

## ABSTRACT

The provisions of Article 50 paragraph 1 letter C, Law N0. 6 of 2014 concerning Villages regarding the requirements for Village officials to be registered as villagers and domiciled at least 1 (one) year before registration is considered by the applicants to reduce the rights of every citizen, the Constitutional Court as the protector and guarantor of the constitutional rights of Indonesian citizens. The decision is final and binding, but there are problems related to binding force, and the legal consequences of the implementation of the Constitutional Court Decision Number 128/PUU-XIII/2015 regarding the review of article 50 paragraph 1 letter C of Law N0.6 of 2014 Post-decision problems found in areas- The region triggers the potential for sharp social friction, opening access for candidates for village apparatus or village officials who come from outside the village who are carrying out filling in village apparatus positions, and whether these candidates can be accepted by the community so that several regions in East Java ignore MK Decision No. 128/PUU-XIII/2015 through Regional Regulations, one of which is the Tuban Regional Regulation No. 19 of 2018 concerning Amendments to the Tuban Regional Regulation Number 2 of 2016 concerning Village Apparatus.

The formulation of this research problem; 1) What are the implications of the Constitutional Court's Decision No. 128/PUU-XIII/2015 on the requirements of village apparatus has binding force for the Region 2) What are the legal consequences of several regional regulations in East Java that are not in accordance with the Constitutional Court Decision N0. 128/PUU-XIII/2015. The purpose of this research is to analyze the implications of binding decisions and the legal consequences of several regional regulations in East Java that are not in accordance with the decisions

The method used in this research is normative legal research in the form of a literature review conducted by tracing primary and secondary legal materials, which is carried out through a study of statutory regulations. The research is directed at examining positive laws related to several Regional Regulations in East Java which regulate the requirements of village officials that are not in accordance with the Constitutional Court's decision No. 128/PUU-XIII/2015. The research approach used in this study is the Legislative Approach (Statue Approach) and Conceptual Approach.

The results obtained from the Implications of the Constitutional Court Decision Number 128/PUU-XIII/2015 on the requirements of village officials, namely granting the applicant's request for a review of article 50 paragraph 1 letter

(C) of Law N0 6/2014 contrary to article 27 paragraph (1), article 28 paragraph (2), Article 28D paragraph (1), paragraph (2), and paragraph (3), Article 28H paragraph (2), and Article 28I paragraph (1) of the 1945 Constitution and do not have binding legal force; The decision of the Constitutional Court No. 128/PUU-XIII/2015 has final and binding legal force, namely the decision of the Constitutional Court immediately has permanent legal force since it was pronounced and there are no legal remedies that can be taken. This final character also includes binding legal force (final and binding). Binding legal force means social control that changes behavior that originally limited the constitutional rights of citizens so that there are citizens who lose their active and passive voting rights, thus appointing village officials without requiring them to be domiciled in the local village.

Based on Law Number 12 of 2011, in the preparation of the Prolegda, the List of Draft Regional Regulations is based on one of the higher Legislation Orders. Related to this, several Regional Regulations in East Java that are not in accordance with the Constitutional Court Decision Number 128/PUU-XIII/2015, the legal consequences of these Regional Regulations can be carried out with the mechanism of canceling Regional regulations through the Supreme Court. This is due to the Constitutional Court Decision Number 128/PUU-XIII/2015 which has final and binding legal force; meaning that the decision of the Constitutional Court cannot be canceled even with a new law and hierarchically has a position above the law.

Keywords: Implementation, Binding Power, Legal Consequences, Constitutional Court, and Decisions

## RINGKASAN

Ketentuan Pasal 50 ayat 1 huruf C, UU No. 6 tahun 2014 tentang Desa terkait persyaratan Perangkat Desa harus terdaftar sebagai penduduk desa dan berdomisili sekurang-kurangnya (satu) tahun sebelum pendaftaran dianggap oleh para pemohon melanggar hak setiap warga Negara, Mahkamah Konstitusi sebagai pelindung dan penjamin hak konstitusional warga negara Indonesia. Putusannya bersifat final dan mengikat, namun terdapat problematika berkaitan dengan kekuatan mengikat, dan akibat hukum Implementasi Putusan MK Nomor 128/PUU-XIII/2015 perihal pengujian pasal 50 ayat 1 huruf C UU No. 6 tahun 2014. Problematika pasca putusan yang terdapat di daerah-daerah memicu potensi terjadinya gesekan sosial yang tajam, membuka akses bagi calon perangkat desa atau perangkat desa yang berasal dari luar desa yang sedang melaksanakan pengisian jabatan perangkat desa, dan apakah calon tersebut dapat diterima oleh masyarakat sehingga beberapa daerah di Jawa Timur mengabaikan Putusan MK No. 128/PUU-XIII/2015 melalui Peraturan Daerah salah satunya Perda Tuban No. 19 Tahun 2018 tentang Perubahan Perda Tuban Nomor 2 Tahun 2016 tentang Perangkat Desa.

Rumusan masalah penelitian ini; 1) Apa implikasi Putusan MK No. 128/PUU-XIII/2015 terhadap persyaratan perangkat desa memiliki kekuatan mengikat bagi Daerah 2) Apa akibat hukum terhadap beberapa peraturan daerah di Jawa Timur yang tidak sesuai dengan Putusan MK No. 128/PUU-XIII/2015. Tujuan penelitian untuk menganalisis implikasi putusan mengikat dan akibat hukum beberapa Perda di Jawa Timur yang tidak sesuai dengan putusan.

Metode yang digunakan dalam penelitian ini adalah penelitian hukum normatif berupa kajian pustaka yang dilakukan dengan penelusuran bahan-bahan hukum primer dan sekunder, yang dilakukan melalui kajian terhadap peraturan perundang-undangan. Penelitian diarahkan pada upaya mengkaji hukum positif terkait beberapa Peraturan Daerah di Jawa Timur yang mengatur persyaratan perangkat desa yang tidak sesuai dengan putusan MK No. 128/PUU-XIII/2015. Pendekatan Penelitian yang digunakan dalam Penelitian ini, adalah Pendekatan

Perundang-Undangan (*Statue Approach*) dan Pendekatan Konsep (*conceptual approach*).

Hasil yang di peroleh dari Implikasi Putusan Mahkamah Konsitusi Nomor 128/PUU-XIII/2015 terhadap persyaratan perangkat desa yaitu mengabulkan permohonan pemohon untuk pengujian pasal 50 ayat 1 huruf (C) UU N0 6/2014 bertentangan dengan pasal 27 ayat (1), pasal 28 ayat (2), pasal 28D ayat (1) , ayat (2), dan ayat (3), Pasal 28H ayat (2), serta pasal 28I ayat (1) UUD 1945 dan tidak mempunyai kekuatan hukum mengikat; Putusan Mahkamah Konsitusi No 128/PUU-XIII/2015 mempunyai kekuatan hukum final dan mengikat yakni putusan Mahkamah Konsitusi langsung memperoleh kekuatan hukum tetap sejak diucapkan dan tidak ada upaya hukum yang dapat ditempuh. Sifat final ini mencakup pula kekuatan hukum mengikat (*final and binding*). Kekuatan hukum mengikat bermakna sebagai pengendalian sosial yang mengubah perilaku yang semula membatasi hak konstitusional warga negara sehingga terdapat warga negara yang kehilangan hak pilih aktif maupun pasif, dengan demikian pengangkatan perangkat desa tanpa mensyaratkan harus berdomisili di desa setempat.

Berdasarkan Undang-Undang Nomor 12 Tahun 2011, dalam penyusunan Prolegda, Daftar Rancangan Perda didasarkan salah satu atas Perintah Peraturan Perundang-undangan yang lebih tinggi. Terkait hal tersebut, beberapa Peraturan Daerah di Jawa Timur yang tidak sesuai dengan Putusan Mahkamah Konsitusi Nomor 128/PUU-XIII/2015, maka akibat hukum dari Peraturan Daerah tersebut dapat dilakukan dengan mekanisme pembatalan peraturan Daerah melalui Mahkamah Agung. Hal ini dikarenakan Putusan Mahkamah Konsitusi Nomor 128/PUU-XIII/2015 yang mempunyai kekuatan hukum final dan mengikat ; artinya putusan Mahkamah Konsitusi tidak dapat dibatalkan bahkan dengan UU baru sekalipun dan secara hirerarki memiliki kedudukan diatas UU.

*Kata Kunci : Implementasi ,Kekuatan Mengikat, Akibat Hukum, Mahkamah Konsitusi, dan Putusan*