

RINGKASAN

Perkembangan peradaban manusia yang ditandai dengan kemajuan ilmu dan teknologi, yang diiringi oleh perkembangan ragam bentuk kejahatan. Dalam konteks ini sejumlah pelanggaran hukum dan kejahatan publik dan kemanusiaan baik masa lalu, maupun yang akhir-akhir ini tidak semuanya diatur dalam KUHP Akibatnya, akselerasi perkembangan hukum lebih lambat jika dibandingkan dengan perkembangan ragam bentuk kejahatan. Hal ini wajar karena perkembangan hukum membutuhkan legalitas dari lembaga yang berwenang sedangkan kejahatan tidak membutuhkan legalitas tetapi illegalitas kreativitas para pelaku.

Pemberlakuan asas retroaktif dalam ketentuan hukum pidana di Indonesia berawal dari karakter asas legalitas yang di dalam prakteknya mengharuskan suatu hukuman itu diatur terlebih dahulu di dalam suatu ketentuan hukum yang tertulis. Namun disisi lain ragam dan bentuk kejahatan semakin berkembang dan tidak semuanya sudah diatur dalam ketentuan hukum yang tertulis. Secara historis tujuan digunakan asas legalitas adalah untuk membatasi keinginan manusia untuk melakukan kejahatan. Misi utama dalam asas legalitas adalah *kepastian hukum*, suka atau tidak suka dalam perkembangan sistem hukum, Indonesia menganut civil law sistem, kalau sistemnya civil law system maka hukumnya kodifikasi sehingga dasarnya adalah legalitas. Namun dalam praktek sering terjadi benturan antara kepastian hukum dan keadilan, kalau hal ini yang terjadi maka keadilan harus didahulukan, adanya tuntutan keadilan inilah yang melahirkan asas retroaktif. Pada dasarnya asas legalitas bukan digunakan dalam kaitan dengan pembatasan ruang lingkup jangkauan hukum pidana dalam menjerat pelaku kejahatan, kemudian sumber hukum dalam menentukan suatu perbuatan sebagai tindak pidana tidak saja didasarkan pada hukum yang tertulis akan tetapi juga didasarkan pada hukum tidak.

Perkembangan bentuk kejahatan yang terjadi dan tidak dapat diselesaikan dengan undang-undang yang ada, menimbulkan niat pemerintah untuk memberlakukan asas retroaktif. Dasar pemikiran dalam pemberlakuan asas retroaktif adalah dalam rangka untuk melindungi warga negara dan memelihara perdamaian dunia. Pemberlakuan asas retroaktif merupakan suatu kebijakan yang diambil oleh Pemerintah untuk ikut memelihara perdamaian dunia dan menjamin pelaksanaan hak asasi manusia memberi perlindungan, kepastiaan, keadilan perasaan aman kepada orang perorangan ataupun masyarakat. Prinsip-prinsip yang ada dalam pemberlakuan asas retroaktif adalah (1) national security, (2) balance of justice, (3) safeguarding rules, (4) safe harbor rules, (5) sunnshine principle dan (6) sunset principle.

Pemberlakuan asas retroaktif pada dasarnya tidak mengganggu eksistensi asas legalitas, namun sebaliknya mendukung pelaksanaan asas legalitas. Akan tetapi pemberlakuan asas retroaktif haruslah dibatasi agar tidak terjadi bias. Bentuk-bentuk kejahatan yang dapat diberlakukan asas retroaktif hendaknya hanya diperuntukkan terhadap kejahatan-kejahatan yang bersifat kemanusiaan dan merupakan extra ordinary crime.

SUMMARY

The advance of human civilization with all progress on science and technology was also followed by the advance of crime, in this context all law violation and public crime which happen in the past or happen earlier not all of them is stated in KUHP, which slow down the advance of law if compare with the advance of crime, this is natural because law advance of crime doesn' need legality but illegality of the suspect creativity.

The adoption of the principle of retroactive on criminal law in Indonesia start from the character of the principle of legality which in practical force a law to be written before it could apply, but in the other hand from of crime is advancing and not all of them was stated on the written law. Based on the history, the purpose for being used the principle legality for limiting the desire of human being for doing the crime. Principle legality is all about definite law, because in history Indonesia was adopt civil law system, and if the system is civil law system the law is codification so the basic is legality. But in practical conflict frequently happen between definite law and justice that brought principle retroactive, and the source of law in determining an action as a crime is not only based on written law but also unwritten law/living law.

The advance of crime that happen and could not be finished with the current law make the Government try to adopt the principle of retroactive. The basic of thinking in adopting the principle of retroactive in criminal law is in order to protect the citizens and world peace, the adoption of principle retroactive is a government policy for taking to preserve the world peace and to guarantee human right to give protection, assurance, justice, safeness to people or community. The principle on adopting the principle retroactive in criminal law is (1) national security 2) balance of justice, (3) safeguarding rules,(4) safe harbor rules, (5) sunnshine principle dan (6) sunset principle

The adoption of principle retroactive basic in general not interfere with the existance of principle legality, but instead as complement for the principle legality, however the use of the principle of retroactive must limited to prevent bias. From of crime that should punished with the principle of retroactive should only limited to crime on mankind and extra ordinary crime.

ABSTRACT

The principle of retroactive is born as demand of justice sense to legality, whereas principle of legality is all about definite law, which has a main characteristic as a law must in written form. Indonesia adopt legality basic, which is consequence of adopted law system, civil law system, but in progress there's some law that use retroactive basic, which draw agreement and disagreement on the existence of principle legality.

This study reveal what become the basic and what principle in criminal law that use principle of retroactive. The method that be used on this study is normative jurisdiction type research with statute approach and history approach, so that the law issues could be analyzed correctly.

The result show that principle of retroactive was used because development of new crime form, and that new form of crime could not be punished KUHP, because principle of legality is what KUHP use, if principle of legality was forced strictly it will be difficult to achieve justice, in the other hand its not fair that there's a crime which could not be punished because not stated in the law. To solve the problem, principle of retroactive could be adopt on criminal law to achieve justice, so that principle of retroactive in general not interfere the existence of principle of legality but as a complement of principle of legality .

Keyword:

- The principle of retroactive
- The development of new crime form.

