

## RINGKASAN

Pelaksanaan restitusi di Indonesia selama ini tidaklah efektif. Berdasarkan data yang dilansir dari Laporan Tahunan LPSK Tahun 2020 menunjukkan sedikitnya pembayaran restitusi oleh pelaku. Hal ini dikarenakan mekanisme pelaksanaan restitusi yang digunakan tidak menjamin pembayaran restitusi. Meski demikian, terdapat langkah progresif yang dilakukan melalui penitipan restitusi sebelum putusan berkekuatan hukum tetap. Oleh karenanya, dilakukan penelitian tesis yang berjudul “Efektivitas Pelaksanaan Restitusi Melalui Mekanisme Konsinyasi” Maria Prehatiningsih Utami, Program Studi Magister Hukum, Universitas Jenderal Soedirman. Ucapan terima kasih disampaikan kepada Komisi Pembimbing, Ketua Dr. Angkasa, S.H., M.Hum., Anggota Dr. Dwi Hapsari Retnaningrum, S.H., M.H., yang telah memberikan bimbingan dan arahan dalam penulisan tesis ini.

Tujuan penelitian ini untuk menganalisis efektivitas dan kendala pelaksanaan restitusi melalui mekanisme konsinyasi. Pendekatan yuridis sosiologis, tipe penelitian kualitatif. Lokasi penelitian di Pengadilan Negeri Karanganyar, Pengadilan Negeri Sleman, Pengadilan Negeri Wates, Kejaksaan Negeri Karanganyar, Kejaksaan Negeri Sleman dan Kejaksaan Negeri Kulon Progo. Pengumpulan data primer dengan wawancara dan data sekunder dengan studi pustaka. Data diolah dengan teknik reduksi data, penyajian data dan penarikan kesimpulan. Penyajian data dalam bentuk deskriptif naratif dan preskriptif. Analisis data menggunakan logika berpikir induktif.

Berdasarkan hasil penelitian dan pembahasan, disimpulkan bahwa pelaksanaan restitusi melalui mekanisme konsinyasi yang dilakukan sebelum tuntutan adalah efektif, karena (i) memberikan jaminan pembayaran restitusi kepada korban; (ii) dapat dipertimbangkan sebagai keadaan meringankan bagi pelaku; (iii) sebagai tindakan mewujudkan hukum yang bermanfaat oleh aparat penegak hukum; dan (iv) memiliki fungsi pencegahan dan edukasi bagi masyarakat.

Kendala yang dihadapi meliputi 3 (tiga) aspek, yaitu struktur hukum, substansi hukum dan kultur hukum. Kendala pada struktur hukum, meliputi: (i) tidak semua jaksa melakukan pendekatan agar pelaku membayarkan restitusi; (ii) tidak semua pengadilan menerima penitipan restitusi; (iii) tidak semua jaksa memberikan petunjuk (P-19) melengkapi berkas perkara dengan permohonan restitusi; dan (iv) tidak semua majelis hakim menyampaikan hak restitusi kepada korban. Kendala pada substansi hukum, meliputi: (i) perbedaan pengaturan mekanisme pembayaran restitusi; (ii) belum ada peraturan teknis mengenai restitusi; (iii) tidak ada klasifikasi tindak pidana prioritas yang disertai restitusi; dan (iv) belum ada pengaturan akibat hukum konsinyasi restitusi sebelum tuntutan. Kendala pada kultur hukum, meliputi: (i) kemampuan ekonomi pelaku; (ii) keinginan pelaku mendapat sanksi pidana seringan-ringannya; (iii) intervensi dari pihak luar; dan (iv) masyarakat belum memiliki pemahaman mengenai restitusi.

Kata kunci: Efektivitas, Konsinyasi, Restitusi

## SUMMARY

*Implementation of restitution in Indonesia so far has not been effective. Based on data quoted from the 2020 LPSK Annual Report, it shows that the perpetrators have paid little restitution. This is because the restitution implementation mechanism used does not guarantee the payment of restitution. However, there are progressive steps taken through compensation recovery before the decision has permanent legal force. Therefore, a thesis research was carried out entitled "Effectiveness of Restitution Implementation Through Consignment Mechanisms" Maria Prehatiningsih Utami, Master of Law Study Program, Jenderal Soedirman University. Thanks are conveyed to the Advisory Commission, Chairman Dr. Angkasa, S.H., M.Hum., Member Dr. Dwi Hapsari Retnaningrum, S.H., M.H., who has provided guidance and direction in writing this thesis.*

*The purpose of this study is to analyze the effectiveness and constraints of implementing restitution through a consignment mechanism. Sociological juridical approach, qualitative research type. The research locations were the Karanganyar District Court, Sleman District Court, Wates District Court, Karanganyar District Attorney, Sleman District Attorney and Kulon Progo District Attorney. Primary data collection by interview and secondary data by literature. Data is processed using data reduction techniques, data presentation and conclusion. Presentation of data in the form of descriptive narrative and prescriptive. Data analysis uses inductive thinking logic.*

*Based on the results of the research and discussion, it was concluded that the implementation of restitution through a consignment mechanism that was carried out prior to prosecution was effective, because (i) it provided guarantees for payment of restitution to victims; (ii) can be considered as mitigating circumstances for the offender; (iii) as an act of realizing useful law by law enforcement officials; and (iv) has the function of prevention and education for the community.*

*The obstacles faced include 3 (three) aspects, namely legal structure, legal substance and legal culture. Obstacles to the legal structure, including: (i) not all prosecutors approached the perpetrators to pay restitution; (ii) not all courts accept deposit of restitution; (iii) not all prosecutors gave instructions (P-19) to complete the case files with requests for restitution; and (iv) not all panels of judges convey the right of restitution to victims. Constraints on legal substance, including: (i) differences in restitution payment mechanism arrangements; (ii) there is no technical regulation regarding restitution; (iii) there is no classification of priority crimes accompanied by restitution; and (iv) there is no regulation regarding the legal consequences of a restitution consignment prior to prosecution. Obstacles to the legal culture, including: (i) the economic capacity of the perpetrators; (ii) the desire of the offender to receive the lightest criminal sanction; (iii) intervention from outsiders; and (iv) the community does not yet have an understanding of restitution.*

*Keywords: Effectiveness, Consignment, Restitution*