

ABSTRAK

Putusan bebas terhadap perkara tindak pidana Narkotika yang dilakukan oleh anggota POLRI bersumber dari acara pembuktian dakwaan primair Jaksa Penuntut Umum Pasal 114 ayat (2) dan dakwaan subsidair pasal 112 ayat (2) Undang-Undang Republik Indonesia Nomor 35 Tahun 2009 tentang Narkotika, putusan bebas (*Vrijspraak*) hakim Pengadilan Baturaja ini sangatlah menciderai jiwa dan rasa keadilan masyarakat, namun adanya perbedaan persepsi keadilan dari sisi lainnya, bahwa sisi keadilan hukum formil dianggap adil namun menimbulkan banyak hujatan dan pertanyaan para akademisi, Sehingga penulis membatasi permasalahan hukum dalam penelitiannya yaitu sebagai berikut : Bagaimanakah bentuk pertimbangan hukum hakim atas putusan yang membebaskan terdakwa bandar narkotika telah sesuai dengan KUHAP? dan bagaimana Upaya Hukum Jaksa Penuntut Umum terhadap putusan bebas Hakim pada terdakwa bandar narkotika menurut Undang-undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana Indonesia?

Metode penelitian hukum ini menggunakan metode pendekatan studi kasus meneliti data primer yang bersumber dari putusan pengadilan, spesifikasi penelitian menghususkan meneliti aspek yuridis normatif, secara otomatis data yang di kumpulkan adalah data primer yang terkait dengan aspek hukum, terkait judul berupa Undang-undang, KUHAP, kemudian disusun secara sistematis agar dapat dilakukan analisa hukum secara terstruktur.

Hasil Penelitian bahwa Hakim dalam memutuskan perkara seharusnya lebih progresif, yaitu mempertimbangkan *judex jurist* yang telah memutuskan perkara Rudial Bin Arifin terdakwa bandar narkotika di bebaskan, Penerapan progresif Pasal 112 dan Pasal 114 dinilai memiliki konsekuensi pilihan hukum dengan cara *non penal*, penemuan hukum progresif mengenai pembuktian 112 dan 114 khususnya dalam hal penyitaan saat pemadaman listrik memiliki aturan dalam mewajibkan hakim untuk mempertimbangkan mencari dan menemukan hukum bagi bandar narkotika yang seharusnya divonis terbukti bersalah melakukan tindak pidana menjual Narkotika, dan juga kesimpulan kedua adalah Upaya Hukum Jaksa Penuntut Umum terhadap Putusan Bebas Hakim (*vrijspraak*) pada Terdakwa bandar Narkotika melakukan upaya hukum peninjauan kembali, karena upaya kasasi Nomor 3815 K/Pid.Sus/2019 telah ditolak oleh hakim kasasi dalam putusan sela nya, strategi hukum jaksa terhadap ditolaknya putusan kasasi, maka klausula permohonan peninjauan kembali tersebut berisikan *novum* berupa saklar yang mudah dijangkau oleh rudial, untuk menguatkan pembuktian *judex factie*, yaitu *novum* untuk menguatkan hukum pembuktian (*jourist*) atas adanya unsur memiliki, menyimpan, menguasai atau menyediakan Narkotika (112 dan 114) serta memperkuat kaidah yurisprudensi No. 1386 K/Pid.Sus/2011 khususnya tentang unsur kontekstual dan tujuan kepemilikan narkotika. Maka saat inilah hakim peninjauan kembali dapat menafsirkan hukum progresif dalam pertimbangan *judex jurist* nya.

ABSTRACT

An event which can reasonably be suspected of being a criminal act, then a legal process can be carried out starting with an investigation which can then be upgraded to investigating, prosecuting and trying the case. In terms of carrying out its duties, the Criminal Procedure Code (HAP) gives the competent authorities the authority to carry out acts of force. The treatment of suspects must be humane and uphold human rights (HAM) and a sense of justice. As a consequence, at all levels of examination in the judicial process, suspects or defendants may not be treated arbitrarily as parties who are merely considered guilty. As for the problem How is the legality of confiscation of evidence in pretrial excise crime related to the Criminal Procedure Code? What are the inhibiting factors for the legality of confiscation of evidence in pretrial excise crime related to the Criminal Procedure Code?

The research method used is to use the normative juridical research method, namely legal research carried out by reviewing and testing secondary data in the form of positive law, especially in the field of criminal law related to the Legality of Confiscation of Evidence in Pre-trial Crime of Excise linked to the Book of Law. Criminal Procedure Law. While data analysis uses qualitative juridical methods, namely data that will be processed and analyzed qualitatively from library data and other sources which are then systematically arranged to be analyzed qualitatively and presented descriptively.

Results of the study show that judges in deciding cases, judges should be more progressive considering *judex jurist*, namely deciding the case of Rudial Bin Arifin, the defendant narcotics dealer being released by criminalizing it under Articles 112 and 114 of the Narcotics Law, the progressive application of Article 112 and Article 114 is considered to have consequences for choice of law in non penal, the progressive legal findings regarding proof 112 and 114 especially in the case of confiscation during a power outage have rules requiring judges to consider seeking and finding laws for narcotics dealers who should be convicted of having committed the crime of selling Narcotics, and also the second conclusion is the Prosecutor's Legal Efforts The Public Prosecutor against the Judge's Free Decision (*vrijspraak*) on the Narcotics bandar Defendant made a legal reconsideration effort, because the cassation attempt Number 3815 K / Pid.Sus / 2019 was rejected by the cassation judge in his interlocutory decision, the prosecutor's legal strategy was *tusan cassation*, then the clause of the request for review contains a *novum* in the form of a switch that is easily accessible by *rudials*, to strengthen the *judex factie* proof, namely *novum* to strengthen the law of proof (*jourist*) for the existence of elements of possession, storing, controlling or providing Narcotics (112 and 114) as well as strengthening the rule of jurisprudence No. 1386 K / Pid.Sus / 2011 especially on contextual elements and the purpose of narcotics possession. So now is the time for the judicial review judge to interpret the progressive law in his *judex jurist* considerations.