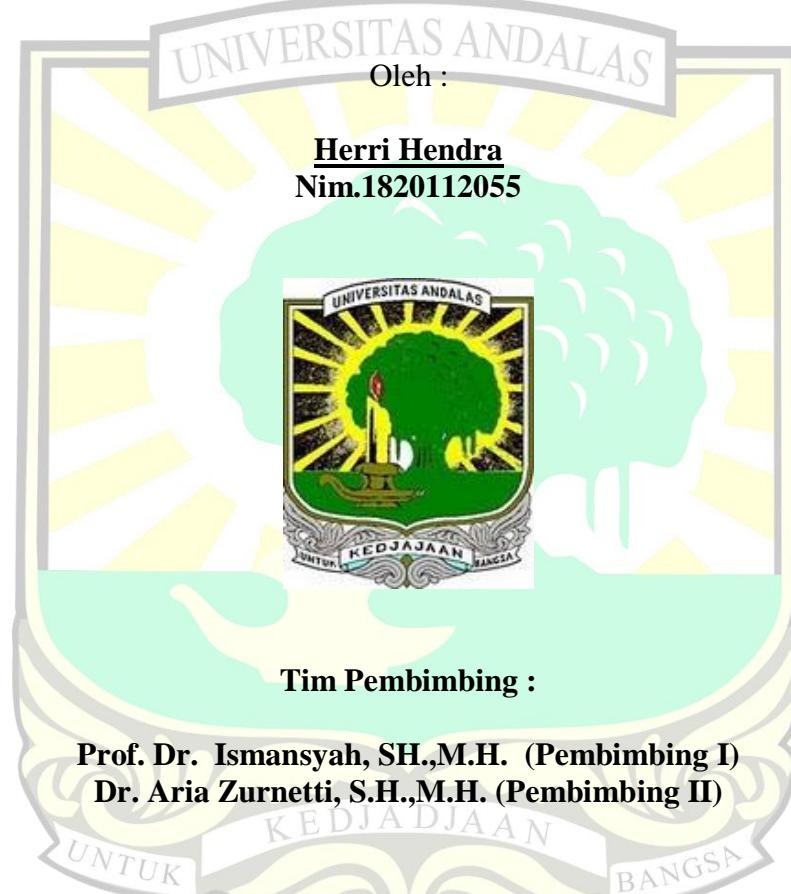


Tesis

**KEPASTIAN HUKUM DALAM PENAHANAN TERDAKWA
TINDAK PIDANA KEKERASAN TERHADAP ANAK
DI WILAYAH HUKUM KEJAKSAAN NEGERI PASAMAN BARAT**

*Diajukan Guna Memenuhi Sebagian Persyaratan Untuk
Memperoleh Gelar Magister Hukum*



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**PROGRAM MAGISTER ILMU HUKUM
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ABSTRAK

Kekerasan dan penganiayaan terhadap anak justru menjadi salah satu masalah yang memiliki urgensi tinggi di kehidupan modern saat ini. Dalam proses penegakan hukum terhadap tindak pidana kekerasan terhadap anak diatur dalam Pasal 80 UU Perlindungan Anak. Namun terhadap pelanggaran pasal tersebut, tidak dapat dilakukan penahanan karena berdasarkan Pasal 21 KUHAP. Sementara terhadap tindak pidana penganiayaan sebagaimana diatur dalam Pasal 351 ayat (1) KUHP. "Penganiayaan diancam dengan pidana penjara paling lama dua tahun delapan bulan atau pidana denda paling banyak empat ribu lima ratus rupiah", dapat dilakukan penahanan berdasarkan ketentuan Pasal 21 KUHAP dengan alasan subjektif dan objektif. Dalam praktek penegakan hukum di Wilayah Hukum Kejaksaan Negeri Pasaman Barat, Penegak Hukum tetap melakukan penahanan terhadap terdakwa kekerasan terhadap anak. Hal ini dapat menyebabkan ketidakpastian hukum dalam penahanan terhadap terdakwa kekerasan terhadap anak. Permasalahan dalam tesis ini adalah 1. Bagaimana pertimbangan Jaksa Penuntut Umum dan Hakim dalam penahanan terdakwa pada tindak pidana kekerasan terhadap anak?. 2. Bagaimana kepastian hukum dalam penahanan terdakwa pada tindak pidana kekerasan terhadap anak di wilayah hukum Kejaksaan Negeri Pasaman Barat?; Penelitian ini merupakan penelitian yuridis sosiologis. Sifat penelitian ini adalah bersifat deskriptif dengan menggunakan data primer dan sekunder. Hasil penelitian menunjukkan bahwa: 1. penahanan terdakwa pada tindak pidana kekerasan terhadap anak di wilayah hukum Kejaksaan Negeri Pasaman Barat menimbulkan ketidakpastian hukum baik secara normatif maupun secara praktek. 2. Pertimbangan Jaksa Penuntut Umum dan Hakim dalam penahanan terdakwa pada tindak pidana kekerasan terhadap anak didasarkan atas pertimbangan untuk melindungi anak dari ancaman pengulangan tindak pidana yang mungkin dilakukan oleh terdakwa tindak pidana kekerasan terhadap anak tersebut. Untuk perbaikan kedepannya diperlukan 1. Pemerintah dan DPR perlu melakukan revisi terhadap UU Perlindungan Anak, dan 2. Penegakan Hukum, khususnya Penuntut Umum perlu menerapkan ketentuan pengenai penahanan tersebut dengan sangat bijaksana.

Kata Kunci: Kepastian Hukum, Penahanan, Tindak Pidana, Kekerasan, Anak.

***LEGAL CERTAINTY IN THE PROCESS OF DETENTION FOR CHILD
ABBUSE VIOLATOR WITHIN THE JURISDICTION OF WEST PASAMAN
PROSECUTOR OFFICE***

(Herri Hendra, 1820112055, Postgraduate Faculty of Law, Andalas University,
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ABSTRACT

Violence and child abuse both have become ones of the problems with high urgency in modern life today. The process of law enforcement against criminal acts of violence against children is regulated in Child Protection Act Article 80. However, the violator of the crime cannot be detained because refers to Provisional Criminal Procedure Code Article 21. While the process of law enforcement against criminal acts of violence against adult is already regulated in Article 351 paragraph (1) of the Criminal Code. "Abuse is threatened with a maximum imprisonment of two years and eight months or a maximum fine of four thousand five hundred rupiahs", nad the violator of the crime can be detained refers to Provisional Criminal Procedure Code Article 21 along with subjective and objective reasons. In the practice of law enforcement in the West Pasaman District Attorney's Jurisdiction, Law Enforcer continues to detain perpetrators of violence against children. This can lead to legal uncertainty in the practice of detention of perpetrators of violence against children. The problems in this thesis are: 1. What are the considerations of the Public Prosecutor and Judge in the practice of detention in criminal acts of violence against children?; 2. What is the legal certainty in the practice of detention in criminal acts of violence against children in the jurisdiction of the West Pasaman Prosecutor Office?. This research is sociological juridical research. The nature of this research is descriptive using primary and secondary data. The results showed that: 1. The practice of detention in criminal acts of violence against children in the jurisdiction of the West Pasaman District Attorney has caused legal uncertainty both normatively and in practice. 2. The consideration of the Public Prosecutor and Judge in the practice of detention in a criminal act of violence against children is based on considerations to protect children from the threat of a repetition of a criminal offense that might be committed by the perpetrators of a violent crime against the child. For future improvement, it is needed 1. The Government and the Parliament need to revise the Child Protection Act, and 2. Law Enforcement, especially the Public Prosecutor needs to apply the provisions regarding the detention very wisely.

Keywords :Legal Certainty, Detention, Crime, Violence, Children.