

ABSTRACT

The focus of this dissertation research is about the detention of a suspect or defendant. There are three problems posed in this dissertation research, namely on: (1) What are the factors that led to the detention of a suspect or defendant is not justice, (2) What is the impact of the detention of a suspect or defendant is not justice, (3) How reconstruction of the norm of the arrest of the suspect or defendant in the Criminal Code that is based on values of justice.

To analyze these three problems were using the paradigm of constructivism, socio-legal research methods. Several theories were used in this study, namely: progressive legal theory, the theory of law enforcement and justice theory dignity.

The study's findings that the rules of detention of a suspect or suspects, both about the detention, transfer type of detention, the surety is not justice. The conclusions in this dissertation research are: (1) the factors that led to the arrest of the suspect or the accused does not bring about justice are: regulation detention of suspects or defendants nebulous; still use the mechanism to the maximum detention for 400 days; subjectivity competent authorities in the matter of detention are very dominant, especially whether or not a necessary condition of detention; bail gave the chance for the commodification; No lack of regulations regarding judicial oversight (judicial scrutiny); detention has over crowded; law enforcement practices still be legalistic positivism. (2) The impact of the detention of a suspect or defendant that no justice can occur for the suspect or the defendant himself, the suspect or the accused family, for the community and for the country. (3) From the findings, researchers recommend the necessary reconstruction of the rules of detention justice; regulation length of detention; and there should be an independent agency (the judge commissioner).

Keywords: detention, suspect, defendant, reconstruction, dignified justice.

ABSTRAK

Fokus penelitian disertasi ini adalah tentang penahanan terhadap tersangka atau terdakwa. Ada tiga masalah yang diajukan dalam penelitian disertasi ini, yaitu tentang: (1) Faktor-faktor apa yang menyebabkan penahanan terhadap tersangka atau terdakwa tidak mewujudkan keadilan, (2) Bagaimana dampak penahanan terhadap tersangka atau terdakwa yang tidak mewujudkan keadilan, (3) Bagaimana rekonstruksi peraturan penahanan terhadap tersangka atau terdakwa dalam KUHAP yang berbasis nilai keadilan.

Untuk menganalisis tiga masalah tersebut, paradigma yang digunakan adalah paradigma *constructivism*, metode *socio-legal research*. Beberapa teori yang digunakan dalam penelitian ini, yaitu: teori hukum progresif, teori tentang penegakan hukum, dan teori keadilan bermartabat.

Temuan penelitian ini yakni peraturan penahanan terhadap tersangka atau tersangka, baik tentang penahanan, pengalihan jenis penahanan, penangguhan penahanan belum mewujudkan keadilan. Simpulan dalam penelitian disertasi ini adalah: (1) Faktor-faktor yang menyebabkan penahanan terhadap tersangka atau terdakwa tidak mewujudkan keadilan adalah: peraturan penahanan terhadap tersangka atau terdakwa samar; masih menggunakan mekanisme penahanan secara maksimal selama 400 hari; subyektivitas pejabat yang berwenang dalam masalah penahanan sangat dominan terutama syarat perlu atau tidaknya penahanan; jaminan uang memberikan kesempatan terjadinya komodifikasi; ada kekosongan peraturan mengenai pengawasan yudisial (*judicial scrutiny*); rumah tahanan telah *over crowded*; praktek penegakan hukum masih secara *legalistic positivism*. (2) Dampak penahanan terhadap tersangka atau terdakwa yang tidak mewujudkan keadilan dapat terjadi bagi tersangka atau terdakwa sendiri, bagi keluarga tersangka atau terdakwa, bagi masyarakat, dan bagi negara. (3) Dari temuan penelitian tersebut, peneliti merekomendasikan perlu rekonstruksi terhadap peraturan penahanan yang tidak mewujudkan keadilan; peraturan lamanya masa penahanan; dan perlu diadakan lembaga independen (hakim komisaris).

Kata kunci: penahanan, tersangka, terdakwa, rekonstruksi, keadilan bermartabat.