

RINGKASAN

Meneguhkan peran Mahkamah Konstitusi (MK) sebagai pengawal konstitusi (*the guardian of constitution*), pelindung hak-hak konstitusional warga negara (*the protector of the citizens' constitutional right*) juga pengawal Pancasila (*the guardian of ideology*) yang merupakan dasar negara (*philosophische grondslag*), pandangan hidup (*way of life*), cita hukum (*rechtsidee*) sebagai kerangka keyakinan (*belief framework*) yang bersifat normatif dan konstitutif masyarakat Indonesia. Dalam kehidupan bernegara kerap kali terjadi pelanggaran hak-hak dan kebebasan konstitusional yang bukan disebabkan karena inkonstitusionalitas norma undang-undang, tetapi adanya perbuatan maupun kelalaian lembaga negara atau pejabat publik (*state institution, public officials*). Tujuan penelitian ini untuk mengetahui bagaimana *constitutional complaint* dalam sistem ketatanegaraan Republik Indonesia untuk mewujudkan negara hukum berdasarkan Pancasila dan bagaimana Prospek *constitutional complaint* sebagai kewenangan Mahkamah Konstitusi Republik Indonesia untuk mewujudkan negara hukum berdasarkan Pancasila. Jenis penelitian yang digunakan dalam penelitian ini adalah jenis penelitian hukum normatif (yuridis-normatif), melalui 3 (tiga) model pendekatan, yakni pendekatan kasus (*case approach*), pendekatan perbandingan (*comparative approach*), dan pendekatan konseptual (*conceptual approach*). Berdasarkan hasil penelitian ini, *constitutional complaint* dalam sistem ketatanegaraan Republik Indonesia untuk mewujudkan negara hukum berdasarkan Pancasila bahwa MK memiliki peran untuk melindungi hak konstitusional warga negara atas tindakan yang dilakukan oleh organ / badan / lembaga negara (cabang kekuasaan eksekutif dan legislatif) sebagai bentuk prinsip *check and balances*. Sebagaimana Indonesia memiliki komitmen dalam menjamin perlindungan dan penghormatan terhadap hak konstitusional warga negara yang harus dijaga dan diwujudkan sebagai negara hukum yang berlandaskan Pancasila. Pengaduan konstitusional yang dimohonkan oleh warga negara kepada MK, hingga kini dilakukan melalui pengujian undang-undang terhadap UUD 1945 (*constitutional review*), meskipun tidak sepenuhnya dikabulkan oleh MK, bahkan tidak dapat diterima (*niet ontvankelijk verklaard*). Hal tersebut mengingat tidak diatur kewenangan MK untuk mengadili dan memutus permohonan *constitutional complaint*. Prospek *constitutional complaint* sebagai kewenangan Mahkamah Konstitusi Republik Indonesia untuk mewujudkan negara hukum berdasarkan Pancasila dengan didirikannya MK sebagai lembaga negara dapat diidentifikasi memiliki kewenangan yang bersumber pada kewenangan atribusi yang diatur dalam peraturan perundang-undangan (UUD 1945 dan UU MK). Secara konsepsi kewenangan MK untuk mengadili dan memutus perkara *constitutional complaint* dan *constitutional review* nampak sejalan terhadap perwujudan atas perlindungan dan penghormatan terhadap HAM, sebagaimana dalam konsep negara hukum berdasarkan Pancasila. MK memiliki prospek untuk mengadili dan memutus permohonan *constitutional complaint*.

Kata kunci: *constitutional complaint*, mahkamah konstitusi, Pancasila.

SUMMARY

Strengthen the role of the Constitutional Court (MK) as the guardian of the constitution, the protector of the citizen's constitutional right, and also the guardian of the Pancasila (the guardian of ideology), which is the basis of the state (philosophical reason), way of life, legal ideals, and a belief framework, which are normative and constitutive of Indonesian society. In the state's life, violations of constitutional rights and freedoms often occur that are not caused by the unconstitutionality of legal norms but by the actions or omissions of state institutions or public officials. The purpose of this research is to find out how constitutional complaints in the constitutional system of the Republic of Indonesia create a legal state based on Pancasila and how prospective constitutional complaints are the authority of the Constitutional Court of the Republic of Indonesia for realizing a legal state based on Pancasila. The type of research used in this study is normative legal research through three approach models: the case approach, the comparative approach, and the conceptual approach. Based on the results of this study, the constitutional complaint in the constitutional system of the Republic of Indonesia to create a legal state based on Pancasila states that the Constitutional Court has a role to protect citizens' constitutional rights to actions taken by organs, agencies, and state institutions (executive and legislative branches of power) as a form of the principle of checks and balances. Indonesia has a commitment to guarantee the protection and respect for the constitutional rights of citizens, which must be maintained and realized as a legal state based on Pancasila. Until now, constitutional complaints filed by citizens to the MK have been carried out through a review of a law against the 1945 Constitution (constitutional review), although they have not been fully granted by the MK; they have not even been accepted (niet ontvankelijk verklaard). This is especially true considering that the authority of the Constitutional Court is not regulated to hear and decide on constitutional complaint requests. The prospect of a constitutional complaint as the authority of the Constitutional Court of the Republic of Indonesia to create a legal state based on Pancasila with the establishment of the Constitutional Court as a state institution can be identified as having authority that originates from attribution authority regulated in statutory regulations (the 1945 Constitution and the Constitutional Court Law). Conceptually, the Constitutional Court's authority to adjudicate and decide on constitutional complaints and constitutional review cases appears to be in line with the realization of protection and respect for human rights, as in the concept of a constitutional state based on Pancasila. The Constitutional Court has the prospect of adjudicating and deciding constitutional complaint requests.

Keywords: constitutional complaint, constitutional court, Pancasila.