

# Criminal Sanction Policy to Stopping Investigation Suspect is Breach of Human Rights

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**ABSTRACT** - *In the process of investigating a suspect, sometimes the treatment is deviated from the provisions of the legislation. This is not only in Indonesia but also in developed countries. If related to Law Number 2 of 2002 concerning the Indonesian National Police which contains the values contained in Pancasila, the 1945 Constitution, and the principles of law, this is the identity of the Polri in carrying out its duties and authorities. This explains the duties and authorities of the Polri in the field of maintaining security and public order, enforcing the law, protecting, protecting and providing services to the public, as described in the Polri's vision and mission. The purpose of this study is to Analyze the practice of the state in providing legal protection for a person to be a suspect without clear time provisions and To analyze the current criminal justice system in an effort to provide protection against cessation of investigations. The formulation of the problem in this study is How does the practice of the state in providing legal protection for a person become a suspect without clear time provisions? and How the current criminal justice system in order to provide protection against the termination of the investigation?. This research method uses a normative juridical approach which is carried out by examining literature sources. The research results obtained in this study are that the termination of an investigation by an investigator against someone without legal clarity is a violation of the law, both Law Number 8 of 1981 and Law Number 39 of 1999.*

**Keywords:** *criminal sanctions for terminating investigations, contrary to human rights*

## I. INTRODUCTION

Based on Law Number 2 of 2002 concerning the Republic of Indonesia National Police have significant duties and authorities both in terms of community security and law enforcement, protection, protection, and community service. In the process of investigating a suspect, sometimes his treatment is deviated from the provisions of the legislation, not only in Indonesia but also in developed countries. To provide an overview of the suspension of investigations of suspects is a violation of human rights.

As also confirmed by the Corruption Eradication Commission (KPK) against former Garuda Indonesia Director Emir Satar and Director of PT. Pelindo II, R.J. Lino. As investigators in both the National Police and the Corruption Eradication Commission in carrying out their duties should be professional, but sometimes a person who is named a suspect has never received service / inspection in accordance with legal procedures.

The term suspects based on Article 1 number 4 of the Criminal Procedure Code (KUHAP) is someone who because of his actions or circumstances, based on

preliminary evidence, should be suspected as a criminal. The defendant based on Article 1 point 15 of the Criminal Procedure Code is a suspect who is prosecuted, examined and tried in court. Furthermore, a convict based on Article 1 number 32 of the Criminal Procedure Code is a person convicted based on a court decision that has obtained permanent legal force. The term legal protection stated in this paper reflects the obligations and responsibilities given and guaranteed by the state to respect, protect, uphold and advance human rights based on laws and regulations.

The Republic of Indonesia has included human rights arrangements in its constitution (UUD). The preamble of the 1945 Constitution does not specifically mention human rights in the words: "that independence is the right of all nations ...". Then the elaboration of the concept of legal protection for human rights is regulated in the body of the 1945 Constitution (after the amendment), namely in Article 27, Article 28A-J, Article 29, Article 30, Article 31 and Article 34..

Protection of Human Rights (HAM) has a long history that starts from the same natural dignity and human rights and cannot be revoked. The recognition of these dignity and rights is the basis of world independence, justice and peace. We see human rights as vital to maintaining human life and preserving the most valuable rights, namely the right to be human. As a term, human dignity and rights are referred to as human rights. Article 4 of Law Number 39 Year 1999 concerning Human Rights mentions a number of absolute human rights, which cannot be reduced under any circumstances and by anyone.

These rights include:

1. Right to life;
2. The right not to be tortured;
3. The right to personal freedom, mind and conscience;
4. Right to religion;
5. The right not to be enslaved;
6. The right to be recognized as a person and equality before the law;
7. The right not to be prosecuted based on retroactive laws

Formulation of Article 4 of Law No. 39 of 1999 concerning Human Rights is the same as the formulation of Article 28I paragraph (1) Amendments to the 1945 Constitution, namely: The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law and the right not to be prosecuted on the basis of a retroactive law are human rights that cannot be reduced under any circumstances.

The sentence "... cannot be reduced under any circumstances" shows that those rights are absolute rights, cannot be limited, even though Article 28J paragraph (2) of the 1945 Constitution recognizes the obligation to respect the rights and freedoms of others within limitations set by law.

If related to Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia which contains the values contained in Pancasila and the 1945 Constitution. As well as the legal principles, which constitute the identity of the National Police in carrying out its duties, and authorities, in the field of maintaining security and public order, enforce the law, protect, protect and provide services to the community, as described in the vision and mission of the National Police.

In this regard, the main tasks and authority of the National Police as referred to in Article 13 of Law Number 2 of 2002 concerning the Indonesian National Police, namely:

1. Maintaining public security and order;
2. Law enforcement; and
3. Provide shelter protection and services to the community

While the National Police in carrying out the tasks referred to in Article 13 in the criminal proceedings, the National Police has the authority to "stop the investigation" as stipulated in article 16 paragraph (1) letter h of Law Number 2 of 2002 concerning the Indonesian National Police.

In the event that the National Police conduct a cessation of the investigation referred to in Article 16 paragraph (1) letter h of Law Number 2 of 2002 and in Article 7 paragraph (1) of letter i of Law Number 8 of 1981 concerning KUHAP, on the grounds that there is not enough the evidence or event is not a criminal offense or the investigation is terminated by law, as referred to in Article 109 paragraph (2) of the Criminal Procedure Code, the supervisor of the investigator orders the investigator with a Termination of Investigation Warrant, and must inform the prosecutor with a notice of termination of the Investigation. , then followed up by issuing a Decree on Termination of Investigation, to be conveyed to the suspect or his family.

Termination of an investigation is one of the actions to settle a case, before the criminal investigation process is stopped by the police investigator. Cases must be held in advance by inviting various parties, including internal police, prosecutors, expert witnesses, reporters and reported parties, with a view to obtaining truth and legal certainty transparently. From the results of the case title, the investigator can analyze and conclude whether the case meets the criminal element or not, if the case meets the criminal element, the investigation process continues until completion. Then proceed to the transfer of case files to the Public Prosecutor (JPU) in accordance with the provisions of Article 8 paragraph (3) letter b of the Criminal Procedure Code, and if the case does not meet the elements, then the investigator is authorized to conduct a cessation of the case investigation, which is based on Article 109 paragraph (2) Criminal Code.

Furthermore, the investigator's supervisor issues an Investigation Termination Order (SP3) addressed to the investigator, then is followed up by the investigator to make / issue a Termination Letter of Investigation, to be delivered to the suspect or his family and the reporter (victim), as well as the Notice of Investigation to be submitted to the public prosecutor. , as a completeness of administration [1].

From the series of descriptions, that the National Police as a tool for the state of law enforcement is part of the Criminal Justice System, and in carrying out its duties and authorities is to carry out the functions of state government, as referred to in Article 2 of Law No. 2 of 2002, stated "the function of the police is one of the functions of the state government in the field of maintaining security and public order, law enforcement, protection, protection and service to the community".

#### Formulation of The Problem

The formulation of the problem in this study is "How does the practice of the state in providing legal protection for a person become a suspect without clear time provisions?"

## II. RESEARCH METHOD

The method used in this study is a normative legal research method / descriptive analysis approach. Descriptive analytical means describing and depicting something that is the object of research critically through qualitative analysis. Because what is intended to be studied is within the scope of jurisprudence, the normative approach includes: legal principles, synchronization of laws and regulations, including efforts to find legal inconcreto [2]. In this research, the researcher focuses on several cases concerning the termination of the investigation of the suspect is a violation of human rights.

In a normative juridical study, the use of the statute approach is a sure thing. It is said to be certain, because in legal logic, normative legal research is based on research conducted on existing legal materials. Although for example the research was conducted because it saw a legal vacuum, but the legal vacuum can be known, because there are legal norms that require further regulation in positive law [3].

## III. FINDINGS AND DISCUSSION

Investigation of suspects by investigators both the National Police and the Corruption Eradication Commission (KPK) must be carried out transparently so as not to arouse suspicion by either the suspect or related parties such as lawyers, or their families. Transparency in an investigation if carried out in accordance with the provisions of Law No. 8 of 1981, all of which will end with whether the person concerned is determined as a defendant for further processing or at all the relevant person is released due to lack of evidence.

Transparency of investigation is part of the information, and information is a basic need of every person for personal development and social environment

and is an important part of national security. That the right to obtain information is a human right and public information disclosure is an important feature of a democratic state that upholds the people's sovereignty to realize good governance. Then the disclosure of public information is a means of optimizing public oversight of the administration of the state and other public bodies and everything that results in the public interest. Then the management of public information is an effort to develop an information society [4].

Protection of Human Rights (HAM) has a long history that starts from the same natural dignity and human rights and cannot be revoked. The recognition of these dignity and rights is the basis of world independence, justice and peace. We see human rights as vital to maintaining human life and preserving the most valuable rights, namely the right to be human. As a term, human dignity and rights are referred to as human rights. Article 4 of Law Number 39 Year 1999 concerning Human Rights mentions a number of absolute human rights, which cannot be reduced under any circumstances and by anyone [5].

These rights include:

1. Right to life;
2. The right not to be tortured;
3. The right to personal freedom, mind and conscience;
4. Right to religion;
5. The right not to be enslaved;
6. The right to be recognized as a person and equality before the law;
7. The right not to be prosecuted based on retroactive laws.

Formulation of Article 4 of Law No. 39 of 1999 concerning Human Rights is the same as the formulation of Article 28J paragraph (1) Amendments to the 1945 Constitution, namely:

“The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law and the right not to be prosecuted on the basis of a retroactive law are non-human rights can be reduced under any circumstances (absolute nature)”

However, in Article 28J paragraph (2) of the 1945 Constitution there is recognition of the obligation to respect the rights and freedoms of others within the limits stipulated by law. In Article 28J paragraph (2) it is stated:

“In exercising their rights and freedoms, every person is obliged to submit to the limitations stipulated by law with the sole purpose of ensuring the recognition and respect for the rights and freedoms of others. And to meet fair demands in accordance with moral considerations, religious values, security and public order in a democratic society.”

Failure to uphold justice also occurs in Indonesia. Based on research conducted and daily practical experience. The author confirms YahyaHarahap's opinion which states that currently more than 80% of criminal cases submitted to courts throughout Indonesia do not use legal counsel / defense. In fact, 80% of cases that are

submitted to the court are actually not suitable to be filed. In corruption cases, more than 95% of cases tried throughout Indonesia are legally flawed, both formally and substantially. When a case that is not suitable for trial but is still forced to be brought before a trial, it is certain that there has been a violation of human rights since the investigation stage.

In the following description, the authors describe the forms of human rights violations that occur in various criminal cases based on normative juridical research conducted and experienced by themselves. However, to unite the understanding and terminology, the "suspect" in this article will further refer to Article 1 number (14) of the Criminal Procedure Code which means "a person who due to his actions or circumstances, based on preliminary evidence, should be suspected as a criminal offender”.

Criminal Procedure Law in Indonesia regulated in the Criminal Procedure Code (KUHAP) pretty much regulates the provisions of the investigation of a criminal offense. Provisions regarding investigations in the Criminal Procedure Code are regulated in chapter IV, part one, Articles 4-12, then Articles 16-19 concerning the authority of investigators to arrest and confiscate evidence, Articles 32-49 regarding the investigator's obligation to make a BAP case. In addition to the provisions above, Chapter XIV, Articles 102-136 also regulates the technical investigation.

One of the problems that occur in the Criminal Justice System is the occurrence of human rights violations at all levels of examination. Such violations can range from procedural violations to serious violations such as the fabrication of witnesses and the fabrication of evidence of a case [6].

#### IV. CONCLUSION

1. Legal protection of human rights, especially for a person who is determined as a suspect. This is an embodiment of what was done by a police investigator and KPK investigator in conducting an examination, but if there were no errors found in the process then what must be done by the police and KPK investigator is to release the suspect.
2. The government together with the House of Representatives must immediately amend Law No. 8 of 1981 concerning Criminal Procedure Law, particularly regarding the examination process carried out by police investigators and KPK investigators regarding the status of suspects.

#### REFERENCES

- [1]. Kabareskrim Mabes Polri, *Pedoman Penyidikan Tindak Pidana*, Jakarta, 2006
- [2]. Soerjono S., Sri M., *Penelitian Hukum Normatif*, Jakarta: Rajawali, 1985, hlm. 4-15. Lihat juga Roni Hanitijo Soemitro, *Metode Penelitian Hukum dan Jurimetri*, Ghalia Indonesia, Jakarta, 1983

- [3]. Peter M. M., *Penelitian Hukum*, Cetakan Kedua, Kencana Prenada Media Group, Jakarta, 2006
- [4]. Undang-Undang Nomor 14 Tahun 2008, tentang Keterbukaan Informasi Publik
- [5]. I Ketut A. P., *Transparansi Penyidik Polri dalam Sistem Peradilan Pidana di Indonesia*, Refika Aditama, Bandung, 2018
- [6]. Bhardwaj, H.R., *Crime, Criminal Justice & Human Rights*. Konark Publisher Pvt. Ltd., New Delhi, 2001.