THE ARREST OF SUSPECTED CRIMINAL OFFENSES BY INVESTIGATE AUTHORITIES ACCORDING TO THE CRIMINAL CODE AND ITS IMPLEMENTATION

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ABSTRACT

Article 1 point 20 of the Criminal Procedure Code reads: An arrest is an investigation action in the form of temporary restraint of the freedoms of a suspect or defendant if there is sufficient evidence for the purpose of investigation or prosecution and/or judiciary in respect of and in accordance with the manner laid down in this law.

The acts and authorities prescribed by the Criminal Procedure Code for investigators in the limitation in one's freedom and human rights, from the process of arresting, detention, seizure and searching are an act that should be placed in proportion for the sake of examination and desperately needed in its application as the provision of the presumption of innocent. If the method of arrest is not in accordance with the Criminal Procedure Code, the consequences can be made pre-trial efforts. The procedures contained in the Criminal Procedure Code are not yet fully implemented, particularly the provisions of Article 19 of the Criminal Procedure Code, the time limit for arrest is only one day, whereas to meet the inspection procedures cannot be done in one day and also the provisions of Article 54 of KUHAP and Article 56 of KUHAP. Therefore through the writing of International Journal entitled: "The arrest of suspected criminal offenses by investigative authorities according to the Criminal Code and its implementation" can be analyzed and discussed in the preparation of this Journal.

The purpose of this paper is to determine the extent of the implementation of arrests by investigators in the territory of the State Police Resort Pematangsiantar North Sumatra and analyze the constraints faced by investigators in applying several articles of arrest under the Criminal Procedure Code. From the analysis results, it can be obtained any constraints in terms of making arrests according to juridical and technical aspects, there are many witnesses who are willing to be a witness at a criminal event.

Keywords: Suspect/Defendant, Arrest,Presumption of innocence

INTRODUCTION

The acts and powers granted by law to investigators in the framework of limiting one's freedom and human rights, from the process of arrest, detention, seizure, and searches are acts that should really be placed in proportion for the sake of examination and really needed.

Article 1 point 20 of the Criminal Procedure Code states: An arrest is an investigating action in the form of temporary restraint of the freedoms of a suspect or defendant in the event

of sufficient evidence of interest of investigation or guidance and or judicial in matters and in the manner laid down in this law.

From the provisions of Article 1 point 20 of the Criminal Procedure Code, it may be understood that the arrest is nothing other than the "temporary restraint" of suspects' freedom for the purpose of investigation or guidance, but must be carried out in the manner found in the Criminal Procedure Code[1].

If the arrest procedure conducted against the suspect is not carried out in accordance with the provisions set forth in the Criminal Procedure Code, it can be said that there have been legal irregularities resulting in the dignity of the arrested person who has been raped or their rights have been violated. In Indonesia, human rights are always upheld and respected by society and government. The Criminal Procedure Code itself regulates the rights of suspects recognized and elaborated in the articles, but often occurs in the practice of arresting the suspect not in accordance with what has been determined. This is because in general the suspect is not aware of the actual arrest procedure, so the suspect obeys just what the investigator questions even if it has clearly violated the human rights of the suspect. If that thing happens, the consequences that can be made by the suspect is to ask the pre-trial to determine the validity of his arrest. (Siswono, 1983: 11). Therefore, in the investigation of suspects, investigators must continue to apply the Principle of Presumption of Innocent contained in article 8 of the Basic Law of Judicial Power (UUPKK) no. 4 Year 2004 juncto on Law no. 35 of 1999. Hence, before any court decision declares the suspect's misconduct and has not obtained a permanent legal force, the suspect must be considered innocent. If it is seen why investigators are doing so, it is because there is often encountered in the practice of some obstacles, technically or juridical, such as the shortest time limit of arrest, only one day according to Article 19 of the Criminal Procedure Code. Meanwhile, to meet all the procedures contained in the Criminal Procedure Code is not possible, especially suspects reside in remote areas that are difficult to reach, and even if the arrest is still carried out it will take days, weeks or even years. Thus all procedures contained in the Criminal Procedure Code cannot be fully implemented properly. Therefore, through this research, the writer tried to research and discusses it in a discussion which reveals the results of the research will be

[1]Harahap Yahya, SH, 2000, Pembahasan Permasalahan Dan Penerapan KUHAP, Penerbit Sinar Grafika, Jakarta page 153

described in the form of International Journal entitled: Arrest against Suspect Criminal Actors by Investigator Apparatus According to Criminal Procedure Code and In Practice ".

Problem Formulation

The main issues that become the starting point in this paper is:

1. How is the implementation of arrest in practice in Pematangsiantar District Police Region - North Sumatera?
2. What are the constraints faced by the investigating authorities in applying the articles of arrest in the Criminal Procedure Code?

Research Objectives

The objectives of this research are:

1. To find out how the implementation of arrest in practice in Pematangsiantar District Police-North Sumatra.
2. To know the constraints faced by investigators, investigators and investigators in the application of several articles in the arrest of the Criminal Procedure Code.

DISCUSSION

Arresting Suspects According to the Criminal Code

Arresting is equated with a sense of defense, where arrest is parallel to the arrest (United Kingdom) while the detention is parallel to detention (UK). Duration of arrest is not long. In the event of being caught red-handed, the arrest (every person can do) only takes place between the arrest of the suspect to the nearest police station, after arriving at the police station or the investigator, the police or investigator may arrest if the offense is determined that the suspect may be arrested.

Article 1 point 20 of KUHAP Mention: An arrest is an investigation action in the form of temporary suspension of freedom of suspect or defendant if there is sufficient evidence for the interest of investigation or prosecution and or judicial in matters and according to the manner stipulated in this law.

Based on the formulation of article 1 point 20, the arresting consists of several elements:

a. Temporary restraint of freedom
b. Suspect or defendant
c. There is enough evidence
d. In the interest of investigation, prosecution and judiciary

From the above elements, the problem is, "there is enough evidence".In the Big Indonesian Dictionary issued by the Ministry of Education and Culture, arresting is defined among others:

a. Nothing less
b. Complete
c. Suffice
d. Fairly, moderately

But if it is related to article 17 of the Criminal Procedure Code then the use of the word "sufficient" in article 1 point 20cannot be used because Article 17 KUHAP formulated "sufficient initial evidence" here is enough proof of the beginning.

Article 17 of the Criminal Procedure Code reads: an order of arrest shall be made against a person suspected of strictly criminal suspension on the basis of sufficient initial evidence.

In the Attachment of Decree of the Minister of Justice of the Republic of Indonesia No: M 01. PW. 07.03 1983 dated 4 February 1982, the field of investigation, stating "the law does not provide a definition or understanding what is proof of the beginning".

This uniformity of interpretation is necessary in order to avoid the occurrence of undesirable things, because something can happen by the investigator is considered as a proof of the beginning, but by a pre-trial judge who checks the legitimacy of his arrest. Something is not or has not been categorized as proof of beginning, enough to guess someone that is the culprit. In accordance with this, it can be interpreted that the Criminal Procedure Code (KUHAP) submits to the practice, by providing leeway to the investigator to judge on the basis of reason whether something is a preliminary proof or not[2]. This needs to be studied

[2]Marpaung Leden, SH, 1992, Proses Penanganan Perkara Pidana, Penerbit Sinar Grafika, Jakarta page 103-104

more deeply, because if we talk about "fairness", the defendant do not need to be arrested, just made a summons, with the sanction of article 216 of the Criminal Code.

Article 216 of the Penal Code reads as follows:

1. Whoever intentionally does not obey orders or demands, conducted according to the rules of the law by the required or satisfied civil servants to investigate or examine punishable acts, as well as those who deliberately prevent, obstruct or thwart any act which carried out by an act committed by the civil servant, in the enforcement of a statutory law, sentenced to imprisonment for four months and four weeks or a maximum fine of Rp.9000, -
2. Equated with the public servants referred to in the first part of the above paragraph are those who, by law, have always been or are required to perform a work of the general laborer.
3. If at the time of committing the crime not to mention 2 (two) years since the permanent decision of which the penalty was wrong before because of similar crime, then the punishment can be highly added.

From the description of Article 216 of the Criminal Code, it can be seen that there is no need to be arrested unless the person has been called not to fulfill the call and even escaped, for example. It is reasonable to be arrested. It is time for all law enforcement officers to come to the dignity of human beings as God's creatures, who long for honor to thereby grow and thrive on the soul of "the embarrassment". Shame to deal with law enforcement officers, will bring a positive impact on the enforcement of the law. It is desirable "arrest based on sufficient proof of inquiry". Abolished all law enforcement officers, seek and gather legal evidence based on Article 184 KUHAP that is the witness testimony, expert information, evidence of letters, guidance, testimony of the defendant[3].

Implementation of Arrest

The Authorized Agencies Carry out the arresting procedure

[3]Marpaung Leden, SH, 1992, Proses Penanganan Perkara Pidana, Penerbit Sinar Grafika, Jakarta page 105

Article 16 paragraph (1) and (2) of KUHAP, which have the authority to make comments on suspects, among others, investigators, investigators and investigators.

Article 16 paragraph (1) and (2) reads:

(1) For the purpose of investigation, thesearcher on the order of the investigator is authorized to make an appraisal.
(2) For the interest of the investigator, the investigator and the auxiliary investigator shall be authorized to make arrests

From the editors of Article 16 paragraph (1) and (2) of the Criminal Procedure Code, it can be concluded that the authorities to perform appraisal are orders of investigators and auxiliary investigators. Furthermore, according to Article 1 point 1 of the Criminal Procedure Code, the investigator shall be the State Police Official of the Republic of Indonesia or certain civil servant officials who are given special authority by the law to conduct an investigation, then the investigator as referred to in Article 6 paragraph (1) of the Criminal Procedure Code.

Article 6 paragraph (1) of KUHAP reads as follows:

(1) The Investigators are:
a. State Police Officer Republic of Indonesia.
b. Officials of Civil Servants.

While the authority of investigator is regulated in Article 7 paragraph (1) and (2) KUHAP namely: -

(1) The investigator as referred to in article 6 paragraph (1) because of its obligations have the authority:
    a. Receive a report or complaint from a person about the existence of a criminal act;
    b. Take the first action at the time of the crime;
    c. Tried to stop a suspect and check the identity of the suspect;
    d. Conduct arrests, detentions, searches and seizures;
    e. Checking and confiscating mail;
    f. Pick up fingerprints and sue someone
    g. Calling someone to be heard and examined as a suspect or witness;
    h. Bringing the necessary expert in connection with the examination of the case;

i. Conducting termination of investigation;
j. Carry out other actions under responsible law

(2) The investigator referred to in Article 6 paragraph (1) letter b shall have authority in accordance with the law and in the performance of his duties under the coordination and supervision of the investigator in Article 6 paragraph (1) a.

According to article 1 point 3 of the Criminal Procedure Code: auxiliary investigator is a police officer of the State of the Republic of Indonesia who due to be given certain authority may perform investigation tasks as regulated in law. The authority of the auxiliary investigator under Article 11 of the Criminal Procedure Code is the same as the investigator's authority contained in Article 7 paragraph (1) of the Criminal Procedure Code except for the mandatory detention with the delegation of authority from the investigator.

Article 4 of the Criminal Procedure Code states: The authority to carry out the investigation function is every police officer of the Republic of Indonesia. the provision of Article 4 KUHAP, affirmed and explained which apparatus or institution is functioning or authorized to conduct investigation. Only POLRI agencies or officials authorized to perform such functions shall no longer be justified by the interference of other agencies and officers in the conduct of investigations of alleged criminal activities.

Furthermore Article 5 paragraph (1) sub a and b KUHAP that the authority of the investigator:

a) Because the obligation he has authority to:
   1. receive a report or complaint from a person about a crime;
   2. seek information and evidence;
   3. order to stop a suspected person and inquire and check the identification;
   4. take other actions according to responsible law.
b) On the orders of the investigator may take the following actions:
   1. arrest, leave ban, search and seizure;
   2. inspection and confiscation of mail;
   3. take fingerprints and photograph someone
   4. bring and confront an investigator

According to the explanation of Article 5 paragraph (1) sub a number 4 KUHAP provides understanding of 'other acts' is the action of the investigator for the sake of investigation. The other actions performed shall meet the following conditions:

1. Not related to any rule of law;
2. In harmony with the legal obligations that require the conduct of office positions;
3. Such action shall be reasonable and reasonable and included in the jurunya environment;
4. Upon appropriate considerations based on coercive circumstances.

Arrest Procedures

The Criminal Procedure Code is a criminal procedure law that intercepts the procedure of law enforcement with humane acts, so that the dignity of human beings should not be raped. In the criminal procedural law we recognize the presumption of innocent, which is contained in the general explanation of point 3 letter c which reads: Everyone suspected, arrested, detained, prosecuted, and or accompanied before the court, shall be regarded as non-guilty until a court decision declares a mistake and obtains a permanent legal force. The principle in the explanation of the Criminal Procedure Code can be concluded that the legislator has established it as the legal principle underlying the KUHAP and law enforcement. Actually, the presumption of innocence has been formulated Article 8 of the Basic Law of Judicial Power Act no. 4 of 2009 Amendment to Law no. 35 of 1999. Article 8 of the Law states: "Everyone who has been suspected, arrested, detained, prosecuted, and or faced before the court, shall be presumed innocent until a court decision declares and obtains a permanent legal force".

The principle of presumption of innocence in terms of technical juridical or technical aspects of the investigation is called the 'Accusatory Procedure/accusatorial system'. The principle of accusation places the position of the suspect/defendant in any level of examination:

1. It is the subject, not as the object of the examination, therefore the suspect must be seated and treated in the position of the man who has the dignity

2. The object of examination in the principle of Accusation is a mistake (criminal act) committed by the suspect/defendant, in that direction the examination is addressed.

The Principle of Presumption of innocence adopted by the KUHAP provides guidance to law enforcement officials to usethe principle of *akusatur* in each examination stage. Law enforcement officers shall abstain from the inquisitorial inspection methods that place suspects in any examination as objects that can be arbitrarily treated. Where the principle of inquisitor used to be the basis of inspection in the HIR period, in no way gives the right and opportunity reasonable for the suspect/defendant to defend himself or defend his rights and correctness, since from the beginning the law enforcement officers:

1. Already a priori suspect guilty, as if the suspect has been convicted since the first time he was examined confronted investigative officials;
2. The suspect / defendant is considered and made an object of ruling regardless of human rights and the right to defend and defend the dignity and truths it possesses.

Furthermore, the principle of presumption of innocence or the principle of accusation can be enforced at all levels of examination, the Criminal Procedure Code has given shield to the suspect/defendant in the form of a set of human rights that must be respected and protected by law enforcer with the shield of rights recognized by law. Theoretically from the beginning of the examination phase, the suspect/defendant must have an equal position to the examiner's official in the legal position, it is entitled to demand the treatment outlined in Chapter VI KUHAP, starting from Article 50-68 KUHAP (rights of suspects/defendants).

Based on the above issue, it is explained in the Criminal Procedure Code that arrest is stipulated in several articles, namely Articles 16,17,18 and 19 KUHAP which will be described as follows:

1. Arrest According to Article 16 of the Criminal Procedure Code

Article 16 paragraph (1) reads: for the sake of investigation, the investigator by order of the investigator has the authority to make the arrest.

The investigator is a State Police Officer of the Republic of Indonesia who is authorized by this law to conduct an investigation. It is in accordance with the formulation of article 4 of the Criminal Procedure Code.

Article 4 of the Criminal Procedure Code reads: the authority to carry out the inquiry function shall be every Police Officer of the Republic of Indonesia. Specifically, investigators are every Police, while prosecutors or other officials are not authorized to conduct investigations. The unification of functions and authority of this investigation is reasonable because:

a. Simplify and provide certainty to the people who are entitled to investigate.
b. Eliminate the confusion of investigations by law enforcement officials, so there is no longer an overlap of investigation as experienced in the HIR.
c. It is also an efficiency of investigation action in terms of waste of the investigation if it is handled by several agencies as well as the person being investigated is no longer faced with various hands of law enforcement officers in the investigation as well as in terms of time and energy wasted to be more orderly.

From the provisions of Article 4 of KUHAP, it is clear that officers or agencies are functioned or authorized to conduct investigations, only those agencies or officials of the police who are authorized to perform such functions shall no longer be justified by the interference of other agencies and officials in the conduct of investigation of a criminal incident.

M. Yahya Harahap in his book '*pembahasaan permasalahan dan penerapan KUHAP"* stated that: The functions and authority of the investigator include the provisions referred to in Article 5 KUHAP which can be separated in terms of the following aspects:

1. Legal functions and authorities
    a. Receive reports and complaints from a person about a crime;
    b. Search for information and evidence;
    c. Order to stop a suspect and inquire and check the identity of the person;
    d. Carry out other actions according to others according to responsible law;
2. Authority under investigative orders

The duty and authority of the investigator here is derived from the 'orders' of the investigator delegated to the investigator, in the form of:

a. Arrests, restrictions on leave, harassment and seizure;
b. Examination and confiscation of mail;

c. Take fingerprints and take a picture
d. Bringing and confronting one to the investigator

3. The obligation of the investigator to create and submit reports

The investigator shall deliver the results of the implementation of the action insofar as the acts concerning the so-called Article 5 paragraph (1) a and b.

Understanding the report on the results of the investigation action shall be in a 'written report'. So besides the oral report must be followed by a written report for the existence of accountability and supervision guidance to investigators, so that anything done by investigators is listed in the report[4].

Then in Article 16 paragraph (2) of the Criminal Procedure Code: for the sake of investigation, the investigator and the auxiliary investigator are authorized to carry out the arrest wherein the meaning of the investigator is the police officer or certain state official who is given special authority by law.

2. Arrest According to Article 17 of the Criminal Procedure Code

Article 17 of the Criminal Procedure Code reads: An arrest warrant is made against a person allegedly committing a crime on the basis of sufficient initial evidence.

From the provision of Article 17 of the Criminal Procedure, it can be seen that the reasons for making arrests are:

1. a suspect allegedly committed a crime;
2. and on strong allegations, should be based on sufficient initial evidence.

The meaning of 'sufficient initial evidence' according to the explanation of Article 17 of the Criminal Procedure Code is the preliminary evidence 'to suspect' the existence of a crime in accordance with Article 1 paragraph 14 of the Criminal Procedure Code. Further explanation of article 17 of the Criminal Procedure Code continues that this article states that the arrest warrants cannot be carried out arbitrarily but shown to those who actually commit a crime.

[4]Harahap Yahya, SH, 2000, Pembahasan Permasalahan Dan Penerapan KUHAP, Penerbit Sinar Grafika, Jakarta page 103

3. Arrest under Article 18 of the Criminal Procedure Code

Article 18 Paragraph (1) of the Criminal Procedure Code states: The execution of arresting duties shall be carried out by the police officers of the State of the Republic of Indonesia by presenting a strict letter and giving the suspect a warrant of arrest which includes the identity of the suspect and mentioning the reason for the arrest as well as a brief description of the crime case which is suspected and the place where it is examined.

From the provisions of article 18 paragraph (1) of the Criminal Procedure Code, it has been explained which officers may arrest, except in the case of being caught in the hands of everyone entitled to arrest. Everyone who has authority in the duty of order, tranquility and security is 'obliged' to arrest the suspect in case of being arrested. In the arrest warrants provide explanation and affirmation about: Identity of the suspect, in the form of explanation of name, age and residence

a. Explain a brief description of a crime case that is being suspected
b. Next the arrest command mentions brightly where the examination is done against it.

Subsequently, Article 18 Paragraph (2) of the Criminal Procedure Code states: In the event that the arrest is made without a warrant, it is provided that the arrest must immediately submit the caught and the evidence to the nearest adjuvant investigator, and in Article 18 paragraph (3) of the Criminal Procedure Code: A copy of the arrest warrant referred to in paragraph (1) shall be given to his family immediately after the arrest. the provision of Article 18 Paragraph (3) of the Criminal Procedure Code can be concluded that the arrest must be based on the arrest warrant, and submit copies of the warrant to the family of the suspect or his legal advisers in the presence of this provision, if the arrest warrant is verbally delivered then the arrest is considered unlawful because it is contradictory to the provisions of Article 18 paragraph (3) of the Criminal Procedure Code.

4. Arrest According to Article 19 of the Criminal Procedure Code

Article 19 paragraph (1) of KUHAP reads: the arrest as referred to in Article 17 of KUHAP can be done for a maximum of one day. The provisions of Article 19 paragraph (1) of the Criminal Procedure Code mean that the arrest can only be made for a maximum of one (1) day. If the time limit of the arrest by more than one day, it means that there has been a

violation of the law if it passes from one day and by itself the arrest is considered invalid, consequently the suspect must be exempt from law.

Furthermore, Article 19 Paragraph (2) of the Criminal Procedure Code reads: Against a suspect the offender is not held arrest unless in the case he has been called legally. From the provisions of article 19 paragraph (2) of the Criminal Procedure Code can be concluded that it is not allowed to arrest the suspect who commits a criminal offense. But the legal principle has an exception. Such exceptions shall be governed by Article 19 paragraph (2) of the Criminal Procedure Code if the suspect has been formally summoned 2 times in a row, but the person allegedly fails to fulfill the summons or does not give a valid reason in which case an arrest may be made.

Types of Arrest

1. **Caught Red-Handed**

Article 1 point 19 of the Criminal Procedure Code: Catching hand is the arrest of a person while committing a criminal offense, or immediately after some time the offense is committed or is immediately called by the public as a person who did it, or if for a moment later found a suspected object has been used to commit the offense which indicates that he or she is the perpetrator or has contributed to or assisted in committing the offense.

The capture of the hand or *'Heterdaad'* as described in article 1butir 19 is the capture of a person at the time:

a) Is committing a criminal offense or in the middle of a criminal offense, meaning that the perpetrator is caught by another person, where while the offender is acting in a criminal act
b) Immediately after some time a criminal offense means the event occurrence at the time encountered by a person is still intact as in the circumstances of the time a criminal offense is committed, not yet changed and the perpetrator is still around the scene of the case.
c) A moment later called by the public as a person who did it means someone is busy around or diuber-uber by the public that he had just committed a crime. In case

like this do not get too emotional at the very least must be found clues or evidence compatible with what is shouted by the crowd.

d) A moment later on the person is found a suspected object has been used to commit a crime that shows that he is the perpetrator.

Article 111 of the Criminal Procedure Code reads:

(1) In the event of being caught by everyone is entitled, while everyone who has authority in the duty of public order, tranquility and public security shall, arrest the suspect to be handed over with or without evidence to the investigator

(2) Upon receipt of the suspect's assignment as referred to in paragraph (1) the investigator shall immediately perform the examination and other actions in the framework of the investigation.

(3) The investigator who has received the report immediately to the scene may prohibit any person from leaving the place while the examination therein has not been completed.

(4) The offender of the prohibition may be forced to stay in the place of the order until the above examination is completed.

The provisions of Article 111 Paragraphs (1) to (4) of the Criminal Procedure Code above, according to M. Yahya Harahap in his book *Pembahasaan Permasalahan Penerapan KUHAP*, provide a basis on the ways of settlement of action in the event of being caught, as described below:

1. Everyone has the right to arrest him (the suspect), not to mention anyone, to capture a person who is being caught red-handed. However, it should be noted the word 'rights' contained in this provision. not an obligation, but right. Means that people who see or caught him may use the right to arrest, may not.
2. For any person or officer who has authority in the duty of order, peace and security is 'obligatory' to arrest the suspect.
3. For those who make the arrest, immediately 'hand over' the suspect including any evidence available to the investigator. In this matter must pay attention to the provisions of Article 19 paragraph (1) Criminal Procedure Code, which determines the time limit of arrest shall not be more than one day.

4. As soon as the investigator receives the surrender of the suspect, as soon as 'mandatory' is necessary to carry out the inspection and other actions deemed necessary in accordance with the scope of the inquiry. Subject to the provisions of Article 50 Paragraph (1) of the Criminal Procedure Code which gives the right of the suspect to 'immediately' obtain examination.
5. Furthermore, after an investigator has obtained a report of a caught incident, he or she has a duty and authority:

- To immediately check the scene;
- And the authorities 'prohibit' everyone to leave the place as the examination has not been completed.

6. Regarding the nature of the prohibition of not leaving the scene is a coercive order based on the provision of Article 111 paragraph (4) of the Criminal Procedure Code, that the prohibition of not leaving the scene may be imposed on the person who violates the prohibition.
7. The obligation to comply with orders or compulsion to leave the scene in a criminal case is caught, restricted until the investigation on the spot where the incident is completed and only limited:

- On the premises, the investigator should not be extended to or elsewhere;
- Deadline for violations, only permitted during inspection on site, not completed[5].

In the event of being caught red-handed, any person or authorities shall not use arrest warrants pursuant to article 102 paragraph (2) of the Criminal Procedure Code, to arrange 'caught red-handed' as follows, in the event of being caught without waiting for an order of investigators, the action required in the framework of investigation as referred to in Article 5 paragraph (1) letter b.

2. Letter of Arrest Warrant

Article 18 Paragraph (1) of the Criminal Procedure Code states: The execution of the task of arrest shall be done by the police officer of the republic of Indonesia by showing the duty of assignment and giving to the suspect an arrest warrant stating the identity of the suspect and mentioning the reason for the arrest and the brief description of the cruel case in the breeding and the place he was examined.

[5]Harahap Yahya, SH, 2000, Pembahasan Permasalahan Dan Penerapan KUHAP, Penerbit Sinar Grafika, Jakarta page 119-120

From Article 18 Paragraph (1) of the Criminal Procedure Code, it can be concluded which officers may arrest an investigator except in case of being caught, everyone is entitled to arrest. In the case of arrest the investigator must show the arrest warrant issued by the Republic of Indonesia police officer. The contents of the arrest warrant must contain the following matters:

1. The identity of the suspect in the form of name, age and place of residence. Whereas if it is found in the warrant not suitable, it may be deemed 'not applicable' to the person whom the officer approached, for the sake of legal certainty and orderliness;
2. Explain or briefly mention the reason for the arrest, for example in the case of the interest of the inquiry and so on;
3. Explain a brief description of a criminal case suspected of a suspect;
4. Mention clearly where the examination is done.

So the most important thing to get attention is that a copy of the Order of Arrest must be given to the family of the suspect immediately after the arrest is done. This rule accommodates the demands of public awareness and at the same time provides legal certainty for the families arrested. Thus the families of suspects and suspects themselves know where the suspect will be taken or checked. The verbal notice of arrest is considered invalid because it is contrary to Article 18 paragraph (3) of the Criminal Procedure Code. Therefore, the provision of 'copies of arrest warrants' to the family, in terms of legal provisions is an obligation for the investigator. If this is not met then they (the family and suspect) may file a pre-trial check against the investigator about the invalidity of the arrest and at the same time can demand compensation. However, it should be kept in mind that arrests can only be made if they meet the provisions of Article 17 of the Criminal Procedure Code.

Article 17 reads: an order of arrest shall be made against a person alleged to have committed a crime on the basis of sufficient initial evidence.

The provisions of Article 17 of this Criminal Procedure can be identified the reasons for making arrests in the form of:

a. A suspect allegedly committed a crime;
b. And on strong suspicion, it should be based on sufficient initial evidence.

Therefore, the meaning of 'sufficient initial evidence' according to the explanation of Article 17 of the Criminal Procedure Code is a proof of the beginning to suspect the existence of a crime.

Suspect Actor

1. **Crime**

The criminal act in Dutch is called *straafbaar feit*. The notion of *straafbaar feit* in Indonesian has various meanings or terminology, among others:

a. Condemnable acts;
b. Acts to be punished;
c. Criminal incidents;
d. Criminal Customers;
e. Criminal Acts;
f. Criminal act

The six terms described above have the same meaning as S*traafbaarfeit*. The formulation of *Straafbarfeit* is a law prohibited by punishment. Given so many criminal terminology, it's good to know some formulas about seconds from some scholars and experts as follows:

Simons stated that a crime or offense is an act contrary to law, which act is committed by a responsible person and can be blamed on the manufacturer, so the *straafbaarfeit* must contain the following elements:

a. A human act
b. The act is prohibited and threatened by penalty by law
c. The act must be done someone who can be accountable or acuntability, which means can be blamed for doing something deed.

Vos stated that the offense is a human feit or behavior that is threatened by criminal law or in other words is a behavior that is generally prohibited by threats. Furthermore Vos provided the *straabaarfeit* formula is a violation of the rule (the disturbance of legal order), there where the perpetrator has a mistake for where the punishment is reasonable to carry out legal order and ensure the common prosperity.

Van Hammel formulated that *straafbaar feit* is a handling or action that is punishable by law, in opposition to the law (*onrehctmatig*) done by a (*schuld)* mistake by a person capable of accountability and in which action is criminal.

Pompe divided within two, according to theory, the offense is a violation of the norms that are committed because of a violation that is violated and threatened with criminal law to defend the rule of law and general welfare, then according to positive law, crime is a punishable event or act.

Satochid Kartanegara summarizes the formulation of the offense as follows:

1. The act (do, not do) must be a human act
2. The act must be done with a will, consciousness and not an unconscious act.
3. The act must be against the law.
4. The act must be done by someone who can be accounted for[6] (Lesson, 1987: 3)
5. From this formula we can say that the crime is not necessarily consistent with the formulation of a second, either offense contained in the Criminal Code and outside the Criminal Code (Legal Principles), but if the human behavior is unlawful and because the error is also included in criminal act. Although many criminals have proposed another term or other sentence to replace "*Straafbaarfeit*" but commonly said are criminal events, criminal acts and criminal acts.

Jonkers gives the definition of*Straafbaarfeit* into two terms namely:

1. Straafbaarfeit is happiness (feit) that can be threatened by criminal law, in the sense of a short definition.
2. Straafbaarfeit is a behavior which is unlawfully related to be done intentionally or culpa by an accountable person, in the sense of a long definition.

Based on the definition of *strafbaarfeit* proposed by Jonkers, the definition shortly essentially states that for each criminal offense must be based on laws made by the legislator and public opinion cannot determine otherwise than the prescribed law, while the definition long emphasizes the unlawful nature of the law and accountability which are the elements that

[6]Sihotang Lesson, SH, 1987, Diktat Asas-Asas Hukum Pidana, Universitas HKBP Nommensen, Medan page 3

have been formulated explicitly in every offense, or hidden elements are secretly considered to exist. Clearly a criminal offense means pointing to an act punishable by criminal law and pointing to an unlawful act committed by mistake by which it can be held accountable.

Unlawful acts or acts called offenses in the Criminal Code system are two types of unlawful acts, namely crime and offense. In essence the two actions are not so big difference because both can be sentenced and both are criminal acts. Thus lawmakers may find it necessary to affirm in the legislation that there are severe and mild differences of sanctions between crime and offense. If a person commits a crime, then he is said to have committed a legal offense, whereas if he violates the law, he is called to do the offense of the law. Furthermore, it can still be distinguished between the crime and the offense, the difference is due to the law grown after the act is done, namely as follows:

a. In crime we find the difference between intentional (omzet) and the negligence (culpa).
b. Trials for violations can not be punishable (Article 54 of the Criminal Code), although there are several attempts to commit crimes that can not be criminalized, namely the trial of persecution (Article 351 (5) of the Criminal Code) and there are also attempts to commit a criminal offense.
c. Helping to commit crimes may be criminal, while assisting in committing an offense can not be criminalized (Article 60 of the Criminal Code).
d. The fall period of the right demands longer on the crime than on the offense.

Bambang Poernomo said that the offense has the nature of prohibiting or requiring a certain act with a criminal penalty to whoever does it and the offense must be shown to:

1. Force a legal interest or damage a legal interest (*kranking soelicten*), such as murder, theft and so forth.
2. Harm a legal interest (*garaatzetings deliten*). Crime endangers public safety of goods (Article 187 of the Criminal Code), falsification of letters (Article 263 of the Criminal Code)

From the description put forward by Bambang Poernomo, it is concluded that a criminal act is an act or human behavior that falls within the limits of criminal formulation that is unlawful and due to awareness despite accountability.

In summary, it can be compiled the elements of criminal acts that are measured by juridical. As for the elements of crime are as follows:

1. Human actions. This means that this act can be a positive deed or a negative act which is a criminal event.
2. The consequences of human acts. This means that human actions from the consequences that can cause damage or harm to the interests of the law that contains the provisions of the law can be punished and this result can arise instantly, for example the loss of stolen goods, impaled someone in a knife so a few days later died at home sick and others.
3. The circumstances. This means that when the act is committed it is a condition in which it can reinforce that the criminal act is a criminal offense. For example, on theft, then when the goods are taken the status of the goods is against the law.
4. The nature of unlawfulness This means that in this case the most important of the elements of criminal acts is the act that is done contrary to the provisions or rules of law of the provisions of the law so that it can be punished.

2. Suspect

The criminal procedure law provides the definition of the suspect mentioned in 1 point 14 of the Criminal Procedure Code. Article 1 point 14 reads: The suspect is a person who due to his or her actions or circumstances, based on preliminary evidence is suspected to be a criminal offender. From the description of article 1 point 14 of the Criminal Procedure Code, it can be concluded that the suspect is a person suspected of committing a crime in accordance with evidence and real circumstances or facts. Therefore the person:

a) Should be investigated by the investigator;
b) Must be prosecuted and examined before the court by the prosecutor and judge;
c) If necessary against the suspect can be any act of forced effort in the form of arrest, detention, search and seizure of objects in accordance with the manner prescribed by law.

In the Criminal Procedure Code, the system of approaching the suspect lays the foundation of the principle of legality (the penal law is based on the law) and the examination approach at all levels, with the Acquisition System means placing the suspect in every level of

examination as a human being with the basic rights and dignity[7]. Leden Marpaung, in his book, "the process of handling criminal cases" states that the formulation of the explanation of article 1 point 14 of the Criminal Procedure Code, which is "quite clear" in terms of criminal law where the formulation is not appropriate because it is not the offender who can become suspect because according to *deelneming* teachings participate, then the person who ordered, then the person who commands, the one who persuades and the one who helps can also be said to be a suspect[8].

3. Perpetrators - Criminal Actors

In everyday language we often hear that the understanding of the perpetrator or the action (*dader*) is someone who performs an action. In the context of criminal law discussions, the term perpetrator is always associated with elements of a criminal offense. Thus, according to the criminal law science is meant by the perpetrator is whoever has realized or fulfilled all elements (element of subjective) of a criminal act as where the elements are formulated in the law. Where the subject of offense or often said as perpetrators of criminal acts according to the Criminal Code system is only human, while animals and legal entities cannot be considered a subject of offense. It is said that only man as the subject of offense is a conclusion of the formulations as follows:

1. The way of formulation of offense that always starts with the word, that is "whoever". From whohever word can be concluded, that it is human.
2. From the punishment imposed or threatened against a crime, in accordance with Article 10 of the Criminal Code, it can be concluded that the subject of offence is human because only the human can undergo the main types of punishment.
3. The current criminal law (Criminal Code) is based on a person's mistake and is also called *Schuld stafrecht* and which can be considered to be just a human error is to make a mistake is only human that is a personal mistake.

From the above formulation that the subject of crime or offender is only human and therefore this school considers that something in the form of a legal entity cannot be punished because it is not a subject of criminal law. In the development of criminal law, then not only

[7]Harahap Yahya, SH, 2000, Pembahasan Permasalahan Dan Penerapan KUHAP, Penerbit Sinar Grafika, Jakarta. Page 319

[8]Marpaung Leden, SH, 1992, Proses Penanganan Perkara Pidana, Penerbit Sinar Grafika, Jakarta. Page 43

the human being is regarded as the subject of offense but the legal entity is also regarded as the subject of offense in the (certain) matters concerning:

a. Source of state finance (taxation, cost of import and export of goods).
b. Economic arrangements (court price, use of checks, corporate arrangements).

In Indonesia, the recognition of legal entities as the subject of law and the subject of offense has grown, it's just setting it outside the Criminal Code. Among other things can be found in the provisions of the legislation as follows:

1. Law on Economic Crimes No.7 Year 1955
2. Laws in Danger State No.23 Perpu Year 1959
3. Anti-Corruption Eradication Act. 20 of 2001
4. Banking Act no. 10 of 1998[9].

This development, further, reinforced the opinion of Van Hattun states that, Legal entity can also be regarded as the subject of offence though it is only an exception, not something new. It can be seen in Article 51 Wvs same as Article 59 of the Criminal Code, where in the event of violation of a rule, which rule is directed against the (*bestuur*) board of a society that is threatened with punishment, the punishment cannot be executed against the board or commissioner if the violation done beyond his knowledge. According to the Doctrine (expert's opinion) states that the offender (offence subject) must meet all the elements of criminal acts, where if the perpetrator is only one person then there is no problem about the relationship of elements of the subject with other elements[10]. In Book I Chapter V of the Criminal Code concerning inclusion to commit a crime. The definition of inclusion here is that there are two or more people who committed a crime. Further, it is explained that the limited participation is only to the extent provided in article 55 - 60 of the Criminal Code which in the form of limited participation is only to the extent stated in the narrow sense article (Article 55 KUHP) and assistance (Article 56 of the Criminal Code).

[9]Kanter, SH dan Sianturi, SH, 2002, Asas-Asas Hukum Pidana Di Indonesia Dan Penerapannya, Penerbit Storia, Jakarta. Page 219

[10]Sihotang Lesson, SH, 1987, Diktat Asas-Asas Hukum Pidana, Universitas HKBP Nommensen, Medan. Page 34

1. The conclusion of a single action or the conclusion of a distinguishable provision of criminalization between the concatenation of a single action of a kind and the conclusion of a single action varies.
2. The pluralistic or crime-pronunciation of criminal acts can be distinguished between the various plural multiplication.
3. The concatenation of the action continues.

Thus, the conditions that must be fulfilled to state that there is a concatenation are:

a. There are two or more crimes committed.
b. That two or more crimes are committed by one person (or two persons / more in the framework of inclusion)
c. Whereas two/more such crimes have not been prosecuted.
d. That two/more such crimes will be tried at once.

Dealing (*deelneming*) in the strict sense in this case are all forms of participation specified in Article 55 of the Criminal Code. It is intended to distinguish the helpers (Article 56 of the Criminal Code) as one of inclusion (*deelneming*). Viewed from the point of viewing there are two kinds of inclusion in this case, namely:

a. Persons convicted as an actor (Article 55 of the Criminal Code)
b. Persons convicted of assistant (Article 56 of the Indonesian Criminal Code)

The provisions of Article 55 of the Criminal Code;

1) Convicted of a criminal offense:
   a) The person who commitsto do, and contributes to it.
   b) Persons who by giving, covenant, misuse of power or influence, violence, threats or deceptions or attempts, intentionally persuade to do an act.
2) About those persons in the sub 2e who may be accountable to him is the act deliberately persuaded by them and with the consequences.

From the provision of Article 55 of the Criminal Code it starts with the formulation of who can be convicted of criminal offenses rather than what is *deelnemers*. Furthermore, it is determined that those who can be punished as perpetrators are those who commit a crime. Although the provisions of Article 55 of the Indonesian Criminal Code can be attributed to the definition of participation, one thing that is emphasized in this article is the matter of criminal

prosecution, whereby the perpetrator and each person equalized with the offender are distinguished by the crime to the helper (Article 56 of the Criminal Code). According to Article 55 of the Criminal Code, the convicted perpetrators are determined in four groups:

1. Persons who perform an action (Pleger); is the person alone has acted to materialize all elements of criminal incidents committed in office for example that person must also fulfill element of "status as civil servant"
2. The person who orders to do (Doen plegen); In this case, the messenger does not do an act himself, but tells others. The messenger (manus domina) is on the screen, while the one who commits a criminal act is one who is ordered (manus manistra). The person who was ordered as a tool (instument). That is, the person who is ordered can not be punished for being unable to be accountable for his actions and/or no element of error (ignorance, mistake and for not being coerced).
3. The participating person (Medepleger); Participation in the sense of the word together do the act. There must be at least two people, the person who did the act (pleger) and the person who participated (medepleger) in criminal events. Meaning that the two persons all do the elements of the criminal event, meaning that it cannot be for example only doing the act of preparation or acts that are only helpful, because if so happens then the person who helped was not included "medepleger" but punished as " medeplictige "(help do) in accordance with Article 56 of the Criminal Code.
4. A person who by giving, misappropriating power, violence, etc., deliberately persuades a criminal act (uitlokker). That is, the person deliberately persuades others, while persuading him to use one of the ways such as by giving, and so on in the case of "order to do" must consist of at least two persons, persecutor and persuader, but there is a difference in "persuading" the persecuted person can be punished as "pleger" while in "order to do" who were told not to be punished.

As for the conditions in the form of inclusion of persuaders are:

a. The path used to persuade is a gift or a promise.
b. Wrong use of power or influence of power does not have to be from public officials, it can also power between father and child, employer with workers, teachers and students and so on.

c. The threat and violence in terms of threat or violence should not be so great that the persecuted person can not do otherwise, because if so, the persecuted person can not be punished for overmatch. And this is not included in the litigation (*uitlokking*) but do *doen* (doen plegen)
d. There are people who are moved and have done an action.
e. Give opportunity, because of the effort of explanation. This is almost the same as helping to do (medeplictig) in Article 56 of the Criminal Code. The difference is in "*uitlokking*" people who deliberately provide the opportunity or effort that has the initiative to conduct the criminal event was originally not a person who deliberately provide opportunities or efforts but from others who are criminal events.

From the description, that the conclusion referred to in Article 55 of the Criminal Code is:

1. An acts committed (active/passive) by a person with such action occurs 2 or more criminal acts as defined in the legislation.
2. Two or more acts committed (active/passive) by a person in continuity with which 2 or more of the offenses are committed (generally of a similar nature).

Furthermore, the provisions of Article 56 of the Criminal Code concerning assistance is Article 56 of the Criminal Code reads: Convicted as a person who helps to commit crimes;

1. e. whoever deliberately helped to commit the crime.
2. e. whoever deliberately gives opportunity, effort or information to commit the crime.

From the provisions of Article 56 of the Criminal Code, the helper to commit crimes can be divided into 2 types:

1. The angle of assistance time.
2. An angle of effort that is a relief.

In the first type, the size is the time of the aid. According to article 56 of the 1e KUHP, when the providers give a hand must coincide with the occurrence of a crime. It means that the help given before or after the aid occurs. It should be borne in mind that the form of assistance referred to in article 56 Ke-1e, not expressly defined, it can thus have a broad meaning.

In other words, the form of effort for the first type of assistance is not determined in a limitative manner. It can be anything. Further, the second type of assistance under article 56 of the 2nd is the provision of certain efforts and the time must be before the crime occurs. For example G is a guardian of a building, he sees Y stealing an item, G lets Y to do his action, so from this case, G cannot be said helping underlie article 56 Ke-2e, because aid in the form of opportunity (giving) was given to when a crime occurred. However, it can be claimed as the first type of helper: do not give help (in the form of power/opportunity) in the event of a crime (Article 56 Ke-1e). So according to Article 56 Ke-2e, the effort is definitive in the form of a chance, means or information. The assistance provided may be morally or materially, but its nature should only help, it should not be so large, so it can be considered to have done an element (act executor) of criminal events because if so then its actions can be categorized "participate in" as intended by Article 55 of the Criminal Code. Based on the article 55 and article 56 of the Indonesian Criminal Code, about taking part in committing a punishable act, it can be determined the forms of the provisions of Articles 55 and 56 of the Indonesian Criminal Code as follows:

a. 2 persons/more together do the act;
b. The messenger and the one told;
c. Perpetrators and participants (medepleger);
d. Movers and movers (driven);
e. Actors (main actors) and helpers.

CONCLUSION

From forms participating in punishable or diligent acts (Articles 55 and 56 of the Criminal Code), points A through D are specified in Article 55 of the Criminal Code, which is called *deelneming* in the strict sense, and E points are specified in Article 56 of the Criminal Code as a helper. So between points A and D are different from E points in general as follows:

1. The action taken on points A to D is a criminal act (a crime and a violation).
2. The criminal penalty for the participant (deelnemers) on points A to D unless the order is maximum.
3. Whereas the form of participation in points A up to D especially after Article 163 bis is a form of independent participation.

4. The element of intent (to commit) the offense on each participant (except the order).
5. Every participant (except those ordered) on points A to D is responsible or deemed to have participated in all the objective elements of that particular criminal rate, although he may have done only medaplegen, (messenger and driver).

While in the aid (E), In article 56 of the Criminal Code explained:

1. The action should be a crime.
2. The criminal penalty for servants is reduced by 1/3
3. Whereas auxiliary participation is related to the execution of a crime by the perpetrator (principal actor) because it is called in the form of a related investment.
4. The element of deliberate (to commit) a particular crime is not in the maid but only deliberate to help or provide assistance only.
5. The helper is not viewed in part or in whole the objective elements of the crime, as with the inclusion of a narrow meaning.

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