

IMPLEMENTATION OF HOUSE ARREST ON SUSPECTS DURING INVESTIGATIONS (Research Study at the North Sumatra Regional Police)

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ABSTRACT

House arrest of suspects can cause problems such as investigators having difficulty supervising suspects and there is a possibility that suspects will influence witnesses or arrange answers during investigations. The formulation of the problem in this thesis is how the legal regulations regarding the implementation of house and city arrest of suspects in the investigation process, How the application of house arrest regulations for suspects in investigations at the North Sumatra Regional Police, what are the obstacles and efforts to overcome obstacles in handling house arrest of suspects in the investigation process at the North Sumatra Regional Police. The regulation on house arrest is regulated in Article 22 of the Criminal Procedure Code. House arrest must be carried out in the defendant's residence or residence or in a certain house that has been determined. The investigator has the authority to grant house arrest status or not upon a request for suspension of detention as house arrest.

1. Introduction

Indonesia is a country governed by the rule of law, with several types of laws governing the actions of its citizens, namely criminal law and criminal procedure law. These two laws are closely related, as criminal procedure law is essentially included within the definition of criminal law. Substantive criminal law, which encompasses all provisions and regulations that indicate which acts are punishable, who can be held responsible for those acts, and what penalties can be imposed, is also known as abstract criminal law. Meanwhile, formal criminal law contains regulations governing how abstract criminal law should be implemented concretely. This type of criminal law is commonly referred to as criminal procedure law.

Criminal procedure law encompasses several legal processes that must be followed, one of which is the investigation process. The investigation process is the stages of action taken by investigators in the context and according to the methods stipulated in the Criminal Procedure Code (hereinafter referred to as the



Criminal Procedure Code) to seek and collect evidence that will shed light on the crime and identify the suspect. Investigations are conducted by investigators.

One of the investigators' powers is to detain suspects. A suspect is "a person who, due to their actions or circumstances, based on preliminary evidence, is reasonably suspected of being the perpetrator of a crime."

According to Article 1, point 21 of the Criminal Procedure Code (KUHAP), detention is a forced attempt to place a suspect or defendant in a place determined by the investigator, public prosecutor, or judge, for a specific reason and in a specific manner. Detention is carried out based on concerns that the suspect will flee, destroy evidence, or repeat the crime. The maximum total detention period is 120 days for crimes punishable by imprisonment for nine years or more, and 60 days for crimes punishable by imprisonment for less than nine years.

Detention may only be imposed on suspects who commit a crime, or attempt to commit, or provide assistance in such a crime, if the crime is punishable by imprisonment for five years or more.

Investigators have the authority to detain a suspect. This authority is granted to enable investigators to conduct effective and efficient examinations of suspects and to fulfill the principle of criminal procedure law, which mandates that trials be conducted simply, freely, and at low cost. Provisions regarding the placement of detainees stipulate that, before the existence of detention centers (Rutan), detention can be carried out in certain locations, such as police stations, prosecutors' offices, and courts.

The Criminal Procedure Code (KUHAP) explanation stipulates that any person suspected, arrested, detained, charged, or brought before a court must be presumed innocent until a court decision declares their guilt and becomes legally binding.

Based on the provisions of the KUHAP and its explanation, it is understood that a suspect who is detained is not guilty but is detained because the interests of the investigation require it. Therefore, the official authorized to detain a suspect is obliged to provide care for the detained suspect.

Suspects detained during the investigation process may apply for a transfer to city detention. This request is submitted with a family guarantee letter, which ensures the suspect will not flee, will not repeat the offense, will not destroy evidence, and



will facilitate the police investigation process even though the legal process is outside of a state detention center (Rutan).

The implementation of house arrest for suspects continues to create legal uncertainty for those suspected or alleged to have committed a crime. Therefore, the investigation process, which involves placing someone under house arrest, has become a source of controversy for law enforcement officials, as the house arrest is not implemented in accordance with the Criminal Procedure Code (KUHAP).

House arrest for suspects during the investigation process can also pose several disadvantages, including making it more difficult for investigators to monitor the suspect and the possibility that the suspect will influence witnesses or manipulate their answers during the investigation.

2. Research Methods

The types of legal research used are normative juridical and empirical juridical. Normative juridical is "research that places norms as the object of research, whether legal norms in statutory regulations or legal norms derived from a statute." It is also known as doctrinal legal research, which is "legal research that uses secondary data." Normative legal research is known as qualitative legal research. Empirical juridical research involves collecting data directly in the field through interviews.

This research is descriptive and analytical, meaning "research that describes, examines, explains, and analyzes laws and regulations related to the objectives of this research." The purpose of descriptive research is "to accurately describe the characteristics of individuals, circumstances, phenomena, or specific groups, or to determine the frequency or distribution of a phenomenon or the frequency of certain relationships between a phenomenon and other phenomena in society." The primary purpose of analyzing legal materials is "to understand the conceptual meaning of the terms used in the laws and regulations, while also understanding their application in practice."

The data collection technique used to obtain secondary data is a literature study. This research aims to have clear and focused objectives and be accountable as a scientific work.

Given that this research is descriptive and the data analysis used is qualitative, conclusions are drawn using an inductive method, which is used to analyze the



collected data by describing or interpreting general matters to specific conclusions.

3. Research Results And Discussion

Investigation is a term intended to align with the meaning of *opsporing* (Dutch) and *investigation* (English) or *strategizing* (Malaysian). Investigation is defined as a series of actions by investigators, in accordance with the methods stipulated by law, to seek and collect evidence that sheds light on a crime and identifies the suspect. When a crime is known to have occurred, an investigation can be conducted based on the results of the investigation. In investigative actions, the emphasis is placed on "searching for and finding" an "event" considered or suspected to be a crime. Meanwhile, in investigations, the emphasis is placed on "searching for and collecting evidence." Investigations aim to shed light on the crime discovered and also identify the perpetrator.

An inquiry is conducted before an investigation, or it can be said that this inquiry is conducted to discover or locate an event suspected of being a crime. Furthermore, this inquiry is conducted to determine whether a crime that has occurred, whether based on a report or complaint, can be investigated.

Investigators, due to their obligations, have the authority to receive reports or complaints from individuals regarding a crime, take initial action at the scene, order a suspect to stop and check their identification, conduct arrests, search and seizures, examine and confiscate documents, take fingerprints and photograph individuals, summon individuals for questioning as suspects or witnesses, summon experts as needed in connection with the case, terminate the investigation, and take other legal actions.

An investigator, in carrying out investigative duties, must possess the skills and expertise in criminal law and criminal procedure, in addition to possessing technical investigative skills and the necessary criminalistic aspects. The investigator's skills are paramount to any investigation because they lay the foundation for subsequent investigations. The investigator's investigation is crucial to its success. This is because an investigation is the first step in the initial investigation. The investigator's overall objective is outlined in an Investigation Report (BAP), which contains all events that occurred, including the examination of evidence, proof, and witness statements. This on-scene investigation is typically conducted for crimes resulting in death (Article 338 of the Criminal Code), theft (Article 362 of the Criminal Code), sexual crimes (Article 285 of the Criminal Code), and other crimes.



The importance of this investigation report is that it forms the basis for the prosecution by the Public Prosecutor. According to Leden Marpaung, the on-scene investigation report constitutes valid evidence, namely a "document." By reading the report, a brief understanding of the nature of the incident is obtained and evidence is obtained.

Regarding the on-scene investigation, it can be concluded that the on-scene investigation is a source of data and facts (statements from people and objects) that are the main focus of efforts to uncover a crime. This investigation ensures that the prosecution is not in vain.

When conducting an investigation into an ongoing case, investigators always strive to resolve the case as effectively as possible. This is done to prevent the back-and-forth nature of the case, as is often the case in practice. The submission of case files is regulated in Article 110 paragraph (1) of the Criminal Procedure Code, which states: "(1) If the investigator has completed the investigation, the investigator is obliged to immediately submit the case files to the public prosecutor.

In accordance with Article 12 of the Criminal Procedure Code, upon completion of the investigation by an assistant investigator, the assistant investigator submits the case files to the investigator, except for cases involving a short examination procedure (where the application of the law is easy and simple in nature), which can be submitted directly to the public prosecutor.

In practice, the submission of case files by the investigator to the public prosecutor, both legally and administratively, is no different between the submission of case files examined under a short examination procedure or a regular examination. All case files are submitted by the investigator (not the assistant investigator) to the public prosecutor.

The provisions of the Criminal Procedure Code state that an investigation is considered complete if the public prosecutor does not return the case files within 14 days. Therefore, it can be further emphasized that the investigation ends when the investigator transfers responsibility for the suspect and evidence to the public prosecutor.

According to the HIR system, an investigation (prosecution) ends when the prosecutor transfers the case to the court or if, in the prosecutor's opinion, the investigation of the case needs to be stopped, as stated in Article 83 of the HIR, namely if it is clear to the magistrate that the matters charged against the accused



are insufficient to indict him, or the act charged against him cannot be prosecuted according to law, because it is not true that it is a crime or violation, then the magistrate must immediately order the release of the accused.

Detention is carried out with a detention warrant based on the reason for detention or further detention carried out by the investigator or public prosecutor against the suspect or defendant by issuing a detention warrant or judge's decision that lists the suspect or defendant's identity and states the reason for detention and a brief description of the crime suspected or charged and the place where he is being detained.

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 concerned that the suspect or defendant will flee, damage or eliminate evidence and/or repeat the crime. In other words, if the investigator assesses that the suspect/defendant will not flee, destroy or destroy evidence, or repeat the crime, then the suspect/defendant does not need to be detained.

Article 21 paragraph (4) of the Criminal Procedure Code states that detention can only be imposed on suspects or defendants who commit a crime, or attempt to commit, or provide assistance in committing a crime, if the crime is punishable by imprisonment for five years or more. Article 21 paragraph (4) of the Criminal Procedure Code is known as the objective detention requirement, meaning there are clear criteria stipulated in the law for a suspect or defendant to be detained.

Investigators must provide a copy of the detention order or continued detention order, as well as the mandatory detention order, to the family of the person detained. This is intended not only to provide certainty to the family but also to provide the family with oversight to determine whether the detention is legal. The family is entitled by law to request a pretrial hearing to examine the legality of the detention. Since the enactment of the Criminal Procedure Code (KUHAP), every legal process related to a criminal case, from the investigation stage to the prosecution stage, through to the trial stage, must be guided by the KUHAP.

The KUHAP is closely related to criminal law and serves as the basis for all government officials and agencies in resolving criminal cases. From the investigation and prosecution stages to the trial stage, the KUHAP must remain guided by the KUHAP.





The KUHAP is a set of regulations that outline how government agencies, namely the Police, the Prosecutor's Office, and the Courts, must act in examining and adjudicating criminal cases to achieve the state's desired goals.

In the investigation of a person who has committed a crime, the police have the right and authority to detain a suspect, either in state detention, city detention, or house arrest, to expedite the process.

Any person suspected of committing a crime, whether based on a complaint or report from another party or without a report, and who has been questioned and investigated by an investigator is called a suspect. A suspect, as a perpetrator of a crime being questioned by an investigator, with sufficient preliminary evidence, under Article 24 of the Criminal Procedure Code (KUHAP), the investigator may detain the suspect, either in state detention, house arrest, or city detention.

The purpose of detention by the investigator is to expedite the investigation and examination of the suspect, prevent the suspect from fleeing, destroying evidence related to the case, and prevent the repetition of similar or other crimes.

Detention carried out by investigators is intended for investigative purposes. This is in accordance with Article 20 paragraph (1) of the Criminal Procedure Code, which states that for investigative purposes, investigators or assistant investigators, upon the order of investigators, have the authority to detain.

Investigators or assistant investigators, upon the order of investigators, for investigative purposes, have the authority to detain. Similarly, prosecutors and judges, for prosecution and court hearings, have the authority to detain or further detain.

Investigators detain or further detain suspects by issuing a detention warrant stating the suspect's identity, the reason for detention, a brief description of the alleged crime and the location of their detention. A copy of the detention warrant is sent to the family.

Suspects have the right to request a change in the type of detention with the authorities. This is in accordance with the principle adopted by the Criminal Procedure Code in the administration of criminal proceedings, namely the presumption of innocence, which means that a person is presumed innocent until a court decision declares their guilt, and that decision must be legally binding.

4. Conclusion





Regulations regarding house arrest are regulated in Article 22 of the Criminal Procedure Code. House arrest must be carried out in the defendant's residence or at a designated house. Investigators have the authority to grant or deny house arrest status upon a request for a suspension of detention.

The implementation of house arrest regulations for suspects in investigations by the North Sumatra Regional Police involves monitoring the suspect to ensure he/she does not flee or destroy evidence. If a suspect whose request for house arrest is granted and then flees, the party providing the guarantee for the granting of the house arrest request must be accountable to the investigator in accordance with the conditions previously determined between the investigator and the applicant.

The obstacles in the implementation of house arrest against suspects in the investigation process at the North Sumatra Regional Police are unclear transparency and accountability because there is no report regarding the amount of bail money and weak supervision so that the defendant runs away and efforts to overcome the obstacles are by appointing clerks, public prosecutors, or police officers assigned to each agency to manage the administration of bail money for the implementation of house arrest as well as regular supervision by enforcing mandatory reporting rules according to the schedule agreed between the parties, namely the suspect/defendant and/or guarantor with the authorized agency.

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