

Legal Analysis of the Detention of Suspects of Theft Crimes by Investigators at the Sagulung Police Sector, Batam City

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Abstract. *Criminal procedure law is a law that regulates how to maintain and defend material criminal law and regulates how to try cases in criminal courts by criminal judges. The Criminal Procedure Code regulates the main points, the principles in Indonesian criminal procedure law, namely: the principle of legality, the principle of opportunity, the principle of equal treatment before the law, the principle of presumption of innocence, the principle of arrest, detention, search, and confiscation are carried out based on written orders from authorized officials, the principle of compensation and rehabilitation, the principle of fast, simple and low-cost trials, the principle that suspects or defendants have the right to receive legal assistance, the principle that the court examines criminal cases with the presence of the defendant, the principle of open trials to the public, the principle of accusatoir (placement of suspects as subjects). Law Number 2 of 2002 concerning the Republic of Indonesia Police, in Articles 13 and 14 outlines the functions and roles of the Police, namely: Article 14 (1) letter g makes the substance of the details of the Police's duties in the field of criminal investigation and inquiry in accordance with the Criminal Procedure Code and other laws and regulations, which relate to the duties and authority of the Police in the law enforcement process. The Criminal Procedure Code gives the main role to the Police to carry out the task of investigating and investigating criminal acts (in general) without limits within the scope of the law, so that basically the Police are given the authority by the Criminal Procedure Code to conduct investigations and investigations of criminal acts.*

Keywords: *Crimes; Detention; Investigators; Police.*

1. Introduction

Criminal procedure law is a law that regulates how to maintain and defend material criminal law and regulates how to try cases in criminal courts by criminal judges. The Criminal Procedure Code regulates the main points, the principles in Indonesian criminal procedure law, namely: the principle of legality, the principle of opportunity, the principle of equal treatment before the law, the principle of presumption of innocence, the principle of arrest,

detention, search, and confiscation are carried out based on written orders from authorized officials, the principle of compensation and rehabilitation, the principle of fast, simple and low-cost trials, the principle that suspects or defendants have the right to receive legal assistance, the principle that the court examines criminal cases with the presence of the defendant, the principle of open trials to the public, the principle of accusatoir (placement of suspects as subjects). As a country of law, Indonesia has a judicial system and law enforcement, one of the components of law enforcement is the Indonesian National Police (Polri). This is something that cannot be separated from one another, because it is a part or system that is integrated as a criminal justice system that requires the connection and attachment of other components.¹

The Indonesian National Police as regulated in the Criminal Procedure Code, with the term of action prioritizing the special duties of the Indonesian National Police, acting as the main investigator of the Criminal Procedure Code in the criminal justice system, protecting and siding with the victim in order to create justice, where it is expected that the law enforcement process will run in accordance with the legislation, so that what the public hopes can be implemented by the Indonesian National Police in accordance with its duties, namely as a guardian, protector and servant for the enforcement of statutory provisions.²

Law Number 2 of 2002 concerning the Republic of Indonesia Police, in Articles 13 and 14 outlines the functions and roles of the Police, namely: Article 14 (1) letter g makes the substance of the details of the Police's duties in the field of criminal investigation and inquiry in accordance with the Criminal Procedure Code and other laws and regulations, which relate to the duties and authority of the Police in the law enforcement process. The Criminal Procedure Code gives the main role to the Police to carry out the task of investigating and investigating criminal acts (in general) without limits within the scope of the law, so that basically the Police are given the authority by the Criminal Procedure Code to conduct investigations and investigations of criminal acts.³

Therefore, with the issuance of the Criminal Procedure Code, law enforcement officers in the criminal justice process must be more careful and selective in carrying out detention.⁹ Various requirements and procedures that have been determined normatively must be met and adhered to. The Criminal Procedure Code is to regulate the behavior and actions of law enforcement.

Article 22 of the Criminal Procedure Code states that there are 3 types of detention for suspects or defendants, namely:

1. State prison detention.

¹ M Yahya Harahap, Discussion of Problems and Application of the Criminal Procedure Code, Investigation and Prosecution, Sinar Grafika, Jakarta, 2002, page 10.

² Atang Ranomihardja, Criminal Law, Principles, Main Understandings and Theories and the Opinions of Several Scholars, Tarsito, Bandung, 1994.

³ Andi Hamzah, Indonesian Criminal Procedure Law, Sinar Grafika, Jakarta, 2001, page 127.

2. House arrest.

3. City arrest.⁴

2. Research Methods

The main data source in this study is the reality that occurred, the rest is additional data such as documents and others. This study uses primary data sources and secondary data. The primary data source is taken from the community where the suspect was detained. The secondary data sources in this study were obtained from various sources, such as library materials, literature, documents, collections of laws and regulations, legal journals or scientific bulletins, newspapers and various scientific works published in accordance with the topic of this study, namely the detention of suspects.⁵

3. Results and Discussion

3.1. Authority Investigator Indonesian National Police Do Detention To Suspects in the Criminal Justice System

Every citizen has freedom of movement, which is a human right guaranteed by the state in the 1945 Constitution of the Republic of Indonesia. Detention is the deprivation of a person's personal rights, so this can only be done on the orders of a legitimate authority according to the regulations stipulated in law.

Detention is a form of deprivation of a person's freedom of movement. So, here there is a conflict between two principles, namely a person's right to move and the interests of public order, this is where the specialness of criminal procedure law lies. It has provisions that can eliminate universally recognized principles, namely human rights. Detention should be carried out if absolutely necessary, errors in detention can result in fatal consequences for detention.

Article 1 number 21 of the Criminal Procedure Code states that detention is the placement of a suspect or defendant in a certain place by an investigator, public prosecutor or judge with its application, in the case and according to the method regulated in this law.

The purpose of detention is to facilitate investigation, because the examination of the suspect will be easier and smoother if the suspect is in detention than if the suspect is outside detention.

In addition to facilitating investigations, the possibility of escape or influencing witnesses who know about the suspect's actions can be prevented if the suspect is in detention.

⁴ JE Sahetapi, *Quovadis Criminal Law*, Alumni, Bandung, 1995, page 3.

⁵ Burhan Bungin, *Qualitative Research Data Analysis, Philosophical and Methodological Understanding Towards Mastery of Application*, Raja Grafindo Persada, Jakarta, 2003, page 53.

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Suspects can be detained for the purposes of preliminary examination, investigation, and prosecution. Prosecutors in preparing their prosecution require direct information from the suspect, which will be easier to obtain if the suspect is in detention. In addition, if the suspect is detained, it will be easier for the public prosecutor to present him in court. The conditions for detention consist of two parts, namely:⁶

1. Objective conditions or also called the grounds of legality
2. Objective requirements are the basis for detention reviewed from the perspective of the crime, namely the crime for which detention is imposed. For this purpose, it has been stipulated in Article 21 paragraph (4) of the Criminal Procedure Code. Objective requirements are absolute, meaning that if the crime committed by the suspect or defendant is not included in the formulation of Article 21 paragraph (4) of the Criminal Procedure Code, then the suspect or defendant cannot be subject to detention.
3. Subjective Terms or also called *gronden van noodzakelijkheid*

Subjective conditions are the reasons for detention reviewed from the perspective of the need for the suspect or defendant to be detained. According to Article 21 paragraph (1) of the Criminal Procedure Code, the need for the suspect or defendant to be detained is due to circumstances that give rise to concerns that:

- a. The suspect or accused will flee;
- b. Destroying or removing evidence;
- c. Repeating criminal acts.

Subjective conditions are alternative, meaning that all three conditions do not need to be met, but one of the conditions is sufficient.

Criminal acts that can be subject to detention as regulated by Article 21 paragraph (4) are: Such detention can only be imposed on suspects or defendants who have been proven to have committed a crime and/or attempted or provided assistance in a crime. For the purposes of investigation, if it turns out that the suspect has actually committed a crime, or is strongly suspected of having committed a crime based on sufficient initial evidence or in circumstances that give rise to concerns that the suspect will flee,

damaging and removing evidence and will repeat the crime and in addition aims for the purposes of investigation, prosecution and examination by the judge in court, then the suspect can be detained.

This is as regulated in Article 20 of the Criminal Procedure Code, namely:

⁶ Abdul Ghofur Anshori, *Philosophy of Science*, Gadjah Mada University Press, Yogyakarta, 2009.

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- (1) For the purposes of investigation, investigators or assistant investigators on the orders of investigators as referred to in Article 11 have the authority to make detentions.
- (2) For the purposes of prosecution, the public prosecutor has the authority to carry out detention or further detention.
- (3) For the purposes of examination, the judge in court hearings has the authority to make detention by his decision.

Article 20 of the Criminal Procedure Code gives investigators, public prosecutors or judges the authority to carry out detention or further detention, where each time a detention is carried out, a detention warrant must be used.

Detention consists of several types, which can be distinguished from the requirements or placement of the suspect/defendant being detained. The types of detention as per Article 22 of the Criminal Procedure Code are:

- (1) State detention of suspects or defendants detained and placed in a state detention center (Rutan).
- (2) House arrest, carried out at the residence of the suspect/defendant by carrying out supervision.
- (3) City detention, carried out in the city where the suspect/defendant lives/resides with the obligation for the suspect/defendant to report themselves at a specified time.

Details of detention in Indonesian criminal procedure law according to Articles 24–28 of the Criminal Procedure Code are as follows:⁷

1. Detention by investigator or assistant investigator (20 days)
2. Extension by the public prosecutor (40 days)
3. Detention by public prosecutor (20 days)
4. Extension by the head of the district court (30 days)
5. Detention by district court judge (30 days)
6. Extension by the head of the district court (60 days)
7. Detention by high court judge (30 days)
8. Extension by the chief justice of the high court (60 days)

⁷ Andi Sofyan, *Criminal Procedure Law: An Introduction*, Rangkang Education, Yogyakarta, 2002.

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9. Retention by the Supreme Court (50 days)

10. Extension by Chief Justice (60 days)

For more clarity regarding detention, it will be explained in the following table:

No	Official	Length of Detention	Legal Basis (KUHP)
1	Investigator	20 days	Article 24 paragraph (1)
	In Extend by ProsecutorPublic Prosecutor	40 days	Article 24 paragraph (1)
2	Public Prosecutor	20 days	Article 25 paragraph (1)
	In Extend by ChairmanDistrict Court	30 days	Article 25 paragraph (2)
3	District Court Judge	30 days	Article 26 paragraph (1)
	In Extend by ChairmanDistrict Court	60 days	Article 26 paragraph (2)
4	High Court Judge	30 days	Article 27 paragraph (1)
	In Extend by ChairmanHigh Court	60 days	Article 27 paragraph (2)
5	Supreme Court Judge	50 days	Article 28 paragraph (1)
	In Extend by ChairmanSupreme Court	60 days	Article 28 paragraph (2)
Amount		400 days	

In accordance with the provisions of Article 7 of the Criminal Procedure Code, investigators as referred to in Article 6 paragraph (1) letter a, due to their obligations, have the authority to make detentions.

Detention is a restriction on a person's freedom, especially freedom of movement, so detention should be carried out when it is absolutely necessary for the interests of law enforcement. On the one hand, detention causes a person to lose their freedom of movement, on the other hand, detention is carried out to maintain order that must be maintained for the public interest. Therefore, detention must be in accordance with the Criminal Procedure Code.⁸

The legal basis for detention by the police can be found in Article 20 paragraph (1) and Article 21 of the Criminal Procedure Code which contains: Article 20 paragraph (1) of the Criminal Procedure Code: For the purposes of investigation, investigators or assistant investigators on the orders of investigators as referred to in Article 11 have the authority to carry out detention. Article 21 of the Criminal Procedure Code:

(1) A detention or further detention order is issued against a suspect or defendant who is

⁸ Burhan Bung, Qualitative Research Data Analysis, Philosophical and Methodological Understanding Towards Mastery of Application, Raja Grafindo Persada, Jakarta, 2003

strongly suspected of committing a crime based on sufficient evidence, in the event of circumstances that give rise to concerns that the suspect or defendant will flee, damage or remove evidence and/or repeat the crime.

- (2) Detention or further detention is carried out by investigators or public prosecutors against suspects or defendants by issuing a detention order or a judge's decision which includes the identity of the suspect or defendant and states the reasons for detention as well as a brief description of the crime for which he is suspected or charged and the place where he is being detained.
- (3) A copy of the detention order or further detention order or the judge's decision as referred to in paragraph (2) must be given to the family.
- (4) Such detention may only be imposed on suspects or defendants who commit a crime and/or attempt to commit or provide assistance in such a crime in the following cases:
 - a. This crime is punishable by up to five years in prison.
 - 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, Article 25 and Article 26 of the Rechtenordonnantie (violation of the Customs and Excise ordinance, last amended by Staaatsblad 1931 Number 471), Article 1, Article 2 and Article 4 of the Immigration Crimes Law (Law Number 8 Drt 1955, State Gazette 1955 Number 8), Article 36 paragraph (7), Article 41, Article 42, Article 43, Article 47, and Article 48 of Law Number 9 of 1976 concerning Narcotics (State Gazette of 1976 Number 37, Supplement to the State Gazette Number 3086).

The rules regarding detention can be found in Article 23, Article 24, Article 25, Article 29, Article 30 and Article 31 of the Criminal Procedure Code:

Article 23 of the Criminal Procedure Code:

- (1) Investigators, public prosecutors or judges have the authority to switch from one type of detention to another type of detention as referred to in Article 22.
- (2) The transfer of the type of detention is stated separately with a written order from the investigator or public prosecutor or a judge's decision, copies of which are given to the suspect or defendant and his/her family and to the relevant agencies.

Article 24 of the Criminal Procedure Code:

- (1) The detention order issued by the investigator as referred to in Article 20, it is only valid for a maximum of twenty days.

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- (2) The time period as referred to in paragraph (1) if necessary for the purposes of an investigation that has not been completed, may be extended by the authorized public prosecutor for a maximum of forty days.
- (3) The provisions as referred to in paragraph (1) and paragraph (2) do not preclude the possibility of a suspect being released from detention before the end of the detention period, if the interests of the examination have been fulfilled.
- (4) After the sixty day period, the investigator must have release the suspect from custody by law.

Article 25 of the Criminal Procedure Code:

- (1) The detention order issued by the public prosecutor as referred to in Article 20 is only valid for a maximum of twenty days.
- (2) The time period as referred to in paragraph (1) if necessary for the purposes of an examination that has not been completed, may be extended by the competent head of the district court for a maximum of thirty days.
- (3) The provisions as referred to in paragraph (1) and paragraph (2) do not preclude the possibility of the suspect being released from detention before the end of the detention period, if the interests of the investigation have been fulfilled.
- (4) After the fifty-day period, the public prosecutor must release the suspect from detention by law.

Article 29 of the Criminal Procedure Code:

- (1) Except for the detention period as referred to in Article 24, Article 25, Article 26, Article 27 and Article 28, for the purposes of examination, the detention of a suspect or defendant may be extended based on reasonable and unavoidable reasons because:
 - a. The suspect or defendant suffers from serious physical or mental disorders, as proven by a certificate from a doctor or
 - b. The case being investigated is punishable by a prison sentence of nine years or more.
- (2) The extension referred to in paragraph (1) is given for a maximum of thirty days and if the detention is still necessary, it can be extended again for a maximum of thirty days.
- (3) The extension of the detention is due to base requests and inspection reports at the level:
 - a. Investigation and prosecution are carried out by the chairman of the district court,

examination in the district court is carried out by the chairman of the high court.

- b. Appeal hearing is provided by the Supreme Court.
 - c. The cassation examination is given by the Chief Justice of the Supreme Court.
- (4) The use of the authority to extend detention by the official in question

Article (3) is carried out in stages and with full responsibility.

(5) The provisions as referred to in paragraph (2) do not preclude the possibility of a suspect or defendant being released from detention before the end of the detention period, if the interests of the examination have been fulfilled.

(6) After sixty days, even if the case has not been completed or has not been decided, the suspect or defendant must be released from detention by law.

(7) Regarding the extension of detention referred to in paragraph (2), the suspect or defendant may submit an objection at the following levels:

- a. Investigators and prosecutors to the chairman of the high court.
- b. District court examination and appeal examination to the Chief Justice of the Supreme Court.

Article 30 of the Criminal Procedure Code: If the detention period as referred to in Article 24, Article 25, Article 26, Article 27 and Article 28 or the extension of detention as referred to in Article 29 is proven to be invalid, the suspect or defendant has the right to request compensation in accordance with the provisions referred to in Article 95 and Article 96.

Article 31 of the Criminal Procedure Code:

- (1) At the request of the suspect or defendant, the investigator or public prosecutor or judge, in accordance with their respective authorities, may: issue a suspension of detention with or without a monetary guarantee or personal guarantee, based on the specified conditions.
- (2) Due to their position, investigators, public prosecutors or judges may at any time revoke the suspension of detention if the suspect or defendant violates the conditions as referred to in paragraph (1).

In the investigation stage, a police investigator has the authority to detain a suspect, where detention is a sensitive matter and is very sensitive in nature in the legal process which requires serious attention because detention is very closely related to human rights.

The basis for detention includes the legal basis, circumstances, and conditions that allow for the act of detention. Between one and another of these bases, they support each other to the other elements, so that if one of the elements is missing, the act of detention does not fulfill the principle of legality even though it is not qualified as an illegal act. For example, only the element of legal basis or what is often called the objective element basis is fulfilled, but is not supported by the element of necessity or what is called the subjective element, and is not strengthened by the element of conditions determined by law, such detention has the nuance of injustice and lacks the dimension of relevance and urgency.

The elements that form the basis for detention are:

1. Basic Basis/Legal Elements/Objective Elements

It is referred to as a legal basis or objective element, because the law itself has determined the articles of the crime for which criminal acts detention can be applied. Not all criminal acts can be subject to detention of suspects or defendants.¹¹² The legal or objective element, determined in Article 21 paragraph (4), detention can only be imposed on suspects or defendants who commit criminal acts and/or attempts or provide assistance in criminal acts, namely:

a. Those who are threatened with imprisonment of five years or more

Criminal acts that carry a criminal sentence of five years or more that are permitted to be detained against suspects or defendants. Significant criminal acts, the criminal sentence of which is more than five years, are crimes against the lives of people regulated in Chapter XIX of the Criminal Code, starting from Article 338 and so on. If the criminal sentence listed in the article of the criminal act violated is less than five years, objectively the suspect or defendant may not be detained.⁹

b. In addition to the general rules above, detention can also be imposed on perpetrators of crimes\referred to in the articles of the Criminal Code and Special Criminal Laws below, even if the criminal threat is less than five years. Perhaps the reason is based on the consideration that the criminal articles are considered to have a significant impact on the interests of public order in general, as well as a threat to the safety of people's bodies in particular. Included in this group are those contained in Article 282 paragraph (3), Article 296, Article 335 paragraph (1), Article 353 paragraph (1), Article 372, Article 378, Article 379a, Article 453, Article 454, Article 455,

Article 459, Article 480 and Article 506.

2. Element of State of Concern/Subjective Element

⁹ Presidential Decree of the Republic of Indonesia Number 70 of 2002 concerning the Organization and Work Procedures of the Republic of Indonesia National Police.

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This element emphasizes the circumstances or need for detention viewed from the subjective aspect of the suspect, but at the same time encounters two subjective aspects, namely the subjective aspect of the suspect or defendant, which is assessed subjectively by the law enforcer concerned.

As for the elements of the circumstances or necessity of detention in question,

as stipulated in Article 21 paragraph (1), namely the existence of circumstances which give rise to concerns: the suspect or defendant will flee, damage or remove evidence or there is concern that he will repeat the crime.¹⁰

All the worrying circumstances here are circumstances that include the subjectivity of the suspect or defendant. The official who assesses the worrying circumstances also starts from a subjective assessment.

Isn't it very difficult to objectively assess whether a suspect has the intention to flee, thus worrying law enforcement officials, and the worrying situation that a suspect or defendant will destroy evidence or intend to repeat a crime is a subjective assessment.

3. Fulfillment of the requirements of Article 21 paragraph (1)/Requirements stipulated by law

In addition to the elements of detention mentioned above, detention must fulfill the statutory requirements as stipulated in Article 21 paragraph (1): the suspect or defendant is strongly suspected of being the perpetrator of the crime in question, and this strong suspicion is based on sufficient evidence.

The conditions for detention are different from the conditions for arrest. The difference is in terms of evidence. In arrest, the requirements for evidence are based on sufficient initial evidence, while in detention, they are based on sufficient evidence. Thus, the requirements for evidence in detention are higher its quality than the act of arrest.

Article 31 of the Criminal Procedure Code states that a suspect or defendant may request a suspension, the suspension may be granted by the Investigator, Public Prosecutor, Judge in accordance with their respective authorities by determining whether or not there is a guarantee of money or person based on certain conditions and if these conditions are violated then the suspension may be revoked and the suspect or defendant may be detained again.

The suspension of detention must be submitted by the suspect or his/her family or can also be submitted by the suspect's legal counsel with a guarantee of money and personal guarantee. Based on the conditions that have been determined. The official who is authorized to detain the suspect or defendant is not required to grant every request and can reject the

¹⁰ Investigation Number: SP.Sidik/05/III/2020/Reskrim dated March 12, 2020.

request for suspension of detention for a certain reason and still place the suspect or defendant in detention.¹¹

Investigators also have a basis for granting a suspension of detention, because of the investigator's belief that the applicant can fulfill the terms of the agreement agreed between the investigator and the applicant, and the most basic thing is the most important indicator of concern so that the investigator does not feel worried about the applicant's ability to fulfill the requirements has been agreed, for example there has been peace with the victim, and is willing to be present and cooperative if needed by the Investigator/Assistant Investigator.

1. Aspects of Justice in Detaining Suspects

A phenomenal idea aimed at law enforcement officers, especially so that they are not bound by legal positivism. So far, it has given many injustices to justice seekers in enforcing the law, because law enforcement is a series of processes describing values, ideas, and ideals that are quite abstract which are the goals of the law. The goals of the law or legal ideals begin with moral values, such as justice and truth. These values must be able to be realized in real reality. The existence of law is recognized if the moral values contained in the law are able to be implemented or not.

Conceptually, the core of the meaning of law enforcement lies in the activity of harmonizing the relationship of values that are outlined in solid rules and embodying attitudes and actions as a series of final stage value explanations, to create, maintain and defend peaceful social interactions.

according to the spirit and deeper meaning (to the very meaning) of the law or statute. Law enforcement carried out with full determination, empathy, dedication, commitment to the suffering of the nation and accompanied by the courage to seek other paths than those usually taken. The criteria for progressive law are:¹²

1. Has a big goal in the form of human welfare and happiness.
2. Contains very strong human moral content.
3. Progressive law is a law that liberates very broad dimensions that not only move in the realm of practice but also theory.
4. Critical and functional.

The actions of the Sagulung Police investigators who examined the suspect in the crime of assault, in which the suspect can be detained in accordance with the provisions of Article 21

¹¹ Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August – 7 September 1990, Chapter 1, Section C, paragraph 2(b).

¹² Teguh Prastyo and Abdul Halim Barakatullah, Criminal Law Politics: Study of Criminalization and Decriminalization Policies, Pustaka Pelajar, Yogyakarta, 2005

paragraph (4) of the Criminal Procedure Code, however, considering that the suspect was very cooperative during the handling of the case, did not beat around the bush, admitted his actions and up to now there has been peace with the victim, there is no need to detain the suspect, this is an action based on progressive law.

With the background of progressive thinking from the Sagulung Police investigators and not limited to what is written in the laws and regulations, then the law enforcement carried out by the investigators can be said to be a progressive investigation model. And with the combination of the scientific investigation model and the progressive investigation, it is hoped that it can realize proportional, professional and intellectual law enforcement.

In addition, the poor situation and conditions in detention centers or other places used to detain suspects or defendants in Indonesia, can currently be said to be in an acute overcrowded condition. This situation finally gave rise to various health problems experienced by the prisoners.

Not only is it a health issue, but the implementation of pre-trial detention also raises various other problems, such as the possibility of fights between prisoners or groups of prisoners.

In addition, limited supervision of the judiciary through pre-trial mechanisms towards investigative institutions often results in arbitrary actions being taken against detainees in the form of torture, both physical and psychological, during the investigation process. There are two main causes of this situation, namely:

1. Because there is no judicial scrutiny at any stage in the current Criminal Procedure Code.
2. The absence of in-depth elaboration of the legal requirements for detention as contained in Article 21 of the Criminal Procedure Code.

In the reality of community life, the law experiences a crucial problem that obscures the meaning of the law. The law is used as a tool to protect certain interests and the law is used as a tool to legalize actions that violate the values of justice in the midst of society.

Law is used as a tool, not a goal. One of the causes of the stagnation that occurs in the world of law is because it is still trapped in a single paradigm of positivism that is no longer functional as an analysis and control that is in line with the living table of human characteristics that are actually in a dynamic and multi-interest context both in the process and in its legal events.¹³⁷ In the history of the Republic of Indonesia, there have been alternating political changes (based on the political system period) between democratic political configurations and authoritarian political configurations.

In line with the changes in political configuration, the character of legal products also changes. When the political configuration appears democratically, the legal products that are born have a responsive character, conversely when the political configuration appears authoritarian, the laws that are born have an orthodox character.

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Justice is only assumed to the routine of Police, Prosecutors, and Judges as a livelihood in a building. Because, for the apparatus, being a Police is aimed at working. Therefore, the law is only part of the pile of files on the law enforcement desk that must be completed. The general issue that occurs in Indonesia, the completion of legal problems refers to the principle of work measured by the nominal values achieved.

Law enforcement as a means of achieving legal goals, all energy should be mobilized so that the law is able to work to realize moral values in law. The failure of the law to realize legal values is a threat of the danger of legal bankruptcy. Laws that are poor in implementing moral values will be distant and isolated from society. The success of law enforcement will determine and become a barometer of legal legitimacy in the midst of its social reality. BM Taverne said, give me good law, good law commissioners, good officers of justice, good police officers, and in the midst of a good law process, give me good judges, prosecutors, police and advocates, then I will eradicate crime even without a single piece of law. In other words, give me good judges and prosecutors, then with bad laws I can bring justice.

The law is a black letter law and can only work if mobilization is carried out. In criminal law, mobilization is mainly carried out by the Police. Without police intervention, the Criminal Code is only writing on paper. It is in this intervention that behavioral factors re-emerge. Whether someone who commits an act listed in the Criminal Code will be detained or not is determined by many things. Legal ethics cannot be replaced by sophisticated formulations of modern law, but people must live it.

Based on the description above, the factors causing the detention of suspects or defendants not to realize justice are due to the suspect's or defendant's rights not being fulfilled and the law enforcers not daring to enforce the law with a progressive legal paradigm, including the following:¹³

1. The regulations regarding the detention of suspects or defendants which have weaknesses (vague) as per Article 21 paragraph (1) of the Criminal Procedure Code make it easy for officials who have the authority to carry out detention to decide to detain someone.
2. Officials authorized to carry out detention still use the detention mechanism to the maximum extent up to the final detention limit permitted by the Criminal Procedure Code.
3. The mechanism for changing the type of detention of suspects or defendants who are with the same official makes the official subjective is very important in determining whether or not a request to change the type of detention is granted.
4. The mechanism for suspending the detention of suspects or defendants who are in the same office makes the subjectivity of the official very important in determining whether or not to grant a request for suspension of detention.
5. Guarantees in the form of money in a request for a suspension of detention provide an opportunity for the official who is authorized to detain to tend to carry out the detention in the hope that the suspect or defendant will submit a request for a suspension of detention.

¹³ Tongat, Life Sentences in the Criminal Law System in Indonesia, University of Muhammadiyah Malang, Malang, 2004.

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6. Guarantees in the form of money in requests for suspension of detention provide an opportunity for officials authorized to issue suspensions of detention to commodify the suspension of detention.

7. The cash guarantee required in a request for suspension of detention is unlikely to be fulfilled by a poor suspect or defendant.

8. The existence of a regulatory vacuum in the Criminal Procedure Code does not recognize the existence of judicial scrutiny (judicial supervision) other than the pre-trial mechanism as regulated in Article 77 of the Criminal Procedure Code: The district court has the authority to examine and decide, in accordance with the provisions regulated in this law regarding:

- a. Whether or not an arrest, detention, termination of investigation or termination of prosecution is legal;
- b. Compensation and/or rehabilitation for a person whose criminal case is terminated at the investigation or prosecution stage.

Article 77 only regulates pre-trial applications regarding the legality or illegality (rechtsvaardigheid) of detention, and does not regulate whether or not detention is necessary (noodzakelijkheid).

9. The poor situation and conditions in detention centers (overcrowding) have given rise to various health problems and fights between prisoners.

10. The practice of law enforcement is still legalistic positivism. The way of thinking used is to spell out the law and obey procedures by ignoring the value of substantive justice, and removing the language of conscience. Law enforcers argue that their work requires certainty, so that the law is used like a doctor's stethoscope. Legal practice becomes a practice that operates more on legal schemes (rule and logic) than asking whether the function of law in society is running well.

If that happens, it is actually trapped in the understanding of humans for the law, and if law enforcement officers hold to the belief that humans are for the law, then humans will always be tried or perhaps forced to be able to enter into the schemes that have been made by the law. So that the assumption arises that justice is above regulations/procedures.

Progressive law in Indonesia is currently still considered taboo because law students and law enforcers are only provided with legal material in law colleges that are positivistic.

3.2. Legal Consequences of Police Investigators' Actions in Detaining Suspects in the Criminal Justice System

3.2.1. Protection of Human Rights in the Process of Detaining Suspects

Detention is an effort aimed at facilitating the criminal justice process, it cannot be used as a means to reduce or even revoke the dignity of detainees as human beings whose basic rights are guaranteed and protected by law and the state. Suspects or Defendants who are subject to detention must be placed in an equal position before the law and protected from all forms

of arbitrary treatment. Detention is given to Suspects or Defendants who have not been sentenced by a Judge with permanent legal force (*inkracht*).

In every criminal law process, an Investigator, Prosecutor and Judge have the authority to detain any Suspect or Defendant of a crime. Such detention is usually carried out in circumstances where a suspect or defendant is feared to escape.

Protection is an effort or form of service provided by law to legal subjects

and things that are protected objects. Meanwhile, the definition of law can be studied from the norms contained in the law and legal norms that live and develop in society. While the theory of legal protection is a theory that studies and analyzes the form or shape or purpose of protection, protected legal subjects and objects of protection provided by law to its subjects.

Soetjipto Rahardjo said that legal protection is an effort to protect a person's interests by allocating power to him to act in his interests.

Furthermore, it is also stated that one of the characteristics and at the same time the purpose of the law is to provide protection (protection) to the community. Therefore, legal protection for the community must be realized in the form of legal certainty.

According to Article 1 number 21 of the Criminal Procedure Code, detention is the placement of a suspect or defendant in a certain place by an investigator, public prosecutor or judge with his/her decision, in cases and according to the methods regulated.

in this law.¹⁴⁶ Based on the provisions of Article 1 number 21, all law enforcement agencies have the authority to carry out detention, each of which has a time limit determined in a limited manner. Then in Article 20 of the Criminal Procedure Code, the purpose of detention is also explained:

1. For the purposes of investigation, investigators or assistant investigators on the orders of investigators as referred to in Article 11 have the authority to make detentions.
2. For the purposes of prosecution, the public prosecutor has the authority to carry out detention or further detention.
3. For the purposes of examination, the judge in court hearings has the authority to make detention by his decision.

Meanwhile, the Regulation of the Chief of the Republic of Indonesia National Police Number 4 of 2015 mentions the points regarding the rights of prisoners that must be fulfilled, including:

1. Spiritual and physical development.

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2. Decent food.
3. Medical examination.
4. Prisoner clothing.
5. Visiting time.
6. Submission of complaints.

Then in Article 18 paragraph (1) of Law Number 39 of 1999 concerning Human Rights it states that: Every person who is arrested, detained or prosecuted on suspicion of committing a criminal act has the right presumed innocent, until proven guilty legally in a court of law and given all legal guarantees necessary for his defense, in accordance with the provisions of statutory regulations.

Basically, protection of the rights of prisoners and their implementation have been regulated in the Criminal Procedure Code, laws and other regulations, but in general in practice in the field this has not been implemented. In the detention process there are rights of prisoners that must be fulfilled, including the right not to be tortured, the right to receive a speedy examination, the right to obtain legal assistance, the right to obtain health services, the right to receive family visits and the right to compensation and rehabilitation.

1) The Suspect's Right to File a Pre-Trial

According to Article 1 number 14 of the Criminal Procedure Code: A suspect is a person who, due to his actions or circumstances based on initial evidence, is reasonably suspected of being the perpetrator of a crime, while Article 1 number 1) of the Criminal Procedure Code also explains that a defendant is a suspect who is charged, examined and tried in court.

From the above understanding, it can be concluded that the difference between a suspect and a defendant lies in the evidence and process. Not only are the rights of victims regulated in the laws in force in Indonesia, there are also several rules that explicitly or implicitly state the rights of a suspect/defendant as an Indonesian citizen.

In the constitutional normative level, this humanitarian aspect is stated in the opening of the 1945 Constitution of the Republic of Indonesia, the first paragraph as follows: That in fact independence is the right of all nations and therefore colonialism in the world must be abolished, because it is not in accordance with humanity and justice. This statement explicitly, although in the context of opposing colonialism, implicitly contains the recognition that independence is the right of every person/human being as an individual member of society. Furthermore, the third paragraph of the opening of the 1945 Constitution states: By the grace

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of Almighty God and driven by the noble desire to live a free national life, the Indonesian people hereby declare their independence.¹⁴

It is necessary to correct the current view of the general public that in fact a suspect/defendant cannot be said to be the perpetrator of a crime, so in a fair legal process it can be seen from the principles of the Criminal Procedure Code (according to the explanation) by Mardjono Reksodiputro which are divided into:

1. Equal treatment before the law without any discrimination.
2. Presumption of innocence.
3. The right to receive compensation (reparation) and rehabilitation.
4. The right to legal aid.
5. The defendant's right to be present in court.
6. An independent trial is conducted quickly and simply.
7. A trial that is open to the public.
8. Violations of individual rights (arrest, detention, search and seizure) must be based on law and carried out with a (written) warrant.
9. The right of a suspect to be informed of the allegations and charges against him.
10. The court's obligation to control the implementation of its decisions.

The freedom and liberty of a person contain broad aspects. One of them is the right of a person to be treated fairly, without discrimination and based on the law, especially if a person is suspected or suspected of committing an act of violation or crime, meaning that the deprivation or restriction of the freedom and freedom of movement of a person suspected of committing a crime, viewed from a criminal law perspective can be in the form of arrest, detention and criminalization, can be justified if based on statutory regulations it has existed before legal action is imposed on him. This means that there are certain rights of a person who is arrested, detained or convicted that must be fulfilled.

International standards permit pretrial detention only in certain limited circumstances. In 1990, the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders established the principle that pretrial detention (including the detention of an accused person) may be ordered only if there are substantial grounds to believe that the

¹⁴ Sri Endah Wahyuningsih, Principles of Individualization of Criminal Procedure in Islamic Criminal Law, Diponegoro University Publishing Agency, Semarang, 2013.

person concerned has been involved in the commission of the crime charged and there is a threat that the person will flee or commit further serious crimes, or a risk that the course of justice will be seriously obstructed if the person is released.

One of the major achievements of the 8th United Nations Congress was the adoption by consensus of the United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules). These rules specifically state that:¹⁵

1. Detention of a suspect or defendant should be used as a last resort in criminal trials, taking into account the investigation process of the criminal charges as well as protection for the community and the victim.
2. Alternatives to detention of suspects or defendants should be sought at the earliest possible stage.
3. The detention of a suspect or accused should not last longer than is necessary and must be carried out humanely and with respect for human dignity.
4. The perpetrator has the right to appeal to the judicial authority or other competent independent authority in cases where the detention of the suspect or accused is carried out.

4. Conclusion

In conducting an investigation, a suspect may be detained. The legal provisions regarding the authority of investigators to detain suspects are contained in Article 20 paragraph (1) of the Criminal Procedure Code which states: For the purposes of the investigation, investigators or assistant investigators on the orders of investigators as referred to in Article 11 have the authority to detain. Factors that influence the considerations of the Police Investigator in exercising his authority to detain a suspect are fears that the suspect will flee and repeat his actions against the victim, in addition to detention being carried out on the grounds that the suspect is an operational target, the suspect's residence is far from clear, the suspect has committed a crime that has attracted the attention of the leadership, the case that occurred has been reported by the mass media and has received wide attention from the public. Meanwhile, the investigator's considerations not to detain the suspect are due to a request not to be detained (suspension of detention), with a letter of guarantee not to flee, repeat the act, remove evidence, and cooperation guaranteed by the Family and Village Head which was granted by the Investigator, and there has been peace with the victim. The legal consequences of the actions of police investigators in exercising their authority to detain suspects, that in carrying out detention, the rights of the suspect must still be taken into account, and the suspect can file a pre-trial motion.

¹⁵ Soerjono Soekanto, *Factors Influencing Law Enforcement*, Raja Grafindo Persada, Jakarta, 2012

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