

PENERAPAN KEADILAN RESTORATIF DALAM PUTUSAN PENGADILAN YANG MENYAMPINGKAN BATAS WAKTU PENCABUTAN PENGADUAN

I Wayan Agus Wilayana¹ dan Marcus Priyo Gunarto²

INTISARI

Penelitian ini bertujuan menggambarkan penerapan penyimpangan batas waktu pencabutan pengaduan dan metode yang digunakan oleh hakim dalam pertimbangan mewujudkan keadilan restoratif dalam putusan pengadilan.

Penelitian ini bersifat normatif empiris karena menggunakan data primer didukung dengan metode wawancara terhadap responden dan data sekunder diperoleh dari penelitian kepustakaan, kemudian dianalisis secara kualitatif dengan metode deskriptif dan preskriptif.

Berdasarkan hasil penelitian dan pembahasan disimpulkan sebagai berikut: *Pertama*, Hakim berdasarkan kewenangan dalam undang-undang nomor 48 tahun 2009 tentang kekuasaan Kehakiman, pasal 2 ayat (1) disebutkan Peradilan dilakukan Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa, pasal 5 ayat (1) disebutkan Hakim dan Hakim konstitusi wajib menggali, mengikuti dan memahami nilai-nilai hukum dan rasa keadilan yang hidup dalam masyarakat, dapat melakukan penyimpangan batas waktu pencabutan pengaduan, dengan syarat adanya pengajuan permohonan oleh pengadu yang disertai alasan-alasan dalam perdamaian, namun praktik Hakim masih mengutamakan kepastian hukum dan kurangnya pengetahuan masyarakat tentang adanya hak untuk mencabut pengaduan. *Kedua*, Metode penemuan hukum berguna sebagai dasar pertimbangan Hakim dalam menjatuhkan putusan. Metode penemuan hukum yang bisa digunakan hakim dalam memutus perkara delik aduan yaitu Interpretasi teleologi atau sosiologis dan Interpretasi Historis. *Ketiga*, Konsep keadilan restoratif dalam sistem peradilan pidana selain diversi dan delik aduan masih dalam tahap berat ringannya pidana. *Keempat*, Agar Hakim lebih berani untuk menjatuhkan putusan dengan mengutamakan keadilan restoratif, lebih memahami nilai-nilai dan rasa keadilan dalam masyarakat, menjadikan tekanan dari luar seperti pemberitaan di media massa, demo dan lain sebagainya sebagai pemicu untuk membuat putusan yang memenuhi rasa keadilan masyarakat. *Kelima*, Agar aparat penegak hukum khususnya Hakim merubah paradigma dari keadilan retributif menjadi keadilan restoratif (pemulihan) dan selalu mengupayakan penyelesaian perkara yang mencerminkan keadilan restoratif. Hakim lebih mengoptimalkan metode penemuan hukum untuk mewujudkan keadilan restoratif.

Kata Kunci: Delik Aduan, Keadilan Restoratif, Putusan Pengadilan.

¹ Mahasiswa Program S-2 Magister Hukum Litigasi FH UGM Kampus Jakarta (wayan_wilayana@yahoo.co.id).

² Dosen Program S-2 Magister Hukum Litigasi FH UGM Yogyakarta (marcupriyogunarto@yahoo.co.id).

THE IMPLEMENTATION OF RESTORATIVE JUSTICE IN COURT DECISION SETTING ASIDE TIME LIMIT OF COMPLAINT WITHDRAWAL

I Wayan Agus Wilayana¹ dan Marcus Priyo Gunarto²

ABSTRACT

This research aims at describing the implementation of setting aside time limit of complaint withdrawal and methods taken into account by Judge to actualize restorative principles in court decision.

The present research belongs to empirical-normative study since it used primary data supported by interviews on respondents and secondary data obtained from literature reviews, which were later analyzed qualitatively using descriptive and prescriptive methods.

Based on the findings and discussions, the conclusions are derived as follows. *First*, Judge, pursuant to the competence in Law Number 48 Year 2009 concerning Judicial Authorities, Article 2 Section (1) mentioning that judiciary is conducted for the sake of Justice based on the principle of the One and Only God, and Article 5 Section (1) mentioning that Judge and Constitutional Court's Judge must elicit, follow, and understand legal values and sense of justice existing in society, is able to set aside the time limit of complaint withdrawal, on the condition that the plaintiff prosecutes a complaint request with excuse for settlement; however, in practice, Judge tends to give priority to legal certainty and people have lack of knowledge on the rights to withdraw complaint. *Second*, method for law finding is taken into consideration by Judge to hand down a decision. The law finding methods that can be used by Judge to sentence offence that warrants complaint include teleological or sociological interpretation and historical interpretation. *Third*, the concept of restorative justice in criminal justice system, except for diversion and the offence that warrants complaint, is still at the stage of either major or minor crime. *Fourth*, it is suggested that Judge hands down decision more bravely by prioritizing restorative justice, understands legal values and sense of justice existing in society more, and considers such pressures as news in mass media, demonstration, etc., as triggers to pass a decision in accordance with people's sense of justice. *Fifth*, it is also suggested that law enforcement officials, particularly Judge, change the paradigm, from retributive justice to restorative justice (restoration) and keep striving for crime clearance reflecting the restorative justice. Judge, therefore, needs to optimize the law finding methods to bring restorative justice into reality.

Keywords: offence that warrants complaint, restorative justice, court decision.

¹ Student of Master Program in Litigation Law of the Faculty of Law of Gadjah Mada University at Campus of Jakarta (wayan_wilayana@yahoo.co.id).

² Lecturer of Master Program in Litigation Law of the Faculty of Law of Gadjah Mada University at Campus of Yogyakarta (marcupriyogunarto@yahoo.co.id).