

ABSTRAK

INDEPENDENSI HAKIM DALAM PUTUSAN MAHKAMAH KONSTITUSI NOMOR 90/PUU-XXI/2023 DITINJAU BERDASARKAN ASAS NEMO JUDEX IN CAUSA SUA

Oleh

M. AKBAR ARRI KOMARA

Penelitian ini bertujuan untuk menganalisis independensi hakim Mahkamah Konstitusi dalam Putusan Nomor 90/PUU-XXI/2023 ditinjau berdasarkan asas *nemo judex in causa sua*, serta mengkaji pencegahan konflik kepentingan khususnya melalui penguatan legitimasi *judicial disqualification* dan pertanggungjawaban hakim konstitusi di masa mendatang. Metode penelitian yang digunakan adalah penelitian hukum yuridis normatif dengan pendekatan peraturan perundang-undangan dan pendekatan konseptual (*conceptual* dengan mempelajari pandangan-pandangan dan doktrin-doktrin di dalam ilmu hukum, peneliti akan menemukan ide-ide yang melahirkan pengertian-pengertian hukum, konsep-konsep hukum dan asas-asas hukum yang relevan dengan isu yang dihadapi. Hasil penelitian menunjukkan bahwa Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 telah menimbulkan penurunan terhadap prinsip independensi dan imparialitas hakim konstitusi. Mahkamah Konstitusi dinilai telah melampaui batas kewenangannya sebagai *negative legislator* dengan memasuki wilayah *open legal policy* dengan membentuk norma baru tanpa adanya kerugian konstitusional yang nyata dan mendesak. Selain itu, keberadaan konflik kepentingan dalam proses pemeriksaan perkara yang tercermin dari perubahan komposisi dalam pengambilan keputusan dalam Rapat Permusyawaratan Hakim yang mana bertentangan dengan asas *nemo judex in causa sua* dan mereduksi legitimasi moral serta konstitusional Mahkamah Konstitusi Oleh karna itu, Penelitian ini menegaskan urgensi penguatan pengaturan mengenai *judicial disqualification* dan mekanisme pertanggungjawaban etik serta konstitusional hakim sebagai instrumen fundamental untuk menjaga integritas, independensi, dan kepercayaan publik terhadap Mahkamah Konstitusi di masa yang akan datang.

Kata Kunci: Independensi Hakim, Mahkamah Konstitusi, *Nemo Judex in Causa Sua*

ABSTRACT

THE POLEMIC ON THE INDEPENDENCE OF JUDGES IN THE CONSTITUTIONAL COURT DECISION NUMBER 90/PUU-XXI/2023, REVIEWED BASED ON THE PRINCIPLE OF NEMO JUDEX IN CAUSA SUA

By

M. AKBAR ARRI KOMARA

This study aims to analyze the independence of Constitutional Court judges in Decision Number 90/PUU-XXI/2023 reviewed based on the principle of *nemo judex in causa sua*, as well as examine the prevention of conflicts of interest, especially through strengthening the legitimacy of judicial disqualification and the accountability of constitutional judges in the future. The research method used is normative juridical legal research with a regulatory approach and a conceptual approach (conceptual by studying views and doctrines in legal science, researchers will find ideas that give birth to legal understandings, legal concepts and legal principles that are relevant to the issues presented. The results of the study indicate that the Constitutional Court Decision Number 90 / PUU-XXI / 2023 has given rise to the principle of independence and impartiality of judges. The Constitutional Court is considered to have exceeded the limits of its authority as a negative legislator by entering the area of open legal policy by forming new norms without any real and urgent constitutional losses. In addition, the existence of conflicts of interest in the case examination process is shown from changes in the composition of decision-making in the Judges' Deliberative Meeting which is contrary to the principle of *nemo judex in causa sua* and reduces the moral and constitutional legitimacy of the Constitutional Court. Therefore, this study notes the urgency of strengthening regulations regarding judicial disqualification and the ethical and constitutional contributions of judges as fundamental instruments to maintain the integrity, independence, and public trust in the Constitutional Court in the future.

Keywords: Judicial Independence; Constitutional Court; *Nemo Judex in Causa Sua*.