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PENGUJIAN FORMIL PERATURAN PEMERINTAH PENGGANTI UNDANG-UNDANG (PERPU) DI MAHKAMAH KONSTITUSI

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ABSTRAK

Penelitian ini berfokus pada praktik sistem pengujian undang-undang di Mahkamah Konstitusi Republik Indonesia, khususnya yang berkaitan dengan pengujian formil terhadap peraturan pemerintah pengganti undang-undang. Diketahui, praktik pengujian Perpu pertama kali dilakukan Mahkamah Konstitusi sejak putusan nomor 138/PUU-VII/2009. Putusan tersebut merupakan salah satu putusan yang melahirkan sebuah perluasan kewenangan yang dimiliki oleh Mahkamah Konstitusi karena secara fundamental, Mahkamah Konstitusi memperluas kewenangannya melalui putusannya dari sebelumnya hanya sebatas berwenang menguji undang-undang hingga akhirnya berujung pada kewenangan untuk menguji Perpu. Di balik putusan monumental tersebut, ada beberapa persoalan yang menghantuinya. Persoalan pertama adalah ketiadaan batu uji yang jelas perihal pengujian formil Perpu di Mahkamah Konstitusi. Alasannya adalah, secara sederhana, Perpu tidak memperoleh porsi yang cukup luas dalam segi pengaturannya karena ketentuan perihal Perpu hanya tertuang di dalam Pasal 22 ayat (1), ayat (2), dan ayat (3), sehingga sulit untuk menemukan pijakan pengujian yang tepat di dalam UUD 1945. Selain itu, pasca putusan tersebut, terdapat dua matahari kembar yang sama-sama berwenang memeriksa aspek konstitusional dari sebuah Perpu. Untuk itu, penelitian ini akan mencoba menggambarkan permasalahan konstitusional yang berkisar pada problematikan kewenangan Mahkamah Konstitusi menguji Perpu secara formil dan bagaimana kompleksitas hubungan antara Mahkamah Konstitusi dan Dewan Perwakilan Rakyat. Penelitian ini menggunakan metode penelitian yuridis normatif. Hasil penelitian ini memberikan kesimpulan, pertama, landasan pengujian formil Perpu harus berdasarkan Pasal 22 ayat (1) UUD 1945 dan kesimpulan kedua adalah persoalan hubungan Mahkamah Konstitusi dan Mahkamah Konstitusi. Dewan Perwakilan Rakyat dapat diselesaikan melalui keputusan inkonstitusional bersyarat.

Kata Kunci : Pengujian Formil, Peraturan Pemerintah Pengganti Undang-Undang (Perpu), Mahkamah Konstitusi

**THE FORMAL EXAMINATION OF GOVERNMENT REGULATION IN LIEU
OF LAW (PERPU) IN CONSTITUTIONAL COURT**

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ABSTRACT

This research focuses on the practice of the legal review system at the Constitutional Court of the Republic of Indonesia especially those related to formal testing of government regulation in lieu of law. It is known that the practice of reviewing Perpu was first carried out by the constitutional court since decision number 138/PUU-VII/2009. This decision is one of the decisions that give the birth to an expansion of the authority possessed by the Constitutional Court because fundamentally, the Constitutional Court expanded its authority through its decision from previously only being limited to review laws until finally culminating in the authority to review Perpu. Behind this monumental decision, there is several problem that haunt him. The first problem is the absence of a clear touchstone regarding the formal review of the Perpu at the Constitutional Court. The reason is, in simple terms, the Perpu does not receive the wide enough portion in terms of its regulation because the provision regarding the Perpu are only contained in Article 22 paragraph (1), paragraph (2), and paragraph (3), so it is difficult to find the right basis for testing in the 1945 constitution. Therefore, after the decision, there were two twin suns who both had the authority to examine the constitutional aspects of a Perpu. For this reason, this research will try to explain in detail and concisely constitutional issues which contain the problem of constitutional power of Constitutional Court to exam the Perpu and describing the problem of the relation between Constitutional Court and House of Representative. This research uses normative judicial research method. The result of this research provide conclusions, first, the basis of formal review of the Perpu must be based of Article 22 paragraph (1) of the 1945 Constitution and the second. House of Representatives can be resolved through a conditional constitutional decision.

Keyword : Formal Examination, Government Regulation in Lieu of Law, Constitutional Court

