

Keabsahan alat bukti keterangan terdakwa yang tidak sesuai dengan BAP penyidikan dikaitkan dengan the right of non self incrimination: perbandingan dengan Amerika Serikat dan Belanda = Admissibility of defendants statement that incompatible with the minutes of investigation in relation to the right of non self incrimination: comparison with United States of America and Netherland

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Abstrak

Non self incrimination merupakan prinsip yang diterima secara universal bahwa yang berkewajiban untuk membuktikan kesalahan dari seseorang yang telah melakukan tindak pidana adalah negara melalui aparat penegak hukumnya. Oleh karena itu sejak tahap penyidikan, pemeriksaan tersangka harus dilaksanakan sesuai prosedur dengan memperhatikan hak tersangka yang berupa the right non self incrimination. Pelanggaran the right of non self incrimination dapat berimplikasi pada pembuktian kesalahan dari tersangka sebagai terdakwa di persidangan. Di Indonesia hasil pemeriksaan tersangka dituangkan dalam BAP Tersangka yang turut diperiksa hakim di persidangan. Dalam hal keterangan terdakwa di persidangan tidak bersesuaian dengan BAP Tersangka, maka untuk pembuktian dalam persidangan akan dihadirkan verbalisan yaitu penyidik yang membuat berita acara untuk diperiksa sebagai saksi. Penelitian ini berbentuk yuridis normatif yang menggunakan pendekatan perbandingan hukum dengan menelaah pengaturan-pengaturan terkait keabsahan alat bukti keterangan terdakwa yang tidak sesuai dengan BAP ditinjau dari the right of non self incrimination di Indonesia, Amerika Serikat, dan Belanda

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Non self incrimination is a universally accepted principle that it is the state who has the obligation to prove the guilt of a person who has committed a criminal act through its law enforcement officers. Therefore, since the investigation stage, the examination of the suspect must be carried out in accordance with the procedure by taking into account the suspect's rights such as the right of non self incrimination. Violation of the right of non self incrimination can have implications for proving the guilt of the suspect as the defendant at trial. In Indonesia, the results of the examination of a suspect are stated in the minutes of investigation (BAP) who is also examined by judge at trial. In the event that defendant's testimony doesn't match with the suspect's minutes of investigation, for evidence in the trial a verbalisan will be presented, namely the investigator who makes the report to be examined as a witness. This research is in the form of judicial normative which use comparative law approach by examining regulations related to the admissibility of defendant's statement that incompatible with the minutes of investigation in relation to the right of non self incrimination in Indonesia, United States and Netherland