

Implikasi Putusan Mahkamah Konstitusi Nomor 91/PUU-XVIII/2020 terhadap Pembentukan Undang-Undang = Implications of the Constitutional Court Decisions Number 91/PUU-XVIII/2020 on Law Making

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Abstrak

Penelitian dilakukan dengan tujuan untuk menguraikan dan menganalisis permasalahan pembentukan Undang-Undang Nomor 11 Tentang Cipta Kerja yang cacat formil dan dinyatakan inkonstitusional bersyarat tetapi masih memiliki daya laku dan daya ikat sebagai undang-undang. Uji formil itu diputus oleh Mahkamah Konstitusi melalui Putusan Nomor 91/PUU-XVIII/2020 pada 21 November 2021. Pembentukan dan pengujian undang-undang merupakan proses yang saling berkesinambungan dalam prinsip checks and balances. Uji formil yang dilakukan oleh Mahkamah Konstitusi merupakan kontrol terhadap proses pembentukan hukum yang menjadi kewenangan kekuasaan dibidang legislasi oleh lembaga yudisial, yaitu upaya kontrol terhadap pembentukan hukum dalam sistem ketatanegaraan Indonesia. Uji formil Undang-Undang merupakan proses pemeriksaan yang dilakukan terhadap prosedur keabsahan pembentukan Undang-Undang. Proses itu dilakukan atas permohonan yang diajukan masyarakat ke Mahkamah Konstitusi terhadap suatu Undang-Undang yang dianggap menyalahi peraturan pembentukannya. Terdapat tiga masalah yang akan diuraikan dan dianalisis yaitu terkait dengan putusan uji formil nomor 91/PUU-XVIII/2020, implikasi dan Implementasi Putusan Mahkamah Konstitusi 91/PUU-XVIII/2020 terhadap pembentukan Undang-Undang, dan menguraikan terkait konsep ideal pembentukan undang-undang agar undang-undang tidak cacat formil. Hasil penelitian menunjukan cacat formil diputuskan Mahkamah Konstitusi terhadap Undang-Undang 11 Tahun 2020 karena telah melanggar Peraturan Pembentukan Undang-Undang yang diatur dalam Undang-Undang Nomor 12 Tahun 2011 jo Undang-Undang Nomor 15 Tahun 2019 yaitu terkait penggunaan metode omnibus law, asas keterbukaan dengan tidak terpenuhinya partisipasi masyarakat, dan terdapat perubahan terhadap substansi rancangan undang-undang setelah disetujui. Dalam implementasinya putusan itu dapat ditafsirkan berbeda oleh pembentuk undang-undang dan pelaksana undang-undang sehingga mengakibatkan muncul permasalahan baru dalam bidang legislasi. Hal itu terjadi akibat tidak konkritnya norma hukum dalam putusan Mahkamah Konstitusi, yang memberi tafsiran baru terhadap inkonstitusional bersyarat dengan menyatakan undang-undang tetap berlaku sampai syarat dipenuhi.

.....The research was conducted with the aim of describing and analyzing the problems in the Process of law making of Law Number 11 Concerning Job Creation which was formally flawed and declared conditionally unconstitutional but still has enforceable and binding power as a law. This judicial review of legislative process or due process of law making was decided by the Constitutional Court through Decision Number 91/PUU-XVIII/2020 on November 21, 2021. The process of law making and the due process of law making are mutually continuous processes in the principle of checks and balances. The formal test conducted by the Constitutional Court is a control over the process of law making which is the authority of powers in the field of legislation by the judicial institution, namely an effort to control the law making of law in the Indonesian constitutional system. The formal examination of the law is a process of examining the legality of the

formation of the law. The process was carried out based on an application submitted by the public to the Constitutional Court against a law deemed to have violated the regulations for its law making. There are three problems that will be described and analyzed, namely those related to the formal test decision number 91/PUU-XVIII/2020, the implications and implementation of the Constitutional Court Decision 91/PUU-XVIII/2020 on the process of law making, and elaborate on the ideal concept of forming a law. law so that the law is not formally flawed. The results of the research show that the Constitutional Court decided on a formal defect against Law 11 of 2020 because it had violated the Regulations for Forming a Law stipulated in Law Number 12 of 2011 in conjunction with Law Number 15 of 2019, namely related to the use of the omnibus law method, the principle of openness with the non-fulfillment of public participation, and there are changes to the substance of the draft law after it is approved. In its implementation, the decision can be interpreted differently by legislators and law enforcers, resulting in new problems in the field of legislation. This happened due to the lack of concrete legal norms in the decision of the Constitutional Court, which gave a new interpretation of conditional unconstitutionality by stating that the law remains in force until the conditions are met.