

ABSTRAK

MAHKAMAH KONSTITUSI SEBAGAI *POSITIVE LEGISLATURE*

(Studi Putusan Mahkamah Konstitusi Tahun 2012 -2022)

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Penelitian ini bertujuan untuk memahami bagaimana praktek *positive legislature* oleh Mahkamah Konstitusi dengan menganalisa berdasarkan pendekatan peraturan perundang-undangan yang berlaku, serta tindak lanjut dan pelaksanaan sifat putusan *positive legislature*. Menggunakan pendekatan peraturan perundang-undangan dan pendekatan konseptual disimpulkan bahwa setelah Putusan Mahkamah Konstitusi Nomor 48/PUU-IX/2011 yang mencabut pembatasan kewenangan Mahkamah Konstitusi dalam memberikan putusan yang bersifat mengatur, ditemukan 107 (seratus tujuh) putusan *positive legislature* periode 2012-2022. Oleh karena itu, dalam 11 (sebelas) tahun terakhir putusan kabul Mahkamah Konstitusi sebagian besar adalah *positive legislature* dengan persentase 54% dan 46% bersifat *negative legislature*. Banyaknya putusan *positive legislature* tidak berbanding lurus dengan tindak lanjut dan pelaksanaan putusan yang hanya 26 (dua puluh enam) putusan. Tidak optimalnya pelaksanaan putusan *positive legislature* oleh *addressat* putusan Mahkamah Konstitusi tentu sewajarnya terjadi karena memang tidak ada legalitas terkait implikasi hukum putusan *positive legislature*, maka tidak terdapat daya paksa bagi *addressat* putusan untuk menindaklanjuti putusan *positive legislature*.

Kata Kunci: Mahkamah Konstitusi, Putusan *Positive Legislature*.

ABSTRACT

CONSTITUTIONAL COURT AS A POSITIVE LEGISLATURE

(Study of Constitutional Court Decisions 2012 -2022)

by

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The purpose of this study is to understand how the practice of positive legislature occurs by the Constitutional Court by analyzing the applicable law and regulations basis, as well as the implementation and execution of positive legislature decisions. using a statue approach and and conceptual approach the results showed that after the Constitutional Court Decision Number 48 / PUU-IX /2011 which lifted the restrictions on the Constitutional Court's authority in making regulatory decisions, 107 (one hundred and seven) Positive Legislature decisions for the 2012-2022 period have been found, therefore in the last 11 (eleven) years the decisions of the Constitutional Court that were decided were mostly regulatory in nature with a percentage of 54% being positive legislature and 46% being negative legislature. The large number of positive legislature decisions is not directly proportional to the implementation decisions which only contained 26 (twenty six) decisions. The non-optimal implementation of positive legislative decisions by the Constitutional Court's decision is certainly reasonable because there is no legality related to the legal implications of positive legislative decisions, so there is no coercive power for the decision to follow up on positive legislative decisions.

Keyword: Constitutional Court, Positive Legislature Decisions.