

**A B S T R A K**

Keberadaan Pasal 197 ayat (1) huruf k KUHAP *juncto* Pasal 197 ayat (2) KUHAP sebelum adanya Putusan Mahkamah Konstitusi Nomor 69/PUU-X/2012 dimaksudkan untuk memberi kejelasan status penahanan bagi terdakwa. Batalnya putusan yang tidak memuat perintah supaya terdakwa ditahan atau tetap dalam tahanan atau dibebaskan lebih merupakan perlindungan bagi terdakwa atas status tahanannya selama proses persidangan berlangsung hingga berkekuatan hukum tetap (*in kracht van gewisjde*). Putusan Mahkamah Konstitusi Nomor 69/PUU-X/2012 yang menguji Pasal 197 ayat (1) huruf k KUHAP merupakan model putusan “konstitusional bersyarat” (*Conditionally Constitutional*). Penjelasan terkait hal tersebut adalah Pasal 197 ayat (1) huruf k KUHAP, Mahkamah Konstitusi menyatakan bertentangan dengan UUD NRI 1945, sepanjang dikaitkan dengan Pasal 197 ayat (2) KUHAP yang menyebabkan suatu putusan dinyatakan batal demi hukum.

Dalam Tesis ini Penulis memfokuskan pada keberlakuan Pasal 197 ayat (1) huruf k KUHAP yang masih ada didalam KUHAP sekalipun dinyatakan bertentangan dengan UUD NRI 1945 oleh Mahkamah Konstitusi. Sasaran yang ingin dicapai dalam penulisan Tesis ini adalah mengenai jalannya hukum acara pidana dengan mencerminkan keadilan dan kepastian hukum. Disamping itu perlu adanya mekanisme “*checks and balances*” antara lembaga tinggi negara dalam menjalankan masing-masing fungsinya.

**Kata Kunci: Putusan Pemidanaan, Pasal 197 ayat (1) huruf k KUHAP, Mahkamah Konstitusi**

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The existence of Article 197 paragraph (1) letter k of the Criminal Procedure Code juncto Article 197 paragraph (2) of the Criminal Procedure Code before the decision of the Constitutional Court Number 69 / PUU-X / 2012 is intended to provide clarity on the detention status of the defendant. The cancellation of the verdict which did not contain an order so that the defendant was detained or remained in detention or was released was more a protection for the defendant on the status of his detainee during the trial process until the legal force remained (in kracht van gewisjde). The decision of the Constitutional Court Number 69 / PUU-X / 2012 which examines Article 197 paragraph (1) letter k of the KUHP is a model of "conditionally Constitutional" decision. The explanation related to this is Article 197 paragraph (1) letter k of the Criminal Procedure Code, the Constitutional Court states that it is contrary to the 1945 Constitution of the Republic of Indonesia, insofar as it is associated with Article 197 paragraph (2) of the Criminal Procedure Code which causes a decision to be null and void.

In this thesis the author focuses on the application of Article 197 paragraph (1) letter k of the Criminal Procedure Code which is still contained in the Criminal Procedure Code even though it is declared contrary to the 1945 Constitution of the Republic of Indonesia by the Constitutional Court. The target to be achieved in writing this thesis is about the course of criminal procedure by reflecting justice and legal certainty. In addition, there is a need for a "checks and balances" mechanism between high-state institutions in carrying out their respective functions.

**Keywords: Judicial Decision, Article 197 paragraph (1) letter k of the Criminal Procedure Code, Constitutional Court**