

# DETENTION OF SUSPECTS UNDER THE INDONESIAN CRIMINAL LAW

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**Citation:** Anzhari; Sunardi; Moh. Muhibbin. 2023. Detention Of Suspects Under The Indonesian Criminal Law. *Int' Journal of Law, Environment, and Natural Resources (INJURLENS)*, 3 (2), 383-310.

**Academic Editor:** Muhammad Hendri Yanova  
Received: 01 June 2023  
Revised: 02 July 2023  
Accepted: 17 November 2023  
Published: 22 Februari 2024

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**Abstract:** The research aims 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 a 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 (KUHP).<sup>1</sup> 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 Code.

**Keywords:** Detention, Suspect, Criminal Law.

## 1. INTRODUCTION

In the body of the 1945 Constitution Article 27 paragraph (1) it is stated; "all citizens have the same rights in law and government are obliged to uphold the law and government with no exceptions". (Mariam Budiardjo, 1999:30)

In the process of a criminal case, a suspect or defendant will face the state through its apparatus, which Van Bammelen describes as if it was a fight, thus saying: the guarantee of human rights must be strengthened, because otherwise there will be

inequality according to with the active role of judges, what must first be highlighted is human rights. (Erni Widhayanti, 1998:34)

Law Number 8 of 1981 concerning Criminal Procedure Law called KUHAP, determines a procedural order for the entire criminal case process which is formulated in the Law. This order is the rule for the operation of state apparatus authorized to deal with all the rights to defend a person. If there is a suspicion that a criminal act has occurred and to make a decision that does not conflict with human rights. ( Bambang Poernomo, 1982:5)

The KUHAP is a law that regulates criminal procedural law in Indonesia. As one of the instruments in Indonesian legal norms, the KUHAP must provide protection for human rights. In enforcing material criminal law, law enforcers need a formal criminal law process, this is where we will use the KUHAP as the basis for formal criminal law. However, in order to achieve the objectives of establishing the KUHAP, this is to optimize these regulations to ensure the achievement of justice and security for the sake of upholding the law. It is in this KUHAP that law enforcement officers are given limits and authority to carry out law enforcement

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

The KUHAP has clearly regulated procedures for enforcing the criminal procedure, but in practice irregularities still occur, whether in the process of investigation, arrest, detention and other processes regulated in the KUHAP. This research will focus more on the process of arresting and detaining suspected criminals by the Police.

After the investigation process is declared complete and complete, the investigator submits the case file to the public prosecutor. Then the public prosecutor carries out a prosecution, which is an act of the public prosecutor delegating criminal cases to the

competent district court. Furthermore, the Panel of Judges of the District Court examined, tried and decided on the case to determine whether or not the defendant was guilty of the crime he was charged with. In the event that the defendant is sentenced to imprisonment or confinement, the judge's decision is implemented by the public prosecutor by placing the convict in a correctional institution to serve his sentence

## **2. METHODS**

This is a normative legal research, using a statutory regulation approach, and focusing on primary legal material, namely Law Number 8 of 1981 concerning the KUHAP. The nature of qualitative descriptive analysis, describes the conditions as they are, without giving treatment or manipulation of the variables studied. Collection of legal materials through document or library studies, processing of legal materials is carried out by inspection, tagging, reconstruction, and systematization. Analysis of legal materials is carried out qualitatively and systematically in order to obtain answers to the problems studied.

## **3. RESULTS AND DISCUSSION**

### **3.1. Detention of Suspects in accordance to Indonesian Criminal Law**

The detention of suspects in their handling is often carried out without regard to the contents of Article 21 of the KUHAP, especially those relating to threats of punishment. This is often ignored so that in the end anyone who is considered a suspect will be detained. Acts of detention in this way certainly result in full detention places, while the facilities available are lacking.

Detention carried out by law enforcement officials, in this case investigators against a suspect, will create negative perceptions among the public. This is related to the actions or legal actions carried out by the suspect which are considered disgraceful, and the suspect and his family must bear the moral burden, being labeled as the perpetrator of a crime before there is permanent legal force which states that the suspect is guilty.

This view of society is also very detrimental to the suspect and his family due to the neglect of the presumption of innocence. Investigators often make detentions based solely on the subjectivity of the perpetrators or simply based on their dislike for someone, which in turn causes the suspect to spend a long time in detention without obtaining clear certainty regarding the case. Actions like this in the end cause ordinary people to often become victims, being arrested only because of minor criminal acts.

Article 1 point 21 regulates the definition of detention which reads: "Detention is the placement of a suspect or defendant in a certain place by an investigator, or public prosecutor or judge with his placement, in matters and according to the method regulated in this law". So it is clear that detention as mentioned above is understandable, that detention is the placement of a suspect or defendant in a certain place carried out by investigators, public prosecutors or judges for the purposes of investigation, prosecution and trial based on procedures regulated by law.

Martiman Pradjahamidjaja said detention must be based on law and necessity. "The basis according to law is that there must be a strong allegation based on sufficient evidence that the person has committed a crime and that crime is punishable by a maximum prison sentence of five years or more, or a certain crime determined by law even though the threat is sentence of less than five years." (Martiman Projohamidjojo, 1988:44) A legal basis alone is not enough to detain someone, because it is complemented by a necessary basis, namely the fear that the suspect or defendant will run away or damage/disappear evidence or will repeat the crime. The nature of the reason according to necessity is alternative, meaning that if one of the three statements mentioned above is found, then detention can already be carried out.

If a person is arrested or detained on legal or necessary grounds and he is of the opinion "that his arrest or detention is illegal, that is, he does not meet statutory requirements, then he can request an examination and a decision by a judge regarding the lawfulness of his arrest, and has the right to ask for compensation". This effort is carried out at the level of investigation and prosecution with the pre-trial process. (Martiman Projohamidjojo, 1988:44)

In the case of being caught with an arrest made without a warrant, with the provision that the arrest must immediately hand over the caught along with the existing evidence to the closest assistant investigator. After knowing about the authority and implementation of the task of arrest, it is necessary to describe the rights of the suspect who is subject to arrest.

In order to guarantee the rights, dignity and worth of a suspect or perpetrator of a crime who is subject to arrest, the detention process must meet subjective and objective requirements. Subjective conditions are contained in Article 21 paragraph (1) of the KUHAP, where these conditions only depend on who the person who ordered the detention is, and whether the conditions stated in the article exist or not.

The objective requirements are contained in Article 21 paragraph (4) of the KUHAP. Regarding the two conditions of detention, the most important is the objective conditions, because detention can only be carried out if the conditions specified in Article 21 paragraph (4) of the KUHAP are found. Meanwhile, subjective conditions are usually only used to strengthen objective conditions and in terms of reasons why suspects are subject to an extension of detention or remain in detention until the detention ends.

The determination of these two conditions looks very easy and does not require much interpretation. This can be seen explicitly in the elucidation of the Article, but the subjective requirements are very elastic in nature because they depend heavily on the interpretation of each law enforcer which ultimately causes injustice to the suspect. The legal basis or objective basis refers to a crime which is the object or type of crime that can be subject to detention, namely a crime that is suspected of being punishable by imprisonment of five years or more, or a crime referred to in Article 21 paragraph (4) letter b of the KUHAP.

The basis of subjective interests refers to the interests of law enforcement officials to carry out detentions, namely for the purposes of investigations. In accordance with the purpose of detention, when the investigation at the investigative level has been completed, the BAP must be immediately transferred to the district

attorney or public prosecutor, and so on the transfer of cases from the public prosecutor to the court and examination in court.

### **3.2. Legal Protection for Suspects in Detention in Accordance to Indonesian Criminal Law**

In Accordance to Article 1 point 14 of the KUHAP a suspect is "a person who because of his actions or circumstances, based on initial evidence, should be suspected of being the perpetrator of a crime." According to J.C.T. Simorangkir (Martiman Projohamidjojo, 1988:44) suspect is "a person who is suspected of having committed a crime and this is still at the preliminary examination stage to consider whether this suspect has sufficient grounds to be examined at trial. Meanwhile, according to Darwan Prints, a suspect is "a person who is suspected of being the perpetrator of a criminal offense" (in this case the suspect cannot be said to be guilty or not).

In accordance to Article 1 point 15 of the KUHAP, that the definition of a defendant is "a suspect who is prosecuted, examined and tried in court." According to J.C.T. Simorangkir (J.C.T. Simorangkir, dkk: 179), that what is meant by the accused is "a person who is suspected of having committed a crime and there is sufficient reason for an examination before the court."

Legal protection is a protection provided by law to legal subjects in the form of legal instruments both preventive and repressive in nature, 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 a reciprocal relationship will be established, which results in the existence of rights and obligations between one another, and legal protection is one of the rights that must be given by a country to its citizens.

Legal protection is always associated with the concept of rechtsstaat 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 protection can be called 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. Relating to the rights of citizens. (djar.grid.id/read/542972260/konsep-perlindungan-dan-penegakan-hukum-di-indonesia-dan-wujudnya?page=all, Desember 2022)

In an effort to obtain legal protection, a suspect has several rights at the time of his detention which are guaranteed by law, namely the right to receive and read a warrant of detention or a judge's decision which lists the identity of the suspect or defendant and states the reason for the detention and a brief description of the crime case he is suspected of. or charged and the place where he was detained, in accordance with Article 21 paragraph (2) of the KUHAP. While in detention, investigators do not prevent suspects from exercising their rights in accordance with articles 50 to 68 of the KUHAP.

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

To safeguard and protect suspects from human rights violations while in detention, the KUHAP regulates the suspension of detention contained in Article 31 of the KUHAP with person guarantees and money guarantees. According to Yahya, the stipulation of this condition is a condition sine quanon in granting a suspension. Thus, without conditions set in advance, suspension of detention may not be granted.

#### **4. CONCLUSIONS**

- a. Provisions for detaining suspects are regulated in Article 1 point 21 of the KUHAP. It is stated that detention is the placement of a suspect or accused in a certain place by an investigator or public prosecutor or a judge with his stipulation in matters and according to the manner stipulated in the law.

- b. In an effort to provide legal protection, a suspect is given a number of rights at the time of detention which are guaranteed by law, namely the right to receive and read a Detention Order or a Judge's Decision stating the identity of the suspect or defendant and stating the reasons for the detention and a description a brief case of the crime that is suspected or charged and the place where he was detained, in accordance with Article 21 paragraph (2) of the KUHAP.

## 5. SUGGESTION

- a. Law enforcers in detaining suspects must adhere to the principle of equality before the law, the legal rules that apply in this case are Law 8 of 1981 concerning the KUHAP and Law Number 39 1999 concerning Human Rights,
- b. In addition to giving rights to suspects, law enforcers 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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