

Abstrak

Muammar Jafri “*Refomulasi Pasal 140 Ayat (2) Huruf d Kitab Undang-Undang Hukum Acara Pidana Perspektif Due Process of Law*” dibimbing oleh **Faissal Malik** dan **Amriyanto**.

Penelitian ini bertujuan untuk (1) menganalisis norma hukum penuntutan kembali perkara pidana tanpa batas waktu Pasal 140 ayat (2) huruf d sesuai asas *due proces of law*, (2) menganalisis norma hukum Pasal 140 ayat (2) huruf d yang sesuai dengan asas *due process of law*.

Penelitian yang digunakan dalam penelitian kali ini adalah tipe penelitian hukum normatif. Pendekatan yang digunakan pendekatan konseptual dan peraturan perundang-undangan. Melalui pendekatan penelitian ini membawa kajian pendalaman norma hukum yang telah ada.

Terhadap ketentuan Pasal 140 ayat (2) huruf d KUHAP sepintas terlihat jelas. Namun, apabila ditelusuri secara mendalam rumusan tersebut mengandung dubious, bahwa seseorang yang telah menerima Surat Ketetapan Penghentian Penuntutan (SKP2) yang diterbitkan penuntut umum sewaktu-waktu dapat dituntut kembali dengan berdasar pada ditemukannya alasan baru. Menurut penjelasan Pasal 140 ayat (2) huruf d alasan baru tersebut diperoleh penuntut umum dari penyidik yang berasal dari keterangan tersangka, saksi, benda atau petunjuk yang baru kemudian diketahui atau didapat. Mencermati bunyi norma Pasal 140 ayat (2) huruf d KUHAP terdapat pengertian kunci “penuntutan kembali” yang tidak menyebut “batas waktu” sehingga tidak memenuhi syarat *lex certa*. Atas dasar itu, penulis berpendapat norma tersebut tidak senafas dengan bunyi Pasal 28D ayat (1) Undang-Undang Dasar Negara Republik Indonesia tahun 1945 yang berbunyi “setiap orang berhak atas pengakuan, jaminan, perlindungan dan kepastian hukum yang adil serta perlakuan yang sama di hadapan hukum. Sudah seharusnya ketentuan Pasal 140 ayat (2) huruf d KUHAP memberikan kepastian dan kejelasan proses berupa diaturnya batas waktu penuntutan kembali. Hal itu semata-mata menghindari praktik penegakan hukum yang koruptif, diskriminatif. Di samping itu, perlindungan hak asasi manusia yang merupakan semangat awal diadakannya KUHAP dapat terwujud secara utuh.

Kata kunci : Reformulasi, Penuntutan Kembali, KUHAP.



Abstract

Muammar Jafril "Refomulation of Article 140 Paragraph (2) Letter d of the Criminal Procedure Code in the Perspective of Due Process of Law" supervised by Faissal Malik and Amriyanto.

This research aims to (1) analyze the legal norms of re-prosecution of criminal cases without time limit in Article 140 paragraph (2) letter d in accordance with the principle of due process of law, (2) analyze the legal norms of Article 140 paragraph (2) letter d in accordance with the principle of due process of law.

The research used in this research is a type of normative legal research. The approach used is conceptual approach and legislation. Through this research approach, it brings a deepening study of existing legal norms.

The provisions of Article 140 paragraph (2) letter d of KUHP seem clear at first glance. However, if traced in depth the formulation contains dubious, that a person who has received a Decree of Termination of Prosecution (SKP2) issued by the public prosecutor at any time can be prosecuted again based on the discovery of new reasons. According to the explanation of Article 140 paragraph (2) letter d, the new reason is obtained by the public prosecutor from the investigator, which comes from the testimony of suspects, witnesses, objects or clues that are only then known or obtained. Looking at the norms of Article 140 paragraph (2) letter d of KUHP, there is a key definition of "re-prosecution" which does not mention "time limit" so that it does not meet the requirements of *lex certa*. On that basis, the author argues that the norm is not in line with Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which reads "every person shall have the right to recognition, guarantees, protection and certainty of a just law and equal treatment before the law". The provisions of Article 140 paragraph (2) letter d of KUHP should provide certainty and clarity of the process in the form of regulating the time limit for re-prosecution. This is solely to avoid corruptive, discriminatory law enforcement practices. In addition, the protection of human rights which is the initial spirit of the presentation of the Criminal Procedure Code can be fully realized.

Keywords: Reformulation, Re-Prosecution, KUHP.

