

**Detention of Suspects in Indonesian Criminal Law Review****Henny Saida Flora**

Fakultas Hukum Universitas Katolik Santo Thomas

hennysaida@yahoo.com.

**Annotation:**

The purpose of this research is to describe the provisions of Indonesian criminal law regarding the detention of suspects and to analyze the legal protection of suspects during detention in terms of Indonesian criminal law. This research is normative legal research, which examines laws and regulations in a coherent legal system and legal values related to the detention of suspects in the study of Indonesian criminal law. The results of the study show that the provisions for detaining suspects are regulated in Article 1 point 21 of the Criminal Procedure Code of Criminal Procedure. While in detention, suspects can exercise their rights in accordance with articles 50 to 68 of the Criminal Procedure Code (KUHAP). Legal protection is always associated with the concept of *rechtstaat* or the concept of the Rule of Law because the birth of these concepts cannot be separated from the desire to provide recognition and protection of human rights. A suspect has rights at the time of detention that are guaranteed by law, such as the right to receive and read a Detention Warrant or a Judge's Order which lists the identity of the suspect or defendant and states the reasons for the detention and a brief description of the crime case being suspected or charged and the place where he is being detained in accordance with Article 21 paragraph (2) Criminal Procedure Codes

**Keywords:** Detention; Suspects; Criminal Law**Background to the Study**

The State has guaranteed and protected individuals for all rights inherent in themselves as human beings who have dignity and dignity that cannot be deprived by anyone, including the State (Berutu, 2017). Indonesia is one of the countries that upholds Human Rights (HAM) and guarantees that every citizen has an equal position before the law (equality of law), and is obliged to uphold the law (Martono, 2020). In the body of the 1945 Constitution Article 27 paragraph (1) is stated; "That all citizens have equal rights in law and government is obliged to uphold that law and government with no exception". Human rights provide legal and moral guarantees to individuals as controls and rules in the practice of state law over individuals so that each individual has a free relationship with the state, and the state is obliged to meet the basic needs of individuals in the jurisdiction of that state.

Internationally, human rights are accepted as the basic conception of human change, but in practice human rights violations still occur frequently (Parsial, 2005). One of the basic rights of every

human being that is universal, is the right to legal protection which includes several very fundamental rights, including rights arising from the principle of presumption of innocence, limitation of the period of detention for suspects / defendants, the right to obtain legal assistance at all levels of examination, the right to use legal remedies and the right to immediately notified of his arrest warrant, right to immediate inspection, and other rights (Martono, 2020).

The protection of a suspect's human rights is exercised from the moment a suspect is arrested, detained, prosecuted and tried before a court of law. In the criminal proceedings, a suspect or defendant will confront the state through its apparatuses, which Van Bammelen describes as if it were a fight, thus saying: the guarantee of human rights must be strengthened, because otherwise there will be inequality in accordance with the active role of judges then the first thing that must be highlighted is human rights (Widhayanti, 1998).

The issue of the need for human rights protection for perpetrators of crimes that are often violated by criminal law enforcement officials gave rise to Law Number 8 of 1981 concerning the Code of Criminal Procedure (KUHAP). The lack of human rights protection for suspects and defendants facing criminal law enforcement equipped with various authorities will be corrected by the Criminal Procedure Code. The Criminal Procedure Code determines a procedural order for all criminal proceedings formulated in the Law. This order becomes the working rule of state equipment that is authorized to deal with all rights to defend for someone. If there is an allegation of a criminal act and to determine decisions that do not conflict with human rights (Poernomo, 1982).

The Criminal Procedure Code is a law that regulates the Criminal Procedure Law in Indonesia. As one of the instruments in Indonesian legal norms, the Criminal Procedure Code must provide protection for humanitarian rights. In enforcing material criminal law, law enforcers need a formal criminal legal process, this is where we will use the Criminal Procedure Code as the basis for formal criminal law. However, in order to achieve the purpose of the establishment of the Criminal Procedure Code is to optimize the regulation to ensure the achievement of justice and security for the sake of law enforcement. In this Criminal Procedure Code, restrictions and authority are given to law enforcement officials to carry out law enforcement

In the Criminal Procedure Code, the process of handling criminal cases includes several stages, namely: investigation, investigation, prosecution, examination in court hearings, and implementation of court decisions. Investigation is the action of the investigator to find and find an act that is suspected to be a criminal act in order to determine whether or not an investigation can be carried out. While investigation is the action of the investigator to find and collect evidence which with the evidence is used to make light of the criminal act that occurred and find the suspect.

The Criminal Procedure Code has clearly regulated procedures for enforcing the Code of Criminal Procedure, but in practice there are still irregularities, whether in the process of investigation, arrest, detention and other processes regulated in the Criminal Procedure Code. This research will focus more on the process of arrest and detention of suspected perpetrators of criminal acts by police officers.

After the investigation process is declared complete and complete, the investigator submits the case file to the public prosecutor. Then the public prosecutor conducts a prosecution, which is an action from the public prosecutor to delegate the criminal case to the competent district court.

Furthermore, the panel of judges of the District Court examines, tries, and decides the case to determine the guilt or innocence of the defendant for the criminal act charged. In the event that the defendant is sentenced to imprisonment or confinement, the judge's decision is carried out by the public prosecutor by placing the convict in a prison to serve the sentence.

### **Problem Statement**

Based on the description above, the author wants to study and examine the following problems:

- 1.How is the detention of suspects handled under Indonesia's criminal code?
- 2.What is the legal protection of suspects during detention under Indonesian criminal law?

### **Research Objectives**

This research is normative legal research, using a statutory approach, and focuses on primary legal materials, namely Law Number 8 of 1981 concerning the Code of Criminal Procedure (KUHP). The nature of qualitative descriptive analysis, describing conditions as they are, without giving treatment or manipulation to the variables studied. Collection of legal materials through the study of documents or literature, processing of legal materials is carried out by examination, marking, reconstruction, and systematics. Analysis of legal materials is carried out qualitatively and systematically in order to get answers to the problems studied.

### **Methodology Research**

This research is a normative legal research, using a statutory approach that focuses on primary legal materials, namely Law Number 20 of 2001, an amendment to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. The nature of qualitative descriptive analysis. Collection of legal materials through the study of documents or literature, processing of legal materials is carried out by examination, marking, reconstruction, and systematics. Analysis of legal materials is carried out qualitatively and comprehensively.

## **RESULTS AND DISCUSSION**

### **Detention of Suspects Under Indonesian Criminal Law**

The authority given to state administrative officials must be exercised on the basis of laws and regulations (Berutu, 2017). There are three principles in criminal law, namely the principle of legality, the principle of necessity, and the principle of proportionality. The principle of legality is related to determining whether a criminal law regulation can be applied to a criminal act that occurs. So, if a criminal act occurs, it will be seen whether there are legal provisions that regulate it and whether the existing rules can be applied to the criminal act that occurred (Ali, 2012).

Law enforcement officers may only use force when absolutely necessary and only when necessary to carry out their duties. This relates to the principle of necessity. The principle of necessity is related to whether or not there are other efforts that need to be taken so that the goals to be achieved can be carried out properly. Meanwhile, the principle of proportionality is defined as the maintenance of an appropriate ratio between two components. In other words, it relates to the reasonableness of an action taken. If the action does not make sense, it is called disproportionate. Or we can call it

illegality and procedural impropriety (Ugochukwu, 2014). In criminal law, proportionality refers to the seriousness of the crime and the severity of criminal sanctions.

Detention of suspects in their handling is often carried out without regard to the contents of Article 21 of the Criminal Procedure Code, especially those related to the threat of punishment. This is often ignored so that in the end anyone who is considered a suspect, will be incarcerated. Detention measures in this way certainly result in full detention places, while the facilities available are very lacking.

Detention carried out by law enforcement officials, in this case investigators against a suspect, will cause negative perceptions among the public. This is related to the actions or legal acts committed by the suspect are considered reprehensible, and the suspect and family must bear the moral burden, labeled as the perpetrator of the criminal act before there is a permanent legal force that indeed states that the suspect is guilty.

This view of society is also very detrimental to suspects and families because the principle of presumption of innocence is ignored. Investigators often make arrests based solely on the subjectivity of the perpetrator or based solely on dislike for someone which ultimately leads to the suspect languishing in detention for a long time without getting clear certainty about the case. Actions like this ultimately lead to small people often becoming victims, arrested only for minor criminal acts.

Article 1 point 21 of the Code of Criminal Procedure regulates the definition of detention which reads: "Detention is the placement of a suspect or accused in a certain place by an investigator, or a public prosecutor or a Judge by his placement, in the case and in the manner provided for in this Law". So it is clear that detention as mentioned above is understandable, that detention is the placement of suspects or accused in a certain place carried out by investigators, public prosecutors or judges for the purposes of investigation, prosecution and trial based on the procedures provided for by law.

The detention of suspects must be based on law and necessity. The basis according to law is that there must be a strong suspicion based on sufficient evidence that the person has committed a criminal offence and that the offence is punishable by imprisonment for not more than five years or more, or a particular offence prescribed by law even if the penalty is less than five years. The legal basis alone is not sufficient to detain a person, because it is complemented by the necessity of fear that the suspect or defendant will flee or destroy evidence or will repeat the crime. The nature of reason according to necessity is alternative, meaning that if there is one of the three statements mentioned above, detention can already be made.

Meanwhile, Article 1 point 20 of the Criminal Procedure Code defines arrest as an investigative action in the form of temporary restraint of the freedom of a suspect or defendant if there is sufficient evidence for the purposes of investigation or prosecution and / or trial in the case and in the manner provided for in this law. If a person is arrested or detained on legal grounds or grounds of necessity and he is of the opinion "that his arrest or detention is unlawful i.e. does not meet the statutory requirements, then he may seek an examination and decision by the Judge on the lawfulness of his arrest, and shall be entitled to seek compensation". This effort is carried out at the level of investigation and prosecution with a pretrial process. Some important things in an arrest are first, the

official authorized to make the arrest, that is, the investigator. Second, the reason for the arrest is if there is sufficient evidence; Third, the procedure for arrest and fourth, the period of arrest.

For the purposes of investigation, the investigator may order the investigator to make an arrest (Article 16 paragraph 1 of the Code of Criminal Procedure). Arrests are made without a warrant, provided that the arrest must immediately hand over the arrest along with the evidence to the nearest auxiliary investigator. Once it is known about the authority and performance of the task of arrest, it is necessary to elaborate on the rights of suspects subject to arrest. So, the investigator's authority to make an arrest is only in the investigation stage based on the investigator's order. If there is no order by the investigator, the investigator is not authorized to make an arrest.

Referring to article 17 of the Code of Criminal Procedure, the reason for arrest is made if a person is strongly suspected of committing a criminal offense based on sufficient preliminary evidence. However, sufficient preliminary evidence is not clearly defined so that in practice it is left entirely to investigators. Thus, there needs to be a clear definition of the meaning of sufficient preliminary evidence, for example an arrest can only be made by an investigator or investigator on the orders of the investigator if it is based on at least two valid pieces of evidence as stipulated in Article 184 of the Code of Criminal Procedure. This needs to be done to minimize the use of investigators' subjectivity, as well as to ensure that the arrest process respects human rights.

About the procedure of arrest, the investigator who carried out the task of arrest must show the arrest warrant. The letter of duty is given to the suspect, including identity, reason for arrest and brief description of the case and place of examination of the case. Another case if caught, then a warrant is not needed. However, they must submit the evidence to the nearest investigator.

Article 17 of the Code of Criminal Procedure states that arrests can be made for a maximum of one day. Investigators or investigators can arrest a person in less than 24 hours, but not more than 24 hours. Arrests made more than 24 hours must be declared null and void and violate human rights.

To guarantee the rights, dignity and dignity of a suspect or perpetrator of a criminal offence subject to arrest, the detention process must meet both subjective and objective requirements. Subjective conditions are contained in Article 21 paragraph (1) of the Code of Criminal Procedure, where this condition depends only on who the person who ordered the detention, and whether the conditions mentioned in the article exist or not. The objective requirements are contained in Article 21 paragraph (4) of the Code of Criminal Procedure. The two conditions of detention are the most important objective conditions, because detention can only be carried out if the conditions specified in Article 21 paragraph (4) of the Criminal Procedure Code are met. Subjective conditions are usually only used to reinforce objective requirements and in the case of reasons why suspects are subject to extended detention or remain in custody until the detention is expired.

Objective conditions of detention may only be imposed on suspects or defendants who commit a criminal offence and/or attempt or provide assistance in such offence in the event that:

- a.the crime is punishable by imprisonment of five years or more;
- b.criminal acts as referred to in Article 282 paragraph (3), Article 296, Article 335 paragraph (1), Article 351 paragraph (1), Article 353 paragraph (1), Article 372, Article 378, Article 379 a, Article 453, Article 454, Article 455, Article 459, Article 480 and Article 506 of the Criminal Code.

What is included in the subjective conditions is;



- a. Suspects or defendants who are strongly suspected of committing a criminal offense based on sufficient evidence;
- b. In the event of circumstances giving rise to fears that the suspect or accused will flee;
- c. Damaging or eliminating evidence and or repeating criminal acts (Article 21 paragraph (1) of the Code of Criminal Procedure).

The determination of these two conditions looks very easy and does not require much interpretation. This can be seen expressly in the explanation of the Article, but the subjective requirement is very elastic in nature because it depends very much on the interpretation of each law enforcement which ultimately causes injustice to the suspect. The legal basis or objective basis refers to a criminal offense that is the object or type of crime that can be subject to detention, namely a crime that is suspected to be punishable by imprisonment of five years or more, or a crime designated in Article 21 paragraph (4) letter b of the Criminal Procedure Code.

The subjective basis of interest refers to the interest of law enforcement officials to make arrests, that is, for the purposes of examination. In accordance with the purpose of detention, if the examination at the investigation level has been completed, the BAP must be immediately transferred to the district attorney or public prosecutor, as well as the transfer of cases from the public prosecutor from the court and examination in court.

With regard to detention there are three types of detention under article 22, namely state detention house arrest, house arrest, and city detention. House arrest is carried out in the residence or residence of the suspect or defendant by providing supervision to avoid difficulties in investigation, prosecution or examination in court hearings. City detention shall be carried out in the city of residence of the suspect or defendant, with the obligation for the suspect or defendant to report at the specified time. The period of arrest and/or detention is deducted entirely from the sentence imposed. For city detention, the reduction is one-fifth of the total length of detention, while for house arrest one-third of the length of detention.

The Code of Criminal Procedure also distinguishes the length of time of detention in the investigation, prosecution or examination stages. Under articles 24, 25, 26, 27 and 28, investigators can detain suspects for a maximum of 20 days and can be extended for a maximum of 40 days. The public prosecutor may detain suspects for a maximum of 20 days and may be extended to a maximum of 30 days. District court judges may detain defendants for a maximum of 30 days and may extend to 60 days. High court judges can detain defendants for a maximum of 30 days and can be extended to 60 days. Supreme court judges can detain defendants for a maximum of 50 days and can be extended to a maximum of 60 days.

Arrests and detentions from the point of view of human rights and applicable law are carried out to assess that arrests and detentions made by investigators or other law enforcement officials are appropriate or contrary to human rights principles.

#### Legal Protection of Suspects in Detention Under Indonesian Criminal Law

The characteristic crime is the intentional imposition of grief or suffering (Failin, 2017). This feature relates to the nature of criminal law that deliberately imposes suffering in maintaining the norms recognized in law. The provision of grief or suffering (deliberately imposed on a perpetrator

who violates the provisions of the criminal law is intended to cause a deterrent effect, so that people do not commit criminal acts, and the perpetrator no longer repeats committing crimes (Failin, 2017).

The purpose of punishment today is a variation of the form of deterrent both directed at lawbreakers themselves and to those who have potential criminals. Protection to the community from evil acts, improvement (reform) to criminals is quite popular which aims not only at improving imprisonment but also looking for other alternatives that are not criminal in nature in fostering violations (Sitompul and Maysarah, 2021).nAccording to Article 1 point 14 of the Criminal Procedure Code, a suspect is "a person who, because of his actions or circumstances, based on preliminary evidence should be suspected as a criminal offender." According to J.C.T. Simorangkir, a suspect is someone who has been suspected of committing a crime and this is still in the stage of preliminary examination to consider whether this suspect has enough grounds to be examined at trial. Meanwhile, according to Darwan Prints, the suspect is a suspected perpetrator of a criminal offense (in this case the suspect cannot be said to be guilty or not).

According to Article 1 point 15 of the Code of Criminal Procedure, the definition of accused is "a suspect who is charged, examined and tried in a court session". According to J.C.T. Simorangkir, what is meant by defendant is "a person who is alleged to have committed a criminal offence and there are sufficient grounds for examination before the court." Legal protection for every perpetrator of crime is an obligation for every National Police officer as an effort to respect and protect human rights, in the context of law enforcement at the Police level (Martono, 2020: 104). Based on the provisions contained in the Criminal Procedure Code, the status of suspects determined by investigators depends on how long the investigation process carried out by investigators. Changes in suspect status will be obtained, if the investigator has delegated the case to the procuratorate and the prosecutor's office considers the case file complete, then the procuratorate will immediately delegate the case to the court (Suswantoro et al., 2018).

The main activities in the investigation process are carried out in 3 processes, namely the process of investigation, enforcement, and examination. The Criminal Procedure Code places a human being in a position and position that must be treated in accordance with the noble values of humanity. The problem is, if the legal provisions are associated with the implementation of the protection of human rights (suspects) in the Criminal Procedure Code, there are many significant gaps. The opportunity for such arbitrary use of authority, for example, can be seen in the formulation of Article 5 paragraph (1) point a point 4 of the Criminal Procedure Code which states that investigators can "carry out other acts according to responsible law. The formulation of this article gives freedom to investigators to act as they wish, arguing that the actions taken are mandatory and still in line with the authority imposed by law.

Legal protection is a protection provided by law to legal subjects in the form of legal instruments both preventive and repressive, both written and unwritten. Legal protection is one of the most important things in the elements of a legal state, because in the formation of a State, laws are also formed that regulate each citizen. In its development, between a country and its citizens will establish a reciprocal relationship, which results in a right and obligation between each other, and legal protection is one of the rights that must be given by a State to its citizens.

Legal protection is always associated with the concept of rechtstaat or the concept of rule of law because the birth of these concepts cannot be separated from the desire to provide recognition and protection of human rights. A protection can be referred to as legal protection if it contains several elements, namely:

1. There is protection from the government to its citizens.
2. There is a guarantee of legal certainty.
3. With regard to the rights of citizens.

In an effort to obtain legal protection, a suspect has several rights at the time of detention guaranteed by law, namely the right to receive and read a Detention Warrant or Judge's Determination that states the identity of the suspect or defendant and states the reason for detention and a brief description of the crime case suspected or charged and where he is detained, in accordance with Article 21 paragraph (2) of the Code of Criminal Procedure. While in detention, investigators did not prevent suspects from exercising their rights in accordance with articles 50 to 68 of the Code of Criminal Procedure (KUHAP).

Article 21 paragraph (1) of the Code of Criminal Procedure (KUHAP) conditionally relates to three reasons for detention which are often interpreted subjectively. Subjective reasons are considered to have no clear boundaries or measures and will eventually have the potential to be misused by law enforcement officials. In addition, this Article is also considered contrary to Article 27 paragraph (1), Article 28D paragraph (1), Article 28I paragraph (2) of the Constitution of the Republic of Indonesia Year 1945.

To safeguard and protect suspects from human rights violations in detention, the Criminal Procedure Code regulates the suspension of detention contained in Article 31 of the Code of Criminal Procedure with bail of persons and money bail. According to Yahya, the determination of this condition is a *conditio sine quanon* in granting deferral. Thus, in the absence of predetermined conditions, a suspension of detention should not be granted.

### Conclusion

Respect, protection and enforcement of citizens' rights including the right to equality in law, the right to recognition and protection, equality, treatment and certainty in law have been guaranteed. Human rights and protection rights have been regulated in the Code of Criminal Procedure. The provisions for detention of suspects are regulated in Article 1 point 21 of the Criminal Procedure Code, it is stated, detention is the placement of suspects or defendants in a certain place by investigators or public prosecutors or judges with their determination in terms and in the manner provided for in the law.

In an effort to provide legal protection, a suspect is granted several rights at the time of detention guaranteed by law, namely the right to receive and read a Detention Warrant or Judge's Determination stating the identity of the suspect or defendant and stating the reason for the detention as well as a brief description of the crime suspected or charged and the place where he is detained, in accordance with Article 21 paragraph (2) of the Code of Criminal Procedure.



**Suggestion**

Law enforcement in detaining suspects must adhere to the principle of equality before the law, the applicable legal rules in this case are Law 8 of 1981 concerning the Code of Criminal Procedure (KUHAP) and Law Number 39 of 1999 concerning Human Rights, In addition to providing rights to suspects, law enforcement must also provide information to suspects about the obligations they must fulfill while in detention. Thus, a balance is created between the rights and obligations of the suspect.

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