

ABSTRAK

Penelitian disertasi ini bertujuan: 1) mengidentifikasi dan menganalisis ide dasar/konsep dasar pengaturan asas *lex tempus delicti* hukum pidana dalam KUHP saat ini; 2) mengidentifikasi dan menganalisis kelemahan-kelemahan *lex tempus delicti* dalam KUHP; 3) membuat rekonstruksi ideal *lex tempus delicti* hukum pidana nasional berbasis nilai-nilai Pancasila.

Penelitian dilakukan dengan metode penelitian hukum normatif, yakni terhadap asas-asas hukum pidana dalam KUHP, khususnya *lex tempus delicti*. Penelitian perbandingan hukum untuk mendukung penelitian normatif, yakni penelitian hukum pidana negara lain. Metode pendekatan penelitian : hermeneutik, peraturan perundang-undangan dan konseptual. Spesifikasi penelitian eksploratif dan deskriptif analitis. Analisis data dilakukan dengan metode analisis kualitatif induktif.

Hasil penelitian : 1) Pengaturan *tempus delicti* di dalam KUHP tidak mampu dijadikan dasar hukum untuk mengatasi problem kejahatan dan tuntutan keadilan. 2) Kelemahan-kelemahan asas-asas *lex tempus delicti* dalam KUHP adalah : a. Didasarkan pada nilai-nilai filosofi dan sosial yakni individual negara Barat. b. Kelemahan *lex tempus delicti* : Pemberlakuan prinsip *nonretroaktif* tidak berlaku mutlak; Ketidakpastian asas *lex tempus delicti* dalam makna kata “perubahan perundang-undangan”; Orientasi pengecualian asas *nonretroaktif* hanya bagi kepentingan oknum pelaku; Ketidak-jelasan kapan waktu perubahan undang-undang dapat diberlakukan; c. Penentuan *lex tempus delicti* terjadinya tindak pidana belum ada; d. Kelemahan *lex tempus delicti* dalam perundang-undangan di luar KUHP : dalam UU ITE tidak diatur secara jelas; dalam Qanun Aceh No. 6 Tahun 2014 tentang Hukum Jinayat tidak menguntungkan pelaku anak. 3) Rekonstruksi *lex tempus delicti* dalam KUHP berbasis nilai keadilan Pancasila : a. Rekonstruksi Nilai : Mengintegrasikan nilai-nilai keseimbangan dan keadilan Pancasila yaitu moral-religius, humanistik dan kemasyarakatan (nasionalistik dan keadilan sosial). b. Rekonstruksi Norma : melaksanakan rekonstruksi Pasal 1 dan Pasal 2 KUHP.

Implikasi teoritis penelitian : Teori baru yaitu “Teori Kemanusiaan dan Keadilan Pancasila”. Nilai kemanusiaan dan Keadilan Pancasila dimaknai adanya ketentuan yang mengandung asas-asas Hukum Pidana Nasional yang menetapkan batas-batas berlakunya asas *tempus delicti*. Implikasi praktis penelitian: Pemerintah bersama DPR RI segera menyelesaikan program legislasi nasional khususnya rekonstruksi norma berupa pembaharuan asas-asas yang terkandung dalam Bab I KUHP sesuai nilai kemanusiaan dan keadilan Pancasila.

Kata kunci : *Lex Tempus Delicti*, Hukum Pidana Nasional, KUHP, Keadilan, Pancasila.

ABSTRACT

This dissertation research aims: 1) identifying and analyzing the basic ideas/basic concepts in the regulation of the *lex tempus delicti* principle of criminal law in the current Penal Code; 2) identify and analyze the weaknesses of *lex tempus delicti* in the Criminal Code; 3) make an ideal reconstruction of the *Lex tempus delicti* national criminal law based on Pancasila values.

The study was conducted with the method of normative legal research, namely the principles of criminal law in the Criminal Code, specifically *lex tempus delicti*. Comparative legal research to support normative research, namely criminal law research in other countries. Research approach methods: hermeneutics, statutory regulations and conceptual. Specifications explorative and analytical descriptive research. Data analysis was performed using inductive qualitative analysis methods.

The results of the study: 1) The regulation of *tempus delicti* in the Criminal Code cannot be used as a legal basis for overcoming the problem of crime and demands for justice. 2) The weaknesses of the *lex tempus delicti* principles in the Criminal Code are: a. Based on philosophical and social values, namely individual Western countries. b. Weaknesses of *lex tempus delicti*: The application of the nonretroactive principle does not apply absolutely; The uncertainty of the principle of *lex tempus delicti* in the meaning of the word "changes in legislation"; The orientation of the exception of the nonretroactive principle is only for the interests of the individual perpetrators; It is unclear when the law changes can take effect; c. Determination of the *lex tempus delicti* crime has not yet occurred; d. Weaknesses of *lex tempus delicti* in legislation outside the Criminal Code: in the ITE Law it is not clearly regulated; in the Aceh Qanun No. 6 of 2014 concerning the Jinayat Law does not benefit child offenders. 3) Reconstruction of *lex tempus delicti* in the Criminal Code based on the value of Pancasila justice: a. Value Reconstruction: Integrating the values of Pancasila balance and justice, namely moral-religious, humanistic and social (nationalistic and social justice). b. Norm Reconstruction: carry out reconstruction of Article 1 and Article 2 of the Criminal Code.

Theoretical implications of research: The new theory is "The Theory of Humanity and Justice in Pancasila". The value of humanity and justice of Pancasila is interpreted as having provisions containing the principles of the National Criminal Law that establish the limits of the validity of the *tempus delicti* principle. Practical implications of the study: The Government together with the Indonesian Parliament will immediately complete the national legislation program, particularly the reconstruction of norms in the form of the renewal of the principles contained in Chapter I of the Criminal Code in accordance with the values of Pancasila and humanity and justice.

Keywords: *Lex Tempus Delicti*, National Criminal Law, Criminal Code, Justice, Pancasila.