

# TINJAUAN YURIDIS TERHADAP PERZINAHAN YANG DILAKUKAN DI LUAR PERKAWINAN

(STUDI PUTUSAN MAHKAMAH KONSTITUSI NOMOR.46/PUU-XIV/2016)

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## ABSTRAK

Mahkamah Konstitusi (sering disebut MK) tidak lepas dari yurisdiksi judicial review. Sistem tinjauan undang-undang adalah cara bagi negara hukum modern untuk mengontrol dan menyeimbangkan (memeriksa dan menyeimbangkan) kekuasaan pembuat undang-undang yang sewenang-wenang. Kewenangan MK sendiri untuk melakukan uji materi sebenarnya merupakan hasil dari perkembangan negara modern yang bertumpu pada *rule of law*, pemisahan kekuasaan, serta perlindungan dan pemajuan hak asasi manusia (*protection of basic rights*). Melalui Putusan No. 46/PUU-XIV/2016 (Uji Materi Pasal Kesusilaan dalam KUHP). Mahkamah Konstitusi menolak secara keseluruhan gugatan pemohon tentang permohonan uji materi Pasal 284, Pasal 285 dan Pasal 292 KUHP perihal perzinahan. dalam Perkara Nomor 46/PUU-XIV/2016. Tujuan penelitian ini untuk mengkaji lebih mendalam lagi tentang apa itu perzinahan dan memperluas cakupan arti perzinahan dengan menggunakan metode penelitian hukum normatif yang bersifat deskriptif. Dan juga membahas yaitu bagaimana tindak pidana perzinahan hubungan diluar perkawinan berdasarkan hukum positif yang berlaku dinegara Indonesia dan dan bagaimana cara penerapan putusan Mahkamah Konstitusi Nomor.46/PUU-XIV/2016 tentang perzinahan diluar perkawinan dalam prakteknya. Sumber bahan hukum yang digunakan berupa bahan hukum primer, sekunder. Mahkamah Konstitusi telah menjalankan kedudukannya sebagai *negative legislator* yang hanya sebagai penguji norma peraturan perundang-undangan. Mahkamah Konstitusi dapat menyatakan suatu norma dalam undang-undang konstitusional bersyarat ataupun inkonstitusional bersyarat yang mempersyaratkan pemaknaan tertentu terhadap suatu norma dalam undang-undang untuk dapat dikatakan konstitusional, namun Mahkamah Konstitusi dituntut untuk tidak boleh masuk wilayah kebijakan hukum terbuka pembuat undang-undang. Putusan tersebut juga menimbulkan akibat hukum, Putusan yang dihasilkan oleh mahkamah konstitusi bersifat final, tidak memiliki upaya hukum untuk ditinjau kembali.

Kata Kunci: Kewenangan, LGBT, Mahkamah Konstitusi, Perzinahan, Persetubuhan,

## ABSTRACT

*The Constitutional Court (often referred to as the MK) cannot be separated from the jurisdiction of judicial review. The statutory review system is a way for the modern rule of law to control and balance (check and balance) the powers of arbitrary legislators. The authority of the Constitutional Court itself to conduct a judicial review is actually the result of the development of a modern state that rests on the rule of law, separation of powers, and protection of basic rights. Through Decision No. 46 / PU-XIV / 2016 (Review of the Material of Decency Articles in the Criminal Code). The Constitutional Court completely rejected the*

*petitioner's claim regarding the petition for judicial review of Article 284, Article 285 and Article 292 of the Criminal Code for adultery. in Case Number 46 / PUU-XIV / 2016. The purpose of this study is to examine more deeply about what adultery is and to expand the scope of the meaning of adultery by using descriptive normative legal research methods. And also I discussed, namely how the criminal act of adultery outside marriage is based on the positive law applicable in the country of Indonesia and and how to implement the Constitutional Court decision Number 46 / PUU-XIV / 2016 regarding adultery outside of marriage in practice. Sources of legal materials used are primary and secondary legal materials. The Constitutional Court has exercised its position as a negative legislator who only tests the norms of legislation. The Constitutional Court can declare a norm in a conditional or unconstitutional constitutional law which requires a certain meaning of a norm in a law to be said to be constitutional, however the Constitutional Court is required not to be allowed to enter the open law policy area of legislators. This decision also has legal consequences. The decision produced by the constitutional court is final, it does not have any legal remedies to be reviewed. The Constitutional Court (often referred to as the MK) cannot be separated from the jurisdiction of judicial review. The statutory review system is a way for the modern rule of law to control and balance (check and balance) the powers of arbitrary legislators. The authority of the Constitutional Court itself to conduct a judicial review is actually the result of the development of a modern state that rests on the rule of law, separation of powers, and protection of basic rights. Through Decision No. 46 / PU-XIV / 2016 (Review of the Material of Decency Articles in the Criminal Code). The Constitutional Court completely rejected the petitioner's claim regarding the petition for judicial review of Article 284, Article 285 and Article 292 of the Criminal Code for adultery. in Case Number 46 / PUU-XIV / 2016. The purpose of this study is to examine more deeply about what adultery is and to expand the scope of the meaning of adultery by using descriptive normative legal research methods. And also I discussed, namely how the criminal act of adultery outside marriage is based on the positive law applicable in the country of Indonesia and and how to implement the Constitutional Court decision Number 46 / PUU-XIV / 2016 regarding adultery outside marriage in practice. Sources of legal materials used are primary and secondary legal materials. The Constitutional Court has exercised its position as a negative legislator who only tests the norms of legislation. The Constitutional Court can declare a norm in a conditional or unconstitutional constitutional law which requires a certain meaning of a norm in a law to be said to be constitutional, however the Constitutional Court is required not to be allowed to enter the open law policy area of legislators. This decision also has legal consequences. The decision produced by the constitutional court is final, it does not have any legal remedies to be reviewed.*

**Keyword:** Authority, LGBT, Constitutional Court, Adultery, Copulation,