

THE IMPLEMENTATION OF SUBJECTIVE ELEMENT IN THE DETENTION PROVISION OF THE CRIMINAL PROCEDURAL CODE IN SPECIAL REGION OF YOGYAKARTA FROM THE PERSPECTIVES OF HUMAN RIGHTS

By :

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ABSTRACT

This research aims to examine the implementation of subjective element in detention provision, especially in the Special Region of Yogyakarta. The implementation then will be analyzed according to the perspectives of Human rights. Detention is a part of the criminal proceeding that intersects with suspect's right over liberty. Based on Article 21 point (1) of the Law No. 8 of 1981, detention could be carried out based on the investigator's subjective determination on the suspicion for the suspect fleeing, destroy evidence, or influence witness. The authority of this subjective determination becomes a "grey area" where suspects may be detained without considering basic human rights of the suspects. Research has been conducted on how Yogyakarta Regional Police carry out detention based on the subjective element. It is assessed how Brigadier Daniel's reasons to detain are analyzed from the perspective of human rights. The research also criticizes how the formulation of subjective element shall be improved in the future to overcome its present weaknesses

This research adopts the type of normative – empirical research with a prescriptive nature. The research applies data from interview with Assistant Investigator from DIY Police, the Criminal Procedural Law, court decisions, regulations, doctrines, and expert testimonies, through primary, secondary, and tertiary legal materials.

The research found that the implementation of subjective element in DIY Police causes disparity in detention of suspects of similar crimes. The reasons of detention may vary, however some of them can be considered does not respect suspect's rights to be presumed innocent and treated equally before the law. The formulation of Article 21 point (1) of Law No. 8 of 1981 also implicates uncertainty where the phrases contain multi-interpretation. To overcome these problems, what can be done is to reformulate the Article 21 point (1) of Law No. 8 of 1981, replacing the pretrial system with the concept of commissary judge, and improving oversight of detention by the judiciary.

Keywords: Detention, Subjective Element, Human Rights, Discretion, Pretrial, Commissary Judge

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IMPLEMENTASI ELEMEN SUBJEKTIF PENAHANAN DALAM KUHAP DI DAERAH ISTIMEWA YOGYAKARTA DIPANDANG DARI PERSPEKTIF HAK ASASI MANUSIA

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INTISARI

Penahanan merupakan bagian dari proses peradilan pidana yang bersinggungan dengan hak atas kebebasan tersangka. Berdasarkan Pasal 21 ayat (1) KUHAP, penahanan dapat dilakukan berdasarkan penilaian subyektif penyidik atas dugaan melarikan diri, menghilangkan barang bukti, atau mempengaruhi saksi. Kewenangan penetapan subyektif ini menjadi “wilayah abu-abu” di mana tersangka dapat ditahan tanpa mempertimbangkan hak asasi tersangka. Telah dilakukan penelitian tentang bagaimana Polda D.I.Y melakukan penahanan berdasarkan elemen subyektif. Penelitian ini menilai bagaimana alasan penahanan oleh Brigadir Daniel dianalisis dari perspektif hak asasi manusia. Penelitian ini juga mengkritisi bagaimana perumusan pasal elemen subyektif harus diperbaiki di masa mendatang untuk mengatasi kelemahannya saat ini.

Penelitian ini mengadopsi jenis penelitian normatif-empiris yang bersifat preskriptif. Penelitian ini menggunakan data hasil wawancara dengan Penyidik Polda DIY, Hukum Acara Pidana, putusan pengadilan, peraturan, doktrin, dan keterangan ahli, melalui bahan hukum primer, sekunder, dan tersier.

Hasil penelitian menemukan bahwa penerapan unsur subyektif di Polda DIY menyebabkan disparitas penahanan terhadap tersangka dalam dugaan pidana yang sejenis. Alasan penahanan bisa bermacam-macam, namun beberapa di antaranya dapat dianggap tidak menghargai hak tersangka untuk diduga tidak bersalah dan diperlakukan sama di depan hukum. Rumusan Pasal 21 ayat (1) KUHAP juga mengandung ketidakpastian dimana frasa-frasa tersebut mengandung multitafsir. Untuk mengatasi permasalahan tersebut, yang dapat dilakukan adalah merumuskan kembali Pasal 21 ayat (1) KUHAP, mengganti sistem praperadilan dengan konsep hakim komisaris, dan meningkatkan pengawasan penahanan oleh lembaga peradilan.

Kata Kunci : Penahanan, Elemen Subyektif, Hak Asasi Manusia, Diskresi, Praperadilan, Hakim Komisaris

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