

ABSTRAK

Penelitian ini mengkaji mekanisme pengaduan konstitusional (*constitutional complaint*) sebagai instrumen perlindungan hak konstitusional warga negara dalam konteks Putusan Mahkamah Konstitusi Nomor 140/PUU-XXI/2023 terkait uji materiil Pasal 330 KUHP terhadap Kompilasi Hukum Islam (KHI). Pasal 330 KUHP, yang mengatur penarikan anak di bawah umur dari kekuasaan sah, sering kali memicu konflik dengan prinsip *hadhanah* dalam KHI, yang mengutamakan hak asuh ibu untuk anak di bawah usia *mumayyiz*. Penelitian ini bertujuan untuk menganalisis kewenangan Mahkamah Konstitusi dalam menangani konflik antara hukum nasional dan hukum Islam, implementasi putusan tersebut terhadap hak individu, serta kendala yang dihadapi dalam menerapkan *constitutional complaint*. Hasil penelitian menunjukkan bahwa meskipun *constitutional complaint* belum diadopsi secara formal di Indonesia, putusan MK tersebut menegaskan perlindungan hak konstitusional atas keluarga dan anak berdasarkan Pasal 28B UUD 1945, meskipun ditolak karena frasa "barang siapa" dalam Pasal 330 KUHP mencakup orang tua kandung. Kendala utama meliputi ketiadaan yurisdiksi formal MK untuk pengaduan individu, ketidakselarasan interpretasi usia dewasa antara KUHP dan KHI, serta tantangan harmonisasi hukum dalam masyarakat plural. Penelitian ini merekomendasikan penguatan regulasi *constitutional complaint* dan integrasi prinsip *maqasid syariah* untuk menciptakan sistem hukum yang inklusif dan adil, termasuk melalui mediasi berbasis agama sebelum penerapan pidana. Implementasi KUHP baru (UU No. 1 Tahun 2023) yang menggantikan Pasal 330 dengan Pasal 452 juga menunjukkan langkah progresif dengan ancaman pidana yang lebih ringan dan pendekatan restoratif.

Kata Kunci: *Constitutional Complaint*, Hak Konstitusional, Pasal 330 KUHP, Kompilasi Hukum Islam, *Hadhanah*, Mahkamah Konstitusi, Hukum Islam, Pluralisme Hukum.

ABSTRACT

This study examines the mechanism of constitutional complaint as an instrument for protecting citizens' constitutional rights in the context of Constitutional Court Decision Number 140/PUU-XXI/2023 regarding the material review of Article 330 of the Criminal Code against the Compilation of Islamic Law (KHI). Article 330, which governs the unlawful removal of a minor from legal custody, often conflicts with the hadhanah principle in KHI, prioritizing the mother's custody rights for children under mumayyiz age. The research aims to analyze the Constitutional Court's authority in addressing conflicts between national law and Islamic law, the implementation of the decision on individual rights, and the challenges in applying constitutional complaint. Using a normative juridical approach and library research method, this study employs statutory, case, and conceptual analyses to evaluate legal norm harmonization. Findings indicate that, although constitutional complaint is not formally adopted in Indonesia, the decision affirms the protection of constitutional rights to family and children under Article 28B of the 1945 Constitution, despite rejection due to the phrase "anyone" in Article 330 covering biological parents. Major challenges include the absence of formal MK jurisdiction for individual complaints, discrepancies in defining adulthood between the Criminal Code and KHI, and harmonization issues in a pluralistic society. The study recommends strengthening constitutional complaint regulations and integrating maqasid syariah principles to create an inclusive and just legal system, including through religion-based mediation before criminal sanctions. The implementation of the new Criminal Code (Law No. 1 of 2023), replacing Article 330 with Article 452, reflects progressive steps with lighter penalties and a restorative approach.

Keywords: *Constitutional Complaint, Constitutional Rights, Article 330 Criminal Code, Compilation of Islamic Law, Hadhanah, Constitutional Court, Islamic Law, Legal Pluralism.*