

Enforcement of the Non-Retroactive Principle in the Bali Bombing Case I in the Constitutional Court of Indonesia Decision Number 013 / PUU-I / 2003

I Made Gemet Dananjaya Suta*, I Gusti Agung Mas Prabandari and Ida Ayu Agung Saraswati

Faculty of Law Udayana University and Faculty of Law Airlangga University

*danan.ade@gmail.com

Published: 25/07/2021

How To Cite:

Suta, I, M, G, D., Prabandari, I, G, A, M., Saraswati, I, A, A. (2021). Enforcement of the Non-Retroactive Principle in the Bali Bombing Case I in the Constitutional Court of Indonesia Decision Number 013 / PUU-I / 2003. *KERTHA WICAKSANA: Sarana Komunikasi Dosen dan Mahasiswa*. 15 (2). Pp 108 - 115. <https://doi.org/10.22225/kw.15.2.2021.108-115>

Abstract

Penerapan asas retroaktif pada kasus bom Bali I berdasarkan Undang-Undang Nomor 16 Tahun 2003 dimaksudkan untuk memberikan rasa keadilan kepada masyarakat, namun uji materil atas penerapan norma retroaktif tersebut dinilai inkonstitusional oleh Mahkamah Konstitusi melalui keputusan nomor 013/PUU-I/2003. Pro dan kontra dari putusan tersebut terjadi di masyarakat, antara menegakkan kepastian hukum atau memenuhi rasa keadilan bagi para korban. Tulisan ini berupaya mengkaji putusan Mahkamah Konstitusi No. 013/PUU-I/2003 dengan memaparkan pertimbangan hukum MK dalam memutus perkara tersebut. Metode penelitian yang digunakan dalam penelitian ini adalah metode penelitian hukum normatif dengan menggunakan pendekatan perundang-undangan dan pendekatan konseptual. Tulisan ini menyimpulkan bahwa asas nonretroaktif merupakan asas yang mutlak harus ditegakkan karena merupakan salah satu asas yang menjamin perlindungan hak asasi manusia yang tidak dapat dikurangi dalam keadaan apapun.

Kata Kunci: Kasus Bom Bali I; Prinsipal Non-retroaktif; Putusan Mahkamah Konstitusi

Abstract

The application of the retroactive principle to the Bali bombing case I based on Law Number 16 of 2003 is intended to provide a sense of justice to the community, but the material review of the application of the retroactive norm was deemed unconstitutional by the Constitutional Court through decision number 013/PUU-I/2003. The pros and cons of this decision occur in the community, between upholding legal certainty or fulfilling a sense of justice for the victims. This paper seeks to examine the decision of the Constitutional Court No. 013/PUU-I/2003 by explaining the legal considerations of the Constitutional Court in deciding the case. The research method used in this study is a normative legal research method using a statutory approach and a conceptual approach. This paper concludes that the non-retroactive principle is an absolute principle that must be enforced because it is one of the principles that guarantees the protection of human rights that cannot be reduced under any circumstances.

Keywords: Bali Bombing Case I; Non-retroactive Principal; Constitutional Court Decision

I. INTRODUCTION

The principle of a rule of law adopted by Indonesia means that all actions or policies carried out by the government must be based on law. The rule of law should reflect the value of justice and protect the human rights of everyone to be effective and achieve the objectives of the law itself. To ensure the value of justice in law, enforcement of a violation of the law must also be guaranteed

by the rule of law. Law enforcement itself must be based on and under the rule of law.

For an act to violate the law, there must be a legal provision stating that the act is an act that violates the law, and therefore the person who commits the act is subject to criminal sanctions, meaning that an act in order to be considered a criminal act, there must be legal provisions governing it (Raharjo, 2008) or commonly known as the "legality principle". The principle of legality

is a fundamental principle in criminal law that cannot be separated from the adage put forward by Von Feurbach, namely *nullum delictum nulla poena sine praevia lege poenali* which can be interpreted that no criminal penalty can be imposed without the preceding regulations, the intention is that all prohibitions and the criminal threat are determined in advance so that everyone knows that an act is prohibited and against the person who violates it is clear about the criminal sentence that will be imposed on him (Saleh, 1983). This definition implies that a legal rule cannot be applied retroactively or what is commonly called the "non-retroactive" principle (prohibition of retroactive law enforcement) (Salsabila & Annisa, 2017).

Indonesia adheres to the non-retroactive principle as one of the fundamental principles to guarantee the protection of human rights as contained in Article 28 I paragraph (1) of the 1945 Constitution of the Republic of Indonesia (2nd amendment, enacted on 18 August 2000), states that the right not to be prosecuted based on retroactive law is a human right that cannot be reduced under any circumstances. This basic principle is then applied in the Indonesian Criminal Law which is regulated in Article 1 Paragraph (1) of the Criminal Code which stipulates that an act cannot be subject to a criminal penalty, except for an act that has the strength of the provisions of the criminal legislation which has been in effect before. Furthermore, Article 18 paragraph (2) of Law Number 39 of 1999 concerning Human Rights stipulates that no one can be prosecuted or convicted, unless based on a statutory regulation that existed before the criminal act was committed. The retroactive provisions prohibition is also related to the principle which states that there is no crime without error (*geen straf zonder schuld*) (Widyawati, 2011), which means that an act must be regulated in advance to know that the act committed is wrong and therefore must be punished. This reflects that the legality principle has an important meaning to maintain legal certainty and protect a person from the arbitrariness of the authorities (Jayalantara, 2012).

Thus, the guarantee of human rights protection is provided by law but will never cover the occurrence of violations of these human rights, from mild to severe, from the national and international levels. One of the cases of human rights violations in Indonesia that still leaves its mark until now is the Bali Bombing I which took place on 12 October 2002 at Peddy's Café and Sari Club

Café in Kuta - Bali, which can be considered the worst act of terrorism in Indonesian history which killed 202 people from 25 countries and 209 people were injured (Gunawan, 2014).

This incident has had a tremendous impact, both from the loss of hundreds of human lives, the destruction of property, and leaving traumatic wounds both to the Balinese people in particular and the world's citizens in general so that it requires a long and intensive recovery process. The Bali Bombing I incident cannot be underestimated only as a crime of ordinary murder but an act of terrorism that has wider and deeper consequences. The act of terrorism has brought new legal problems, where the existing legal instruments (Criminal Code & Criminal Procedure Code) at that time did not cover acts of terrorism so there were no provisions that could bring down the perpetrators with terrorism crimes.

Based on these conditions on October 18, 2002 (six days after the Bali Bombing I incident) the Indonesian Government issued a Government Regulation in Lieu of Law (hereinafter referred to as Perpu) Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism and Perpu Number 2 of 2002 concerning Eradication of Criminal Acts of Terrorism, During the Bomb Blasting in Bali on 12 October 2002. In Article 46 of the Perpu Number 1 of 2002 stipulates that the provisions in the Perpu can be retroactively applied to certain cases before the Perpu comes into effect, the retroactive enforcement is stipulated by a separate Law or Perpu, meaning that the provisions on the eradication of criminal acts of terrorism are retroactively enforced in accordance with the provisions of Perpu Number 2 of 2002. Then on April 4th 2003 the House of Representatives (DPR) validate the Perpu Number 1 of 2002 and Perpu Number 2 of 2002 became Law Number 15 of 2003 and Law Number 16 of 2003.

On October 15th, 2003 Masykur Abdul Kadir as one of the defendants in the Bali Bombing I submitted a judicial review to the Constitutional Court on the enactment of Law Number 16 of 2003 for reasons that state that the statement "... under any circumstances" as stated in article 28I paragraph (1) of the 1945 Constitution of the Republic of Indonesia very clearly contains the meaning of refusal to apply the retroactive principle and therefore cannot be interpreted differently.

Based on this petition the Constitutional Court issued Constitutional Court Decision No. 013 /

PUU-I / 2003 whose amendment states that Law Number 16 of 2003 concerning the stipulation of Perpu Number 2 of 2002 concerning the enforcement of Perpu Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism during the Bomb Blasting in Bali on 12 October 2002 Becomes a Law (State Gazette of the Republic of Indonesia of 2003 No. 46, Supplement to the State Gazette of the Republic of Indonesia Number 4285) is contrary to the Constitution of the Republic of Indonesia 1945 and has no binding legal force. Regarding the decision of the Constitutional Court, 4 (four) out of 9 (nine) Constitutional Court Judges have different opinions.

Previous research related to this research is from Lutfi Salsabila & Sigma Febby Annisa in *Scientia Law Review* Volume 1 No. 1 which examines the breakthrough of the Non-Retroactive principle on perpetrators of criminal acts of terrorism in Indonesia from a human rights perspective. Meanwhile, this research will examine the enforcement of the nonretroactive principle in the prosecution of the Bali Bombing I case by explaining the legal principles and theories used by judges to assess the applicability of the retroactive principle in the Constitutional Court decision No. 013 / PUU-I / 2003 in the Bali Bombing I case and the views that criticized the enforcement of the non-retroactive principle in that case.

II. METHOD

The research method used in this writing is the normative juridical research method (Ali, 2016), which examines the legal norms contained in statutory regulations and court decisions using a statutory approach and a conceptual approach. This research was conducted by collecting primary legal materials, namely statutory regulations and decisions as well as secondary legal materials, namely books and related research results, using descriptive analysis techniques.

III. RESULT AND DISCUSSION

Basis for Consideration of the Enforcement of Non-retroactive Principles in the Bali Bombing Case I

Constitutional Court Decision Number 013 / PUU-I / 2003 which in essence adjudicates Law Number 16 of 2002 concerning the stipulation of Perpu Number of 2002 concerning the enforcement of Perpu Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism at the Bomb Blasting Incident in Bali on 12 October 2002 Becomes a law that is contrary to the Constitution (unconstitutional) and declared as non-

binding, meaning that the retroactive effect of Perpu Number 1 of 2002 in the Bali Bombing I was declared unconstitutional and non-binding, therefore, the provisions of the Perpu No. 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism could not apply to the perpetrators of the Bali Bombing Case I. The Court's decision was inseparable from the Court's legal considerations which contained the basis for considerations that led to the annulment of retroactive norms in the Bali Bombing I case.

In its decision 013 / PUU-I / 2003, the Constitutional Court in its legal considerations is of the view that (i) That basically, the law must apply prospectively. It is unfair if someone is punished for an act which at the time of his or her act is legal. It is also unfair if a person is subjected to a heavier legal provision for an act which, when he does, is threatened by lighter legal provisions, both concerning procedural law and material law (substance); (ii) Whereas the non-retroactive principle refers more to the philosophy of punishment based on retributive, even though this principle is no longer the main reference of the criminal system in our country which refers more to the principle of preventive and educative; (iii) Whereas it is common knowledge that waiving the principle of non-retroactivity opens the opportunity for certain ruling regimes to use the law as a means of revenge against previous political opponents. This kind of revenge should not occur, therefore it must be avoided giving the slightest opportunity that could provide an opportunity in that direction; and (iv) Whereas Currently, efforts are underway to enforce the law (rule of law), including upholding a fair trial. The minimum guarantees for a fair judicial process are the presumption of innocence, equal opportunity for the litigants, pronouncement of decisions open to the public, the principle of *ne bis in idem*, enforcement of lighter laws for actions that are in progress, processing (pending cases), and prohibition of the application of the retroactive principle. Regarding the minimum requirements mentioned above, Law Number 16 of 2003 conflicts with the guarantee for a fair trial, because it has violated one of the conditions that must be met, namely the application of the retroactive principle.

The Court also considered that Indonesia had long prohibited on the enforcement of retroactive rules which were regulated, among others, in the following provisions:

1. Article 6 *Algemene Bepalingen van*

Wetgeving voor Nederlands Indie (AB) Staatsblad 1847 Number 23 reads: "De wet verbindt alleen voor het toekomstige en heeft geene terug werkende kracht".

2. Article 1 paragraph (1) Wetboek van Strafrecht reads: "geen feit is strafbaar and uit kracht van eene daar aan voor afgegane wettelijk strafbepaling (An act cannot be punished unless it is based on the strength of the provisions of the existing criminal legislation)".

3. Law Number 39 of 1999 concerning Human Rights,

o Article 4 reads: "The right to life, the right not to be tortured, the right to personal freedom, thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person and equality before the law and the right not to be prosecuted based on law. retroactive are human rights that cannot be reduced under any circumstances and by anyone".

o Article 18 paragraph (2) reads: "Every person may not be prosecuted to be punished or sentenced to punishment, except under a statutory regulation that existed before the criminal act was committed".

4. The 1945 Constitution of the Republic of Indonesia, Article 28I paragraph (1) reads: "The right to live, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted based on retroactive law is a human right that cannot be reduced under any circumstances".

Regarding Maria Farida's view as an expert witness in court proceedings in the view that the provisions of Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia which contains the possibility of limiting human rights cannot be applied to Article 28I paragraph (1), because of clause (phrase) "under any circumstances". Therefore, the Court believes that all human rights can be limited, unless stated otherwise in the Constitution.

The problem of terrorism cannot be underestimated, the eradication of criminal acts of terrorism is a matter that must be prioritized, it must even be resolved to the root of the problem and its initial causes, following the expectations of the international community. Therefore, it is necessary to establish a law that can provide guarantees

to prevent, avoid and eradicate these criminal acts of terrorism. The law must provide a guarantee of convenience for the disclosure process, its prevention and enforcement. With the enactment of Perpu Number 1 of 2002 concerning the Crime of Terrorism into Law with Law Number 15 of 2003 is considered to have sufficiently met the expectations of the Justicia Balance. Furthermore, the Court is of the view that the stipulation is Law Number 15 of 2003 does not need to be treated retroactively, because the elements and types of crimes contained in terrorism according to the Law on the Eradication of Criminal Acts of Terrorism previously constituted a criminal offense with a type of crime with a serious threat.

The Court emphasized that only in gross violation of human rights the retroactive principle in criminal law can be enforced (Article 4 of Law Number 39 of 1999 concerning Human Rights). A crime that is included in the category of serious human rights crimes regulated in the Rome Statute of 1998 is (i) war crimes; (ii) crimes of aggression; (iii) crimes of genocide; and (iv) crimes against humanity, while in Article 7 of Law Number 26 of 2000 concerning Human Rights Courts, the crime that is included in the category of gross human rights violations are crimes against humanity and crimes of genocide. Referring to the aforementioned provisions, the Constitutional Court believes that the Bali Bombing I case which occurred on 12 October 2002 could not yet be categorized as an extraordinary crime that could be subject to retroactive legal principles (retroactive). Crime in the Bali Bombing I case can still be considered an ordinary crime which is very cruel and can still be prevented under the existing criminal provisions. Perpu Number 1 of 2002 and Perpu Number 2 of 2002, legally formal, actually cannot apply the retroactive principle. Provisions and legal actions to eradicate terrorism cannot override human rights, even though the crime of terrorism is deemed contrary to these human rights (Aziz, 2009).

In Decision Number 013 / PUU-I / 2003, the Constitutional Court also considers the harmony and linkages between the substance of the norms contained in Law 16 of 2003 and the form of the legal regulations pouring it. Stufen Theorie des Recht from Hans Kelsen views a legal system as a hierarchical law where a certain legal provision originates from a higher level. the highest provision is the basic norm (ground norm) which is hypothetical, while the lower provision is more concrete than the higher provision (Hajiji, 2013).

Referring to this theory, the Court is of the view that as a legislative product, laws contain general legal norms-abstract. The law does not contain individual & concrete norms, as are the rules or norms contained in state administrative decisions in the form of administrative decisions (beschikking) made by state administrative officials or court law products in the form of decisions (verdict). In essence, it is not the authority of the legislators to apply a concrete legal norm in-law that should be general-abstract, because this is the area of the judge's jurisdiction through a judicial process that is authorized to judge by individual decisions - concrete.

Law Number 16 of 2003 which is sourced from Perpu Number 2 of 2002 which contains the rules for the enforcement of Law Number 15 of 2003 sourced from the Perpu Number 1 of 2002 to assess concrete events, namely, the Bali Bombing I case was inaccurate and contrary to the principle of separation and distribution of power adopted in the 1945 Constitution of the Republic of Indonesia, which in this case the legislators were deemed to have done something that was the authority of the judicial power in Article 24 paragraph (1), as an independent power and separate from the branch of state government power. Furthermore, the Constitutional Court is of the view that if the Constitutional Court justifies and assesses the constitution of enforcement of legal principles against concrete events that have previously been regulated by the legislators, then this can set a bad precedent that can be referred by legislators to enforce a rule of law. explicitly regarding a concrete event that has occurred before, only based on a political judgment that the legal event that occurred previously is a very serious crime for humanity. In fact, sufficient rules or legal instruments to cope with and take action against the crimes in question already exist. This precedent will weaken the realization of the rule of law principle as mandated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

Based on the description above, the Constitutional Court in Decision No. 013 / PUU-I / 2013 assessed that the retroactive principle was applied to the Bali Bombing I incident which was regulated in Law Number 16 of 2003 is unconstitutional (contrary to the Constitution) so it is declared non-binding. Broadly speaking, the considerations of the Constitutional Court in assessing the case can be broken down into 3 (three), among others:

(1) The Bali Bombing incident I cannot yet be categorized as a gross human rights violation as a condition for the application of the retroactive principle in criminal law, therefore, if the action against the Bali Bombing incident is applied retroactively, it will cause violations of human rights as regulated in Article 28I paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

(2) Judging from the harmony and linkages between the material content of norms with the form of legal rules of casting, the application of the retroactive principle in the Bali Bombing I which was a concrete incident that was inconsistent with the form of regulation in the law which should contain general rules - abstract, where the legislative policy is based on political judgments, therefore, it is contrary to the principles of the rule of law adhered to by Indonesia as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

(3) Regulations for the application of the retroactive principle to a concrete event by the legislators (the House of Representatives or DPR) are contrary to the principle of separation of prudential power adopted by the 1945 Constitution of the Republic of Indonesia.

Critical Views of the Principle of Non-Retroactivity in the Bali Bombing Case I

Constitutional Court Decision No. 013 / PUU-I / 2003 reaping the pros and cons in society. On the one hand, he views that the non-retroactive principle in enforcing criminal law is absolute, but on the other hand, he views that retroactive enforcement provides a protective role for human rights, especially for victims (Salsabila & Annisa, 2017), and if law enforcement in the Bali Bombing I case was carried out without proper enforcement of retroactive as regulated in Law Number 16 of 2003 is considered not to solve and provide solutions, because the crime of terrorism is not an ordinary crime but a very cruel crime with a fundamental goal of intentionally creating an atmosphere of terror in society (Jayalantara, 2012). The pros and cons of applying the retroactive principle also occur in making decisions on judicial review which applies the principle. There are 4 Constitutional Judges who have different views (dissenting opinions) including Maruarar Siahaan, I Dewa Gede Palguna, H.A.S Natabaya, and Harjono. The opinions on the substance of the case that differ from those of the judges can be described as follows:

Retroactive application is a demand for justice, because it is considered very contrary to human morals, if the human rights of the perpetrator are protected by the prohibition of the retroactive principle of treatment, this will allow for greater and more severe human rights violations. Therefore, justice is a rational basis for overriding the non-retroactive principle, in certain limited circumstances. If viewed systematically, one human right is not absolute, because in exercising its rights and freedoms, it is obliged to respect the human rights of others and is obliged to comply with the restrictions stipulated by law with the sole purpose of ensuring the enforcement and respect of rights and freedoms of other people and to fulfill justice demands in accordance with moral considerations, religious values, security and public order in a democratic society (Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia). By reading Article 28J paragraph (2) together with Article 28I paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it can be concluded that the principle of non-retroactivity is not absolute and therefore recognizes exceptions in the framework of "fulfilling fair demands in accordance with moral considerations, religious values, security, and public order".

In the application of the non-retroactive principle, it must also be estimated whether applying this rigidly will cause injustice, undermine religious values, security, and public order so that if this happens, the purpose of protecting an individual is thus not the goal of the law. A crime must be punished, allowing the crime to be ignored because the non-retroactive principle is a wrong attitude (Weda, 2013). One balance point must be found between legal certainty and justice, by trying to understand the meaning of Article 28 I paragraph 1 of the 1945 Constitution of the Republic of Indonesia by not only basing it on the text but also studying the understanding of these principles from its history, practice and comparative interpretation. Measures to determine the balance of legal certainty and justice, especially in upholding the retroactive principle, may be done with the following formula:

- a. The value of justice is not obtained from the high value of legal certainty, but from the balance of legal protection for victims and perpetrators of crimes;
- b. The more serious a crime is, the greater the value of Justice that must be maintained, more

than the value of legal certainty

The value of justice is higher than legal certainty, especially in realizing universal justice, therefore if there is a conflict between the two principles, what takes precedence is the principle that can manifest justice in real terms, therefore treating the law retroactively which is limited, especially in extraordinary crimes seen from the method and the result (victim). Retroactive application of a law does not automatically cause a law to conflict with the Constitution, there are 3 factors or conditions that must be met to assess whether the application of the retroactive principle is contrary to human rights, including:

- (1) The amount of public interest that must be protected by such law;
- (2) The weight of the rights violated as a result of the enactment of such a law is smaller than the violated public interest;
- (3) Retroactive characteristics of the rights affected by the law.

It must be understood that the core principle of non-retroactivity is the prohibition of criminalizing an act that is not a criminal act at the time it is committed or increasing the punishment imposed on the prohibited act. In the Bali bombing case, the offense that was regulated was a crime that was prohibited and punishable under the previous criminal act law and with the same maximum punishment as stipulated in the previous law and there was a living legal awareness before the enactment of the law, it has also considered it was a crime (*Mala Propria*), therefore substantively the prohibition on the application of the retroactive principle must be understood that the essence of the non-retroactive principle is the prohibition to criminalize an act that is not a criminal act when it is committed or to increase the punishment that is threatened imposed on the prohibited act. In the Bali Bombing case, the offense that was regulated was a crime that was prohibited and punishable under the previous criminal act law and with the same maximum punishment as stipulated in the previous law and there was a living legal awareness. before the enactment of the law, it had also considered it was a crime (*Mala Propria*), therefore substantively the prohibition against the retroactive principle was not violated even though there were other aspects in Law Number 15 and 16 of 2002 concerning events that were also declared retroactive.

Judging from the three elements in assessing the validity of the retroactive limited enactment of the Law mentioned above, by taking into account the very large number of victims aimed at certain races or groups and with a broad and organized network even through transnational preparations, with extraordinary consequences for in the social, economic and political terms of the Republic of Indonesia, the public interest that needs to be protected is very large compared to the weight of the individual human rights of the petitioner. The limited enactment of Law Number 15 of 2003 concerning the Crime of Terrorism with Law Number 16 of 2003 on the Bali Bombing is quite appropriate as one exception to the general principle of non-retroactivity, taking into account the practice and interpretation of comparative study interpretation.

IV. CONCLUSION

The considerations of the Constitutional Court in upholding the nonretroactive principle in the Bali Bombing I can be described as follows: (i) The Bali Bombing incident I cannot yet be categorized as a gross human rights violation as a condition for the application of the retroactive principle in criminal law, therefore, if one action was taken against the Bali Bombing incident, the following rules were applied. retroactive law will cause human rights violations as stipulated in Article 28I paragraph (1) of the 1945 Constitution of the Republic of Indonesia; (ii) the application of the retroactive principle in the Bali Bombing I incident which was a concrete event that was incompatible with the form of regulation in the law which should contain general principles - abstract, in which the legislative policy was based on political judgments, thus, contrary to the principles of the rule of law adopted by Indonesia as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia; and (iii) Regulations for the application of the retroactive principle to a concrete event by the legislators (the People's Representative Council or DPR) are contrary to the principle of separation of powers adhered to by the 1945 Constitution of the Republic of Indonesia. However, on the other hand, there is a view that criticizes the enforcement of the non-retroactive principle in this case, which is of the view that by taking into account the very large number of victims aimed at a certain race or group and with a broad and organized

network even through transnational preparations, with extraordinary consequences for the territories of Republic of Indonesia socially, economically and politically, the public interest that needs to be protected is very large, therefore the limited application of Law Number 15 of 2003 concerning the Eradication of Crime of Terrorism with Law Number 16/2003 on the Bali bombing is quite appropriate as one exception to the general principle of non-retroactive.

REFERENCES

- Ali, Z. (2016). *Metode Penelitian Hukum*. Jakarta: Sinar Grafika
- Constitutional Court Decision No. 013 / PUU-I / 2003 22 July 2004.
- Gunawan, R. (2014). 12-10-2002: Bom Bali I Renggut 202 Nyawa. *Liputan6.com*. Retrieved from <https://www.liputan6.com/news/read/2117622/12-10-2002-bom-bali-i-renggut-202-nyawa>.
- Hajiji, M. (2013). Relasi Hukum dan Politik Dalam Sistem Hukum Indonesia. *Jurnal Rechts Vinding*, (2)3, 361-373; retrieved from <http://dx.doi.org/10.33331/rechtsvinding.v2i3.65>.
- Jayalantara, A. A. N. (2012). *Kajian Terhadap Pengecualian Pemberlakuan Asas Nonretroaktif Dalam Kasus Bom Bali I*. Universitas Indonesia;
- Law Number 15 of 2003 concerning the stipulation of Government Regulation in Lieu of Law Number 1 of 2002 concerning Eradication to Crime of Terrorism, Indonesian State Gazette Year 2003 Number 45, Additional of Indonesian State Gazette Number 4284
- Law Number 16 of 2003 concerning the stipulation of Government Regulation in Lieu of Law Number 2 of 2002 concerning the enforcement of Government Regulation in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism during the Bomb Blasting in Bali on 12 October 2002 Becomes a Law, Indonesian State Gazette Year 2003 Number 46, Additional of Indonesian State Gazette Number 4285;
- Law Number 26 Year 2000 concerning Human Rights Courts, Indonesian State Gazette Year 2000 Number 208, Additional of Indonesian State Gazette Number 4026;
- Law Number 39 Year 1999 concerning Human Rights, Indonesian State Gazette Year 1999 Number 165, Additional of Indonesian State Gazette Number 3886;
- Raharjo, A. (2008). Problematika Asas Retroaktif Dalam Hukum Pidana Indonesia. *Jurnal Dinamika Hukum*, 8(1), 70-80; retrieved from <http://dx.doi.org/10.20884/1.jdh.2008.8.1.36>.
- Saleh, R. (1983). *Perbuatan Pidana dan Pertanggungja-*

waban Pidana: Dua Pengertian Dasar Dalam Hukum Pidana. Jakarta: Aksara Baru Aziz, H. M. (2009). Beberapa Catatan Tentang Lahir dan Kinerja Mahkamah Konstitusi Dalam Sistem Kekuasaan Kehakiman Indonesia. *Jurnal Legislasi Indonesia*, 6(3), 13-62;

Salsabila, L., & Annisa, S. F. (2017). Kajian Hak Asasi Manusia dalam Penerobosan Prinsip Non-Rektoraktif pada Pelaku Tindak Pidana Terorisme di Indonesia, *Lex Scientia Law Review*, 1(1), 57-68; retrieved from <https://doi.org/10.15294/lesrev.v1i01.19482>.

The 1945 Constitution of the Republic of Indonesia;

Weda, M. D. (2013). Pengecualian Asas Legalitas Dalam Hukum Pidana. *Jurnal Hukum dan Peradilan.*, 2(2), 203-223; retrieved from <http://dx.doi.org/10.25216/jhp.2.2.2013.203-224>.

Widyawati, A. (2011). Dilema Penerapan Asas Retroaktif di Indonesia, *Pandecta*, 6(2). 170-180; retrieved from <https://doi.org/10.15294/pandecta.v6i2.2335>.