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Authority of the Internal Investigating Prosecutor Make Arrest and Detention Performers of Criminal Acts of Corruption

I Made Wahyu Chandra Satriana [1*], Ni Made Liana Dewi[1], Ni Putu Ari Seni Antari [2]

[1]Faculty of Law, Dwijendra University, Denpasar, Indonesia
[2] Faculty of Law, Dwijendra University, Denpasar, Indonesia
[1]Email: wahana.chandra@gmail.com
[2]Email: wahanadewi80@gmail.com

ABSTRACT

Described problems in this research is what does the legal basis of the inventory in arrest and detention the corruptor. The objectives of this research is to know the legal basis of investigators in creating and handling the corruptor, and to know the obstacles contained incidence principles in catching and handling the corruptors. The research method used in this study is the normative juridical which is a study that refers to legal analysis. The approach in this study emphasizes the legislation approach that is the search for some legislation related to the investigation of corruption crime. The result of the research is indicated the normative juridical basis of the authority of the prosecutor in conducting arrest and detention in accordance to with article 16th KUHAP and article 20th KUHAP. Regarding the obstacles on the implementation of arrest and detention perfomance is related to the time of arrest the geographical position if indonesian associated shall create problems that does not allow the arrest within one day, other factors are the suspects escape and the dificulty to done so that inhibit persuit investigation process. Obstacles to detention may also be encountered by a suspect who refuses detention and insists not to be detained, the suspect flees and does not meet the conditoins of detention in article 21th KUHAP.

Keywords: Arrest, Criminal act of corruption, Detention, Prosecutor

*Corresponding Author:
E-mail: wahana.chandra@gmail.com (I Made Wahyu Chandra Satriana)
Faculty of law, Dwijendra University, Denpasar, Indonesia

1. INTRODUCTION

The law determines what must be done and/or what is permitted and prohibited. The target of the law that is intended to be aimed at is not only people who actually act against the law, but also legal actions that might occur, and the state's equipment to act according to the law. This system of legal operation is a form of law enforcement (Evi Hartanti, 2008 : 1).

The law always strives to guarantee and protect the rights of individuals and society and protect the interests of the state from deviation and denial. Corruption crimes in Indonesia have become increasingly widespread among Indonesian society. Its development continues to increase from year to year and is proven by the increasingly pervasive culture of corruption from the central to the regional level.

Corruption comes from the Latin word corruptio or coruptus which means rottenness, dishonesty, bribery, immorality, deviation from purity, words

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or utterances that are insulting or slanderous (Adami Chazawi,2005:2). According to the Complete Legal Dictionary, Corruption is the behavior of public officials, both politicians and civil servants, who unreasonably and illegally enrich those close to them by abusing the public power given to them. (Rocky Marbun,dkk,2012 :169). Meanwhile, according to Subekti and Tjitrosoedibio in the Law Dictionary, what is meant by curruptie is corruption, fraudulent acts, criminal acts that harm the State's finances. (Evi Hartanti, 2008 : 9). Regarding efforts to eradicate criminal acts of corruption, this is related to enforcement efforts carried out through the investigation stage by investigators which then culminates in a decision from the Court Judge and then the implementation of the decision which has obtained permanent legal force for the case in question.

Article 1 point 2 of the Criminal Procedure Code states "Investigation is a series of investigative actions in and according to the methods regulated in this law to search for and collect evidence which will shed light on the criminal act that occurred and in order to find the suspect." Investigations into criminal acts of corruption can be carried out by National Police Investigators, Prosecutor's Office Investigators or Corruption Eradication Commission (KPK) investigators. The investigation is intended to search for and collect evidence to support each element in the criminal offense of corruption. Prosecutors who serve as Investigating Prosecutors have different duties and authorities from other investigators, as regulated in the provisions of Article 17 of Presidential Decree Number 86 of 1999 concerning the Composition and Work Procedures of the Prosecutor's Office of the Republic of Indonesia, which states:

The Deputy Attorney General for Special Crimes has the duties and authority to carry out inquiries, investigations, additional examinations, prosecutions, implementation of judge determinations and court decisions, supervision of the implementation of conditional release decisions and other legal actions regarding economic crimes, corruption crimes and special crimes others based on statutory regulations and policies determined by the Attorney General.

In connection with the investigation process, the prosecutor's office as a law enforcement agency has the authority to carry out arrests and detention during the investigation process. Investigating prosecutors in corruption cases also have the task of arresting and detaining suspects suspected of committing criminal acts of corruption. As stated in Article 1 point 20 of the Criminal Procedure Code, "Arrest is an investigator's action in the form of temporary restraint on the freedom of a suspect or defendant if there is sufficient evidence for the purposes of investigation or prosecution and/or justice in matters and according to the methods regulated in this law." Based on this explanation, arrest is nothing other than a "temporary restraint" on the freedom of a suspect or defendant, for the purposes of investigation or prosecution. However, it must be carried out according to the methods specified in the Criminal Procedure Code (M.Yahya Harahap, 2010 : 157).

Furthermore, Detention is also regulated in Article 1 point 21 of the Criminal Procedure Code which states "Detention is the placement of a suspect or defendant in a certain place by an investigator or public prosecutor or judge

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with his or her determination, in the terms and according to the method regulated in this law." Regarding who carries out the detention, it is stated in the provisions of Article 20 of the Criminal Procedure Code **:**

1) For investigative purposes, investigators or assistant investigators, on the orders of investigators as intended in Article 11, have the authority to carry out detention.
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 at the court hearing has the authority to carry out detention.

Based on the formulation of Article 20 of the Criminal Procedure Code, those who have the authority to carry out detention are investigators, public prosecutors and judges according to the level of examination (Leden Marpaung, 2014 : 120).

Regarding the handling of criminal acts of corruption, because prosecutors can act as investigators and also as public prosecutors, their role in eradicating criminal acts of corruption in a penal manner is very dominant, in penal terms it means eradicating criminal acts by using criminal law tools in handling them, so that problems are oriented towards the legal basis of the Prosecutor. Investigators in arresting and detaining perpetrators of Corruption Crimes and the obstacles faced by Investigating Prosecutors in arresting and detaining perpetrators of Corruption Crimes. The purpose of this research is to develop legal knowledge, to develop students' personal selves into community life, to find out the legal basis for Investigating Prosecutors in arresting and detaining perpetrators of Corruption Crimes, and to find out the obstacles faced by Investigating Prosecutors in arresting and detaining perpetrators. Corruption Crime indicated on the journal website. Information about final paper submission is available from the journal website.

Introduction takes part of 25 % of the Paper. It consists of research background, research problems and purpose with literature review, and up-to date theoretical basis.

2. METHODS

This research uses a normative juridical problem approach. Normative legal research is also called doctrinal legal research and is also called library legal research. It is called doctrinal legal research because this research is carried out or aimed at written regulations or other legal materials, while it is called library research or document study because this research is mostly carried out by libraries or document studies because this research is mostly carried out on legal materials. secondary ones in the library. In accordance with the characteristics and nature of normative research (library), this research will use the Statue Approach method (legislative approach), namely several searches of several statutory regulations, in this case concerning the investigation process, especially the investigation of criminal acts of corruption. The source of legal materials used in this research is library research which was carried out to explore sources of legal materials based on literature and books related to the prosecutor's authority in carrying out arrests and detentions. Material collection is carried out by

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reviewing laws and other regulations related to the problem.

3. RESULT AND DISCUSSION

3.1 Legal basis for the Investigating Prosecutor in arresting and detaining perpetrators of Corruption Crimes

The term investigation is the equivalent of a word that comes from Dutch, namely opsporing, from English, namely investigation (Yudi Kristiana,2006 : 52). According to Article 1 point 2 of the Criminal Procedure Code, what is meant by Investigation is "a series of investigator actions in terms and according to the methods regulated in this law to search for and collect evidence which will shed light on the criminal act that occurred and in order to find the suspect.".

Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia explicitly states that the prosecutor's office has the authority to carry out investigations. This is regulated in Article 30 paragraph (1) letter d, namely carrying out investigations into certain criminal acts. In the explanation, it is stated that what is meant by certain criminal acts are Corruption Crimes and Human Rights Violations. With the provisions of Article 30 paragraph (1) letter d of Law Number 16 of 2004, legally the prosecutor has the authority to carry out investigations into criminal acts of corruption and human rights violations..

The Supreme Court has provided an answer to respond to legal questions regarding the basis for the prosecutor's office in conducting corruption investigations by issuing opinion/fatwa number KMA/102/III/2005 dated March 9 2005 concerning the authority of investigations carried out by the prosecutor's office, where in essence the fatwa holds that Prosecutors have the authority to investigate corruption cases after the enactment of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes Jo. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes on the basis of:

- Article 26 Law Number 31 of 1999 in conjunction with Law Number 20 of 2001.
- Article 27 Law Number 31 of 1999 Jo. Law Number 20 of 2001.
- Article 284 paragraph (2) of the Criminal Procedure Code and its explanation.
- Article 17 Government Regulation Number 27 of 1983.
- Article 30 paragraph (1) letter d Law Number 16 of 2004.

Through this Supreme Court fatwa, the legal construction was obtained that based on Article 26 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes Jo. Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, investigation, prosecution and examination in court of criminal acts of corruption are carried out based on the Criminal Procedure Law (KUHAP), so that because of the Criminal Procedure Code there is a rule under Article 284 paragraph (2) of the Criminal Procedure Code and its explanation in conjunction with Article 17 of Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code, it is clear that the Prosecutor has the authority to investigate criminal acts of corruption.

In Law Number 16 of 2004 concerning the Prosecutor's Office of the

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Republic of Indonesia there is no regulation stating that the task of the Prosecutor is to carry out arrests and detention. Basically, the task of the Prosecutor (prosecutor's office) as a functional official authorized by law is to act as a public prosecutor and implementer of court decisions that have obtained permanent legal force and other authority based on law. In relation to the Prosecutor having authority in matters of investigation as described above, the prosecutor is given the task and authority to carry out investigations into criminal acts of corruption, where acts of arrest and detention include actions carried out for the purposes of investigating certain criminal acts based on law. So automatically the Prosecutor who has the status of Investigating Prosecutor can carry out arrests and detention. As stipulated in Article 16 paragraph (2) of the Criminal Procedure Code, it is stated that: "For investigative purposes, investigators and assistant investigators have the authority to make arrests." Based on the provisions of this article, the Prosecutor who has the status of Investigating Prosecutor has the authority to make arrests for investigative purposes. Arrests are not solely carried out to deprive someone of their freedom, but arrests are also carried out on the basis that someone who has been suspected of committing a criminal act is absent from a summons or has run away.

Based on the provisions of Article 1 point 21 of the Criminal Procedure Code, all law enforcement agencies have the authority to carry out detention. These law enforcement agencies include the Police, Prosecutor's Office and Courts. However, in the position of the prosecutor's office as an investigator of criminal acts of corruption, the authority of the prosecutor's office in carrying out detention is strengthened by the provisions of Article 20 of the Criminal Procedure Code. In Article 20 paragraph (1) of the Criminal Procedure Code it is stated that: "For the purposes of investigation, investigators or assistant investigators, on the orders of investigators as intended in Article 11, have the authority to carry out detention." The provisions of this article in the Criminal Procedure Code strengthen the position of Prosecutors as Investigators in arresting and detaining perpetrators of criminal acts of corruption.

3.2 Obstacles faced by Investigating Prosecutors in arresting and detaining perpetrators of Corruption Crimes

1. Obstacles to Investigating Prosecutors in making Arrests.

Regarding making an arrest, there are things that must be considered before an arrest is carried out by investigators, therefore there are conditions that must be met first. The conditions that must be met are the formal and material conditions for the arrest. What is meant by material requirements is the existence of sufficient preliminary evidence that there has been a criminal act. The formal requirements are a letter of assignment, an arrest warrant and a copy thereof. These formal and material requirements must be fulfilled by investigators precisely so as not to cause errors. The arrest of a suspect in Article 17 of the Criminal Procedure Code states "Arrest Order for a person who is strongly suspected of committing a criminal act based on sufficient preliminary evidence". This article determines that arrest orders cannot be issued arbitrarily, but are

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directed at those who have actually committed a criminal act.

Based on the explanation of Article 17 of the Criminal Procedure Code, what is meant by sufficient initial evidence is initial evidence to suspect a criminal act as intended in Article 1 point 14. In this case, what really needs to be looked at is the evidence that the Investigating Prosecutor has to make an arrest. . Because if the prosecutor does not have this basic evidence, the suspect can file a pre-trial which will result in canceling the legal process.

Based on the provisions of Article 19 paragraph (1) of the Criminal Procedure Code, a time limit for the duration of an arrest has been determined, which cannot exceed one day. After one day has passed, it means that a violation of the law has occurred and the arrest is automatically considered invalid. As a consequence, the suspect must be released by law. Or if the time limit is violated, the suspect, his legal advisor or his family can request a pre-trial examination regarding the legality of the arrest and can at the same time demand compensation (M.Yahya Harapap, 2010 :160).

Regarding this short arrest period limitation, it can cause difficulties and problems in practice due to several factors. Among other things, geographic factors which are often found in several regions of the Indonesian archipelago, such as Maluku, Irian Jaya and Kalimantan, cannot be completed in one day, starting from the act of arrest and continuing with the inspection on the same day. For example, if the arrest is made on a remote island, then the investigator's location is on another island which must be reached within a week or several weeks using a boat or other means of transportation that does not support the speed to reach the destination island quickly. Or even obstacles in the form of communication facilities, where in the area there are no communication facilities or limited communication tools (still traditional).

Apart from the above, something that investigators really need to pay attention to when making an arrest is that the officer who is ordered to make the arrest must carry an arrest warrant. The officer showed an arrest warrant. The arrest warrant provides an explanation and confirmation of the suspect's identity, name, age and place of residence, explains or briefly mentions the reason for the arrest, provides a brief description of the crime alleged against the suspect, then clearly states the place where the examination was carried out. Things like this are technical obstacles faced by investigators in connection with arrests, and must be examined carefully, because if these conditions are violated then the suspect's family can file a pre-trial hearing, and the arrest made will be considered illegal.

2. Obstacles to the Investigating Prosecutor in carrying out Detention.

Before the Investigating Prosecutor detains a suspect, it is necessary to pay attention to the matters or conditions that make the detention valid. This really needs to be paid attention to so as not to cause obstacles to detention by prosecutor's investigators. A detention is said to be legal if it has fulfilled the conditions for legal detention. Based on the provisions of the articles in the Criminal Procedure Code, a person who is to be detained must fulfill the legal requirements for detention. Conditions for detention are regulated in Article 21 of Law Number 8 of 1981

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concerning the Criminal Procedure Code (KUHAP).

Article 21 paragraph (1) of the Criminal Procedure Code states, "An order for detention or further detention is issued to a suspect or defendant who is strongly suspected of committing a criminal act based on sufficient evidence, in the event that there are circumstances that give rise to concerns that the suspect or defendant will flee, damage or disappear. evidence and/or repeating criminal acts." The detention conditions in Article 21 paragraph (1) of the Criminal Procedure Code above are known as subjective detention conditions, meaning that the defendant can be detained if the investigator assesses or is worried that the suspect or defendant will run away, destroy or destroy evidence and/or repeat a criminal act. So in other words, if Investigators assess that the suspect or defendant will not run away, damage or lose evidence or repeat a crime, so the suspect or defendant does not need to be detained.

Carrying out detention as required in the Criminal Procedure Code is not easy. As an investigator, the prosecutor must be prepared for all the consequences of carrying out an arrest. When detaining someone who has been designated as a suspect, the investigating prosecutor must pay attention to the matters or conditions that make the arrest valid. This really needs to be paid attention to so as not to cause obstacles to detention by prosecutor's investigators. If an error occurs in terms of not fulfilling the conditions for detention, the suspect can submit a pre-trial hearing. In pre-trial, a suspect or the suspect's family can submit a pre-trial to the district court to examine and decide according to the method stipulated in the law regarding whether or not a detention is valid. If this happens, it will hamper the case investigation process carried out by the prosecutor's office investigators.

Another thing that needs to be taken into account is that even though investigators have the authority to accept requests to postpone the detention of suspects, the investigating prosecutor must again think about the subjective conditions of the detention itself. Even though there is a dilemma in granting the suspect's request not to be detained, the investigating prosecutor must still use his authority in detaining the suspect to avoid undesirable events. Thus, the suspect must remain detained so that he does not run away, destroy evidence, repeat criminal acts, cause unrest in society, and cause social jealousy in society.

4. CONCLUSIONS

The Legal Basis for Investigating Prosecutors in carrying out Arrest and Detention is Article 30 paragraph (1) letter d Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia and Fatwa of the Supreme Court Number: KMA/102/III/2005 dated March 9 2005, which in essence The fatwa is of the opinion that the Prosecutor has the authority to investigate criminal cases of corruption after the enactment of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes Jo. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes Article 26 of Law Number 31 of 1999 Jo. Law Number 20 of 2001 concerning Eradication of Corruption Crimes. Based on these regulations, the action of arrest and detention carried out by

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the Investigating Prosecutor is one of the permitted actions as stipulated in Article 16 paragraph (2) of the Criminal Procedure Code and Article 20 paragraph (1) of the Criminal Procedure Code. Meanwhile, the obstacles faced by Investigating Prosecutors in arresting and detaining perpetrators of Corruption Crimes are the suspect running away, geographical conditions that do not allow an arrest to be made within one day, making it difficult to pursue and hampering the investigation process by the Investigating Prosecutor, and obstacles when carrying out detention are not fulfillment of detention conditions in Article 21 of the Criminal Procedure Code.

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