

# Kajian Terhadap Pengecualian Pemberlakuan Asas Nonretroaktif Dalam Kasus Bom Bali I

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## Abstrak

Hak untuk tidak dituntut berdasarkan hukum yang berlaku surut diakui dalam konstitusi Indonesia, namun dalam penanganan peristiwa Bom Bali I, menunjukkan hak atas perlindungan dari hukum pidana yang berlaku surut adalah hak asasi manusia yang tidak mutlak di Indonesia. Penelitian ini mengkaji penerapan asas non retroaktif dalam peradilan kasus Bom Bali I, sehingga diketahui alasan kenapa diterapkannya prinsip retroaktif, dan diketahui apakah putusan pidana terhadap pelaku Bom Bali I memiliki keberlakuan hukum. Pendekatan yang dipergunakan diantaranya: interpretasi oleh mereka yang melaksanakan peradilan pidana, pendekatan perundang-undangan (statute approach), yang berkaitan dengan penegakan hukum dalam sistem peradilan pidana, dan pendekatan konsep (conceptual approach) digunakan untuk memahami konsep-konsep "aw-in-action" dalam penerapan asas legalitas dan asas non retroaktif. Terhadap kejadian yang luar biasa (terorisme), pemberlakuan prinsip retroaktif merupakan representasi hak para korban untuk mendapatkan/mencapai keadilan yang penerapannya bersifat terbatas. Tolak ukur keadilan dalam masyarakat dijadikan alasan utama dalam menyimpangi asas fundamental dalam sistem peradilan, yang dapat berdampak merusak tatanan penegakan hukum di Indonesia. Proses penegakan hukum terhadap pelaku Bom Bali I tetap memiliki keberlakuan hukum karena aturan yang digunakan telah disahkan sesuai sesuai konstitusi negara dan diterima oleh sebagian besar masyarakat, jadi dapat dikatakan "rasa keadilan mengenyampingkan asas fundamental". (A.A Ngr Jayalantara, NPM: 1006788933).

.....Right not to be prosecuted under retroactive law is recognized in the constitution of Indonesia, but in handling the 1st Bali bombing incident, application of the right to protection from retroactive criminal law is a human right was not always absolute in Indonesia. This study examines the application of the principle of non retroactive in judicial case of the 1st Bali Bombing, so in mind the reason why the principle of retroactive are applied, and known whether that the decision punishment of Bali bombers are have legal validity. The approach that used such as: the interpretation by those how implemented criminal justice, regulatory approach (the statute approach) that relating to the enforcement of the criminal justice system, and conceptual approach that used to understand the concept of "law-in-action" in the application of the principle of legality and the principle of non retroactive. For extra ordinary crimes (terrorism), the application of retroactive principle represent a rights of victims to get/achieve justice that its application is limited. The Measure of justice in society in the main excuse deviate fundamental principle in the judicial system, which can have devastating effects on the order of law enforcement in Indonesia. Law enforcement against perpetrators of the 1st Bali Bombing still have legal validity because rules that are used have been validated according to the state constitution and accepted by most people, so it can be said to be "justice set aside the fundamental principle ". (A.A Ngr Jayalantara, NPM: 1006788933)