



PERTIMBANGAN HAKIM DALAM PENANGANAN PERKARA HATE CRIME BERBASIS AGAMA

INTISARI

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Penelitian ini bertujuan untuk mengetahui dan menganalisis keputusan hakim dalam mempertimbangkan perkara berlatar belakang kejahatan kebencian berbasis agama yang berakibat pada berat-ringannya suatu pidana yang dijatuhkan agar mencapai putusan yang objektif dan untuk mengetahui, mengkaji dan menganalisis mengenai urgensi pembentukan peraturan perundang-undangan mengenai kejahatan kebencian pada masa yang akan datang.

Penelitian ini menggunakan metode pendekatan hukum normatif yang menggunakan data sekunder dengan didukung oleh data primer. Data primer diperoleh melalui hasil wawancara dengan responden dan narasumber, sedangkan data sekunder diperoleh melalui penelitian kepustakaan yang bersumber dari sumber hukum primer, sumber hukum sekunder, dan sumber hukum tersier. Data yang diperoleh kemudian disusun secara sistematis dan dianalisis secara kualitatif untuk mendapatkan penjelasan dari masalah yang dibahas.

Terhadap hasil penelitian dan pembahasan dalam penelitian ini, diperoleh dua kesimpulan. **Pertama**, bahwa hakim dalam pertimbangannya untuk menangani beberapa putusan yang berlatarbelakang *Hate Crime* berbasis agama terlalu bersandarkan pada peraturan tertulis dan terpaku pada surat dakwaan, sedangkan Pasal 3 dan Pasal 5 Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman memberikan kewajiban sekaligus kewenangan bagi hakim dalam kebebasannya untuk menggali, mengikuti dan memahami nilai-nilai yang berlaku dalam masyarakat untuk mencapai keadilan. Pertimbangan yuridis dan non yuridis yang diberikan kurang argumentatif dan memadai berdasarkan aspek filosofis, yuridis, sosiologis dan moral, mengingat kompleksitas perkara dari dampak sosial yang ditimbulkan. Hal ini akan berpengaruh terhadap putusan hakim sebagai putusan yang objektif. **Kedua**, bahwa *Hate Crime* berbasis agama belum diatur secara spesifik di Indonesia dan belum memberikan arah yang jelas mengenai definisinya. Berdasarkan hal tersebut, legislator maupun hakim dalam yurisprudensinya perlu memberikan pedoman tegas mengenai *Hate Crime* berbasis agama agar tidak terjadi ketimpangan dan multitafsir dalam pelaksanaannya untuk mewujudkan putusan yang objektif.

Kata Kunci: pertimbangan hakim, *hate crime* berbasis agama, putusan yang objektif

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JUDGE CONSIDERATION IN DECIDING RELIGION BASED HATE CRIME

ABSTRACT

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This research is conducted with the objectives to (a) identify and analyze a judge's decision in considering a case with a background of religion-based hatred, which consequently leads to how lenient or strict a verdict is made upon a crime in order to obtain objective decisions; and (b) identify, examine and analyze the urgency of the making of laws and regulations regarding hate crime in the future.

This research implemented the legal method of normative approach, utilizing secondary data and supported by primary data. Primary data are obtained through interview with respondents and interviewees, while secondary data are acquired through library research that consist of primary, secondary, and tertiary legal materials. Collected data would then be assorted in a systematic way and analyzed qualitatively in order to obtain the elaboration of the issue in discussion.

Regarding the result of this research and the discussion herein, it came down to two points of conclusions. **First**, that a judge, in his consideration prior to his decision upon the case with a background of hate crime, was too adhered with written regulations and was transfixed upon the indictment, while Article 3 and Article 5 of Law Number 48 of 2009 concerning Judiciary Power extend both an obligation and authority for a judge in his freedom to delve in, grasp and comprehend the values and norms that exist in a society in order to obtain justice. The juridical and non-juridical considerations given by the judge were insufficient, in the sense that they were less argumentative and insubstantial based on philosophical, juridical, sociological and moral aspects, bearing in mind the complexity of the case from which it caused a social impact. Such thing will affect the judge's decision as an objective one. **Second**, that religion-based *Hate Crime* had not specifically been regulated yet in Indonesia and even had not established a clear direction of its true definition. Based on such conclusions, both legislators and judges in their jurisprudences should give clear and strict guidelines regarding religion-based *Hate Crime* to prevent any injustice and multi-interpretation in practice, hence resulting objective decisions in court.

Keywords: judge consideration, religion-based hate crime, objective decision

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