

# Penambahan Kewenangan Constitutional Question kepada Mahkamah Konstitusi sebagai Bentuk Perlindungan Hak- Hak Konstitusional Warga Negara = The Addition of Constitutional Question Authority to the Constitutional Court to Protect the Constitutional Rights of the Citizen

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## Abstrak

### <b>ABSTRAK</b><br>

Mahkamah Konstitusi mempunyai fungsi untuk mengawal konstitusi agar dilaksanakan dan dihormati baik penyelenggara kekuasaan negara maupun warga negara. Tak ayal, reformasi hukum di Indonesia menjadi prasyarat untuk menjadi negara hukum yang demokratis. Salah satu bentuk reformasi hukum dalam institusi kekuasaan kehakiman adalah gagasan mengadopsi mekanisme constitutional question kedalam sistem peradilan konstitusi. Constitutional question merujuk pada suatu mekanisme pengujian konstitusionalitas undang- undang, yaitu dalam hal seorang hakim yang sedang mengadili suatu perkara ragu-ragu mengenai konstitusionalitas undang-undang yang berlaku untuk perkara tersebut. Oleh karena itu, skripsi ini ingin membahas mengenai urgensi penerapan kewenangan constitutional question di Indonesia dan alternatif penerapan constitutional question di Indonesia. Metode penulisan yang digunakan adalah penulisan yuridis normatif dengan pendekatan kualitatif dan menggunakan bahan kepustakaan serta wawancara. Dari hasil riset didapati bahwa terdapat urgensi untuk menambahkan kewenangan constitutional question di Indonesia. Diadopsinya mekanisme constitutional question adalah bentuk pemberian perlindungan maksimum terhadap hak konstitusional warga negara. Dengan adanya mekanisme tersebut, dapat dihindari adanya putusan hakim yang bertentangan dengan konstitusi dan melanggar hak konstitusional warga negara; ruang pengujian terhadap peraturan perundang-undangan semakin luas; dan dapat dihindari adanya pelanggaran hak konstitusional yang tidak diperlukan. Bila diterapkan di Indonesia, dasar kewenangan constitutional question dapat diatur melalui amandemen konstitusi, revisi Undang-Undang Mahkamah Konstitusi, Putusan Mahkamah Konstitusi, ataupun perluasan legal standing lembaga negara sebagai salah satu pemohon constitutional review. Dalam pelaksanaannya, pemohon constitutional question, baik hanya hakim peradilan umum maupun dibuka peluang bagi pihak yang berperkara, mengajukan permohonannya melalui kepaniteraan pengadilan tersebut untuk selanjutnya diolah oleh Ketua Pengadilan dan diajukan ke Mahkamah Konstitusi dalam bentuk serupa dengan constitutional review. Selain itu, perlu diatur mengenai kualifikasi pemohon constitutional question dan pembatasan waktu penanganan perkara constitutional question oleh Mahkamah Konstitusi.

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### <b>ABSTRACT</b><br>

The Constitutional Court functions to oversee the implementation of the constitution both by state and citizen. Needless to say, legal reform in Indonesia is a requirement to be a democratic legal state. One part of legal reform in the institution of judicial power is the idea of adopting a constitutional questioning mechanism into the constitutional court system. Constitutional question refers to a mechanism for examining the constitutionality of a law, namely in the case of a judge who is adjudicating a case has a

doubt regarding the constitutionality of the law applicable in the case. Therefore, this thesis would like to examine about the urgency of applying constitutional question and alternative way to implement constitutional question in Indonesia. Research method used is normative juridical writing with qualitative approach from library materials and interview. The research results found the urgency for the implementation of constitutional question in Indonesia. The adoption of the constitutional question mechanism is a form of maximum protection to the citizen's constitutional rights. With the existence of such mechanism, court decisions that are contrary to the constitution and violate the constitutional rights of the citizens can be avoided the testing material of the legislation becomes expansive and unnecessary constitutional rights violations can be avoided. If applied in Indonesia, the basis of the authority of constitutional question may be regulated through constitutional amendment, the revision of the Constitutional Court Law, the Constitutional Court Decision, or the extension of legal standing of state institutions as one of the applicants for constitutional review. In implementation, the applicant of constitutional question, whether only judges from general courts or the opportunity will also be opened for litigant, files the application through the secretariat of the court. Henceforth the application will be processed by chairman of court and submitted to Constitutional Court in form similar to constitutional review. In addition, it is necessary to regulate the applicant's qualification of constitutional question and time limitation for handling of constitutional question by the Constitutional Court.