation of the Court in Constitutional Court Decision No. 21 / PUU-XII / 2014 whereas the term "evidence", "preliminary evidence" and "evidence", as referred to in Article 1 number 2 and number 14, Article 17 and Article 21 paragraph (1), and Article 184 Criminal Procedure Code, substantially has no distinguished understanding anymore. Second, the Constitutional Court decision No. 21 / PUU-XII / 2014 has been implicated toward the fulfillment of the principle of legal certainty and the principles of justice and embodies the principle of due process of law in the process of Criminal Law Enforcement toward the suspect. it means the current procedure setting mechanisms of suspects by the police institute and the Attorney General in accordance with the Corruption Eradication Commission which has been affirmed in prior within the Article 44 paragraph (2) of Law No. 30 of 2002 on Corruption Eradication Commission, which in advance interpreted that "adequate preliminary evidence "is at least two items of evidence.

Keywords: decision, *judicial review*, *due process of law*, implementation.

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