JURNAL META HUKUM
Volume 4, Number 4, Edition October 2025
Published: 30-10-2025, e-ISSN: 2985-3338, Page: 531-539

LEGAL ANALYSIS OF THE SUSPENSION OF DETENTION AGAINST SUSPECT OF CORRUPTION

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ARTICLE INFO

History of the article:
Received: 08/10/2025
Corrected: 13/10/2025
Accepted : 30/10/2025
Published: 30/10/2025

Keywords:
Suspension of Detention, Suspect, Corruption

ABSTRACT

Suspension of detention is the release of a suspect or defendant from detention before the expiry of the detention period. Based on research results, it is known that the regulationsuspension of detention in criminal procedure law in Indonesiaregulated inArticle 31 paragraph (1) of Law Number 8 of 1981 concerning the Criminal Procedure Code.The procedure for suspension of detention at the North Sumatra Regional Police isAs long as the suspect fulfills the conditions for suspension of detention, a suspect can request suspension of detention. Factors that form the basis for accepting a request for suspension of detention in criminal case examinations inThe North Sumatra Regional Police is due to the existence of guarantees in the form of money and people, there is an act of detention, namely the granting of permission by authorized officials to detain suspects who are sick and are being hospitalized (admitted) in hospitals outside the Rutan (State Detention Center),psychological and sociological considerations as well as pInvestigators are not worried that the suspect will not run away

1. Introduction

According to Article 1 paragraph (1) of the Criminal Code which states "no act can be punished unless it is based on criminal provisions according to laws that have been enacted beforehand." This article applies the principle of legality, the consequence of which is that criminal laws must be prior to the act.

Detention is a restriction on a person's freedom, especially a person's freedom of movement, so detention should be carried out when it is absolutely necessary for the interests of law enforcement. Detention also gives rise to two conflicting principles, namely on the one hand, detention causes the loss of a person's freedom of movement, and on the other hand, detention is carried out to maintain order that must be maintained for the public interest for criminal acts suspected of the suspect or defendant. All detention actions carried out by officials authorized to carry out detention must be in accordance with the Criminal Procedure Code, this is to avoid errors in the implementation of detention that can cause fatal legal consequences for officials who carry out detention in the form of demands for compensation or rehabilitation in accordance with what is regulated in Article 95 of the Criminal Procedure Code.

The law provides dispensation for a person to have their detention suspended with or without bail (cash or personal). This is in line with the principle of presumption of innocence, which requires that a person be considered innocent. Every suspect or defendant has the right to request a suspension of detention from the investigator, public prosecutor, or judge at the appropriate stage of the examination.

Suspension of detention according to Article 31 paragraph (1) of the Criminal Procedure Code is "at the request of the suspect or defendant, detention can be suspended". Investigators, public prosecutors or judges according to their respective authorities can issue a suspension of detention, with or without financial or personal guarantees, based on the specified conditions. This suspension of detention can be revoked at any time by the investigator, public prosecutor or judge if the suspect or defendant violates the specified conditions.

Article 31 of the Criminal Procedure Code only states that a suspect or defendant may request a suspension, the suspension may be granted by investigators, public prosecutors, judges 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. This regulation is considered to provide very little clarity regarding the implementation of suspension of detention in practice.

The Criminal Procedure Code does not explain the amount of bail if the suspension is carried out with a cash guarantee and if the suspension is carried out with a personal guarantee, the Criminal Procedure Code also does not provide an explanation. Article 31 of the Criminal Procedure Code also does not explain the legal consequences of the guarantee if the suspect who is guaranteed escapes. The official who is authorized to detain a suspect or defendant is not required to grant every request for a suspension of detention and can reject the request for a suspension of detention for a certain reason and still place the suspect or defendant in detention. If the suspension of detention is granted by the official who carries out the detention, then based on the provisions of the Criminal Procedure Code, the official can determine a guarantee in the form of a cash guarantee or a personal guarantee. The determination of the existence or absence of a guarantee in the Criminal Procedure Code is optional

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2. Research Method

This research is descriptive, because it only describes the object that is the main problem.Descriptive research leads to normative juridical research, namelyresearch that starts from the problem by looking at the existing problem, then connecting it with the applicable laws and regulations.

Based on the object of the research, which is positive law, the type of research used in this study is normative juridical. As normative juridical research, this research is also conducted by analyzing laws, regulations, statute books, and court decisions made by judges through the judicial process (law as it is decided by the judge through the judicial process), or what is often referred to as doctrinal research.

The type of research used is normative juridical, with the aim of obtaining qualitative results, so the approach taken is a statute approach, carried out by means of library research, namely by reading, studying and analyzing literature/books, laws and regulations and other sources

3. Results And Discussion

Government Regulation Number 27 of 1983 mentions the conditions and agreements for suspension of detention, but does not specify the specific conditions. What can be stipulated as conditions for suspension of detention and agreements for suspension of detention?

The guarantee of suspension of detention is contained in Government Regulation Number 27 of 1983, which is in Article 35:

a. The bail money for the suspension of detention determined by the authorized official according to the level of examination is kept in the clerk's office of the District Court.
b. If the suspect or defendant runs away and after 3 (three) months has not been found, the bail money becomes the property of the state and is deposited into the state treasury.

Cash guarantee where the deposit of the cash guarantee to the District Clerk's Office is carried out by the Guarantee Provider and for this the Clerk provides a receipt, a copy of the deposit receipt by the Clerk to the authorized Official according to the level of examination.

Article 36 of Government Regulation Number 27 of 1983:

a. If the guarantor is a person and the suspect or defendant runs away, then after 3 (three) months have passed and he or she has not been found, the guarantor is obliged to pay money in an amount determined by the authorized official according to the level of examination.

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b. If the guarantor cannot pay the amount of money referred to in paragraph (1), the bailiff will confiscate his/her property to be sold at auction and the proceeds will be deposited into the State Treasury through the District Court Clerk.

A person's guarantee, the amount of which is determined by the authorized official according to the level of examination, at the time of receiving the application for suspension of detention with a person's guarantee.

If the guarantee is in the form of money, the relevant agency will determine the amount of the guarantee in the deferral agreement. The conditions for determining the guarantee in the form of money are as follows:

1) The bail money is kept at the District Court Clerk's Office.
   Whichever agency grants a suspension of detention, the bail money is deposited in the District Court Clerk's Office. The Clerk is authorized to keep the bail money, even if the person granting it suspension of detention by the investigating agency, public prosecutor, High Court or Supreme Court.
2) Depositing the security deposit is done by the applicant or his legal advisor or his family.
   Based on the amount of the guarantee stipulated in the agreement, the applicant, their legal counsel, or their family member must deposit the money with the District Court Clerk's Office. The deposit is made using a deposit form issued by the relevant agency. If the investigator provides the form, the applicant must then take it to the District Court Clerk's Office.
3) Proof of deposit is made in triplicate. This is stipulated in point 8 letter f of the Attachment to the Decree of the Minister of Justice No. M.14-PW.07.03/1983. Proof of deposit is made in triplicate with the following details:

a) A sheet as an archive for the clerk of the District Court
b) A sheet is given to the depositor to be used as evidence to the detaining agency that he has carried out the contents of the agreement relating to the payment of the deposit.
c) Another sheet is sent by the clerk to the official or agency holding it via courier to be used as a control tool.

4) Based on the proof of payment, the detaining official issues a letter of determination regarding the suspension of detention.

Until the applicant, legal counsel, or family have presented proof of the bail payment, or the detaining agency has not received proof of the deposit from the court clerk, a warrant or order for suspension of detention cannot be issued. Therefore, there are two methods that can be used to determine the validity of the deposit:

a) By being shown by the applicant or legal advisor or his family.

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b) Based on receipt of proof of deposit sent by the clerk to the withholding agency.

5) The fall of the security deposit into the property of the state

As long as the conditions stipulated in the agreement for suspension of detention are not violated by the applicant, the bail money remains materially and legally the property of the applicant. This means that from a civil law perspective, the applicant remains the legal owner. However, the bail money is temporarily sequestered or separated from the applicant's control by depositing and depositing it at the District Court clerk's office, so that in fact and in reality, the bail cannot be controlled or used while the agreement for suspension of detention is still in effect. The bail money will only actually return to the applicant's control after the agreement for suspension of detention ends. However, if the applicant violates the conditions stipulated in the agreement in the form ofthe act of "escaping", the bail money deposited at the District Court Clerk's Office automatically becomes the property of the State. This is regulated in Article 35 paragraph (2) of PP No. 27 of 1983 number 8 letter i Attachment to the Decree of the Minister of Justice No. M.14 PW.07.03/1983. These provisions regulate the basis and procedures for transferring bail money to become the property of the state, namely:

a) The basis for ownership is that the suspect or defendant has fled after 3 months have passed without being found. The basis for transferring bail money to the state is that if the person concerned flees and is not found within 3 months of the date of escape, then from the date the three-month period has passed, the bail money becomes the property of the state.

b) The transfer procedure is carried out by a District Court ruling. The transfer procedure is regulated in point 8, letter i, of the Attachment to the Decree of the Minister of Justice. Based on the instructions specified therein, the procedure for transferring bail money to state property requires a District Court ruling. Therefore, if a suspect or defendant whose detention has been suspended from trial flees and is not found within three months, the District Court shall issue a ruling containing:

(1) Takeover of state-owned security deposits

(2) And at the same time ordered the clerk to deposit the money into the state treasury.

6) Guarantee of suspension in the form of a person

Guarantees for suspension of detention in the form of persons are further regulated in PP No.27 of 1983 and number 8 letters c, f and j of the Attachment to Decree of the Minister of Justice No.M.14-PW.07.03/1983. The

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procedures for implementing suspension guarantees in the form of persons are as follows:

a) Clearly state the identity of the person guaranteeing.
b) The withholding agency determines the amount of money that must be covered by the guarantor, which is called the surety money.
c) The issuance of a suspension order is based on a letter of guarantee from the guarantor.
d) The surety must deposit the bail money into the state treasury through the court clerk.

The procedure for requesting a suspension of detention is regulated in Article 31 paragraph (1) of the Criminal Procedure Code which states: "Based on the specified conditions". From the sound of this sentence, the determination of conditions by the Police agency granting the suspension of detention is a factor that forms the basis for granting the suspension of detention. The request for suspension of detention must be submitted by the suspect or his family or can also be submitted by the suspect's legal counsel with or without a guarantee, as stated as follows, "at the request of the suspect, the investigator can issue a suspension of detention with or without a guarantee of money or person, based on the specified conditions".

The right to grant and grant a request for suspension of detention for a suspect is a right and authority granted by law to investigators in court proceedings based on the provisions of Article 24 paragraph (1) of the Criminal Procedure Code, which states that investigators or public prosecutors or judges have the authority to change one type of detention to another type of detention as referred to in Article 22 of the Criminal Procedure Code.Investigators have the right and authority to suspend detention or change the type of detention for a suspect, namely from the time the request is granted.

Every application for a suspension of detention must first be submitted with a written application submitted by the legal advisor. If the request for a suspension of detention is granted by the investigator, then legally the suspension of detention is stated separately with a written order or judge's decision, a copy of which is given to the suspect and his family (Article 23 paragraph (2) of the Criminal Procedure Code).

Every request for a letter of suspension of detention usually has to be accompanied by a guarantee, at least a guarantee from the person or family of the accused stating and guaranteeing that during the examination of the case, the suspect will not run away and will not destroy evidence.

The existence of a guarantee from the suspect's family for the granting of a request for suspension of detention at this time is absolutely necessary in order

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to prevent the defendant from escaping, and apart from the guarantee in the form of the person or family of the defendant, the guarantee for suspension of detention can also be advanced in the form of a cash guarantee deposited into the State treasury through the District Court Clerk's Office.

Any request for a suspension of detention for a suspect detained by investigators may be submitted by the suspect himself, his family, or his legal counsel with a guarantee, either personal guarantee or in the form of a cash guarantee deposited into the state treasury. Without the conditions stipulated in advance, a suspension of detention may not be granted. The conditions for a suspension of detention must be determined by the detaining police agency, the detainee in question must state his willingness to comply, and only then will the authorized police agency grant the suspension.

Regarding the conditions that must be determined by the authorized agency, which are not detailed in Article 31 of the Criminal Procedure Code, the confirmation and details of the conditions that must be determined in the suspension of detention are further stated in the explanation of Article 31 of the Criminal Procedure Code. From this explanation, we obtain confirmation of the conditions determined by the Police agency that is detaining the suspect, namely:

1. Compulsory reporting
2. Don't leave the house
3. Not out of town.

According to M. Yahya Harahap, the conditions for suspension of detention must include, among other things:

1. That if there is an order to revoke the suspension, the suspect or defendant will not distance himself from carrying out the order of city detention, house detention or state detention.
2. That the suspect/defendant, if he/she is in a situation that can be detained according to Article 21 of the Criminal Procedure Code, receives a sentence of suspension of their freedom (vrijheidstraf) other than a substitute sentence, will not escape from carrying out that sentence.
3. That the suspect/defendant will have permanent domicile at a specified address/residence.
4. Other conditions that may be put forward

According to data on case resolution progress, in certain cases, recent obstacles to settlement have been caused, among other things, by the suspension of detention being enforced with financial or personal bail. This occurs when the suspect/defendant is needed for questioning, but they fail to appear despite having been duly summoned.

In theory, if the investigation has been completed and information from the suspect is needed, it can be suspended. After completing the procedure for requesting a suspension of detention, there is a guarantee. This guarantee can be in the form of money and people. The nominal amount of the bail is determined by the investigator because it is the investigator's authority, and is adjusted to the crime committed by the suspect/defendant. The obligation of the suspect/defendant is to report as determined by the investigator and determined by the investigator. In granting a suspension of detention to a suspect/defendant, all criminal cases can be suspended, because the suspect/defendant has the right to receive a suspension of detention. However, it must first be approved by the investigator because the investigator must have confidence in advance that the suspect/defendant will not flee and will not violate the terms and agreement between the investigator and the applicant

4. Conclusion

Arrangementsuspension of detention in criminal procedure law in Indonesiaregulated inArticle 31 paragraph (1) of Law Number 8 of 1981 concerning the Criminal Procedure Code. Based on the provisions of Article 31 paragraph (1) of the Criminal Procedure Code, to obtain a suspension of detention, there must be at least an element of a request from the suspect or defendant, the request or request for suspension of detention must be approved by the investigator or public prosecutor (JPU) or the judge who is detaining with or without guarantees as stipulated, in the form of approval from the suspect or defendant who is being detained to comply with the conditions and guarantees stipulated.

The procedure for suspending detention of perpetrators of corruption crimes at the North Sumatra Regional Police is:As long as the suspect meets the requirements for a suspension of detention, a suspect can request a suspension of detention even if he has been detained for 7 days. A suspect who is subject to detention has the right to be informed of his detention by the authorized official, at all levels of examination in the judicial process, to his family or other people who live with the suspect or defendant or other people whose assistance is needed by the suspect or defendant to obtain legal assistance or guarantees for his suspension.

Considerationinvestigators in granting permission to suspend detentionagainst perpetrators of corruption inThe North Sumatra Regional Police is due to the existence of guarantees in the form of money and people, there is an act of detention, namely the granting of permission by authorized officials to detain

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