

# Perbandingan Pemulihan Biaya Honorarium Advokat Sebagai Kerugian Dalam Upaya Mengatasi Vexatious Litigation Di Inggris = Comparasion Of The Recovery Of The Cost Of An Advocate's Honorarium As A Loss In An Effort To Overcome Vexatious Litigation In Indonesia And The United Kingdom

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## Abstrak

Menjelang 100 tahun kemerdekaan negara ini, nyatanya banyak penyelesaian permasalahan hukum yang masih berpedoman pada produk legislasi era Pemerintahan Hindia Belanda seperti Herzienne Indonesisch Reglement (HIR)–S. 1941 No. 44 dan Rechtsreglement Buitengeweten (RBg)–S. 1927 No. 277 yang masih dianggap berlaku. Salah satunya adalah Pasal 118 HIR yang tidak mewajibkan para pihak untuk mewakilkan penyelesaian perkaranya kepada orang lain. Alhasil, pasal tersebut menjadi sebuah alasan bagi hakim-hakim di pengadilan untuk menolak gugatan yang memintakan agar pihak lawan menanggung ganti kerugian berupa biaya honorarium advokat yang telah dikeluarkan. Padahal dengan dapat dipulihkannya biaya honorarium advokat melalui mekanisme ganti kerugian, maka diharapkan kedepannya fenomena gugatan sembrono (vexatious litigation) akan menurun dikemudian hari. Alasannya karena penggugat akan lebih mempertimbangkan langkahnya sebelum mengajukan gugatan, sebab dia kemungkinan akan menanggung biaya honorarium advokat pihak lawannya sebagai kerugian apabila gugatan tersebut terbukti sebagai gugatan sembrono (vexatious litigation). Pemulihan biaya honorarium advokat di Inggris sendiri sudah lebih lama berlaku melalui doktrin pengalihan biaya (cost shifting), atau pecundang membayar (loser pays), atau follow the event. Secara umum prinsip tersebut mewajibkan pihak yang gagal memenangkan perkara untuk membayar biaya pihak yang memenangkan perkara. Prinsip tersebut juga telah memperoleh payung hukum berupa Hukum Acara Perdata (Civil Procedure Rules) (CPR) tahun 1998, (Costs Practice Direction atau CPD), Civil Supreme Court Practice (SCP) atau Rule of the Supreme Court (RSC). Melihat dari perbandingan pengaturan pengalihan biaya honorarium advokat dengan Inggris dapat menghantarkan kita pada sebuah pandangan bahwa pemikiran atau pandangan hukum progresif dalam penggunaan konsep kerugian tampaknya belum sepenuhnya melandasi pembentukan hukum di Indonesia

.....Approaching the 100th anniversary of this country's independence, many legal dispute resolutions are still to this day guided by legislative products from the Dutch East Indies era such as the Herzienne Indonesisch Regulation (HIR)–S. 1941 No. 44 and Rechtsreglement Buitengeweten (RBg)–S. 1927 No. 277. One of such archaic regulations can be found on Article 118 HIR which does not oblige the parties to be represented in the settlement of their cases by an advocate, which is still in power. As a result, the article becomes an excuse for the judges at the court to reject a lawsuit requesting that the opposing party bear compensation in the form of an attorney's fee that has been issued. With the restoration of an advocate's honorarium through a compensation mechanism, it is hoped that in the future the phenomenon of reckless litigation will decrease significantly. This should cause the plaintiff to be more considerate before filing in a lawsuit, because he is likely to bear the cost of the opposing party's advocate's honorarium as a loss if the lawsuit is proven to be a reckless lawsuit (vexatious litigation). The recovery of advocate's honorarium in England itself has been in effect for a long time through the doctrine of cost shifting, or loser pays, or follow

the event principle. In general, this principle obliges the party who fails to win the case to pay the costs of the party who won the case. This principle has also obtained a legal umbrella in the form of Civil Procedure Rules (CPR) of 1998, (Costs Practice Direction or CPD), Civil Supreme Court Practice (SCP) or Rule of the Supreme Court (RSC). Judging from the comparison of the regulation of the recovery of the cost of an advocate's honorarium with the UK, it can lead us to a view that progressive legal ideas or views in the use of the concept of loss do not seem to fully underlie the formation of law in Indonesia.