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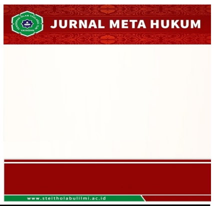


# DETERMINATION OF WANTED PERSON STATUS BY POLICE INVESTIGATIONS

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**ABSTRACT**

A person who commits a crime or offense and is considered a suspect based on sufficient preliminary evidence and has been legally and properly summoned for questioning, but fails to appear, leading to the assessment that he or she has absconded, is placed on the Wanted List. A suspect who has been summoned for questioning more than three (3) times for investigation purposes and whose whereabouts are unclear may be listed on the Wanted List and issued a Wanted List. If the suspect or person being searched for has been located or is no longer needed in the investigation, the Wanted List must be revoked. A suspect with DPO status has the right to file a pretrial motion. This is based on the right of every suspect to file a pretrial motion under the Criminal Procedure Code, regardless of whether the suspect is in detention or on the DPO status. The determination of Wanted List status by police investigators is not specifically regulated in the Criminal Procedure Code but is regulated by National Police Chief Regulation Number 14 of 2012 concerning the Management of Criminal Investigations. The legal consequence of incorrectly determining Wanted List status by police investigators is that the individual may file a pretrial motion.

## 1. Introduction

Article 1 Number (2) of the Criminal Procedure Code (KUHAP) explains that an investigation is any action by an investigator to seek convincing evidence or support the belief that a criminal act or an act prohibited by criminal law has actually occurred. Finding a suspect during an investigative task is the initial step in solving a crime. A person who commits a crime or offense and is considered a suspect based on sufficient preliminary evidence and has been legally and properly summoned for questioning, but fails to appear, leading to the assessment that the person has absconded, and thus becomes a wanted person (hereinafter referred to as a DPO).

DPO procedures are not specifically regulated in the Criminal Procedure Code, and the KUHAP only regulates suspects. Article 1 Number 14 of the KUHAP explains that a suspect is a person who, based on preliminary evidence, is reasonably suspected of being the perpetrator of a crime due to their actions or

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circumstances. A suspect may be arrested or summoned prior to questioning if they have not previously been questioned as a suspect. A suspect who has been summoned three times for questioning but fails to appear and whose whereabouts are unknown may be designated a DPO. This is regulated in National Police Chief Regulation No. 14 of 2012 concerning the Management of Criminal Investigations (National Police Chief Regulation No. 14/2012).

Article 31 Paragraph (1) of National Police Chief Regulation No. 14/2012 states that a suspect who has been summoned for questioning more than three (3) times for investigation purposes and whose whereabouts are unclear may be listed as a "DPO" (wanted list) and a wanted list issued. Thus, the police will designate a suspect as a "DPO" if they fail to comply with the summons. Furthermore, Paragraph (3) states that if the suspect and/or person being sought has been located or is no longer needed in the investigation, the DPO must be revoked.

## 2. Research Method

This research is descriptive analytical, meaning it merely describes the circumstances of the object or event without any intention of drawing general conclusions. Descriptive analytical research orients toward normative juridical research, namely, it is reviewed based on the law. The approach method in this research is to use a "normative juridical approach, namely an approach carried out by collecting secondary data" in the form of legislation and materials relevant to the problem.

## 3. Results And Discussion

When discussing the Criminal Procedure Code (KUHAP), the term "suspect" is inextricably linked to the concept of "suspect." A suspect is someone who, based on preliminary evidence, is reasonably suspected of committing a crime due to their actions and circumstances. According to Andi Hamzah, the phrase "due to their actions and circumstances" is inappropriate because it implies that investigators already know the suspect's actions and circumstances, when in fact, this is something the investigators still need to determine. A more precise formulation is provided by Ned. Strafvordering in Article 27 paragraph (1): "...a suspect is someone who, based on facts and circumstances, is reasonably suspected of committing a crime. Therefore, the use of the phrase "facts and circumstances" is more appropriate because it is more objective.

A suspect is someone who, based on preliminary evidence, is reasonably suspected of committing a crime due to their actions or circumstances. A defendant is a suspect who is charged, questioned, tried, and in court. The term "suspect" is often misunderstood by many Indonesians, as if the suspect is

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definitely guilty. In fact, the court has the authority to determine guilt or innocence, based on a court decision that has permanent legal force.

Based on the principle of the presumption of innocence, it is clear and reasonable that suspects or defendants in the criminal justice process are obliged to obtain their rights (the principle of the presumption of innocence means that every person suspected, arrested, detained, charged, or brought before a court must be presumed innocent until a court decision declaring their guilt has become final and binding). According to Article 1, Number 14 of the Criminal Procedure Code (KUHAP), 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. It is not uncommon for people who have been designated as suspects by the police to flee, resulting in the suspect being placed on the wanted list.

Upon closer inspection, the KUHAP does not explain the concept of a wanted list, and in this regard, many suspects whose names are listed on the wanted list feel burdened by the police's designation. According to Article 31 Paragraph (2) of Police Chief Regulation No. 14/2012, the officials authorized to sign a wanted list are:

1. Criminal Investigation Unit:
    a. Directors of the Criminal Investigation Unit of the Indonesian National Police;
    b. Directors of the Criminal Investigation Unit of the Regional Police;
    c. Heads of Criminal Investigation Units of the Resort Police;
2. Head of Special Detachment 88 AT of the Indonesian National Police;
3. Water Police:
    a. Director of the Water Police;
    b. Director of the Regional Police;
4. Traffic:
    a. Head of the Traffic Law Enforcement Division of the Indonesian National Police;
    b. Director of Traffic at the Regional Police;
5. Sector Police Chief.

Article 31 Paragraph (3) of Police Chief Regulation No. 14/2012 states that if the suspect and/or person being sought has been located or is no longer needed in the investigation, a DPO must be revoked. According to Article 31 Paragraph (4) of Police Chief Regulation No. 14/2012, the officials authorized to issue DPO revocations are:

1. Criminal Investigation Unit Function:
    a. Directors of the Criminal Investigation Unit of the Indonesian National Police;
    b. Directors of Criminal Investigation of the Regional Police;

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   c. Heads of Criminal Investigation Units of the Resort Police;
2. Head of Densus 88 AT of the Indonesian National Police;
3. Water Police:
   a. Director of Water Police of the Indonesian National Police;
   b. Director of Water Police of the Regional Police;
4. Traffic Function:
   a. Head of the Traffic Law Enforcement Division of the Indonesian National Police Corps;
   b. Director of Traffic Police of the Regional Police;
5. Sector Police Chief.

Article 32 of Police Chief Regulation No. 14/2012 states that if a suspect is not detained and is suspected of fleeing Indonesia, preventive measures may be imposed. Any person abroad who is suspected of committing a crime in Indonesia may be subject to preventive measures. In urgent or urgent circumstances, for the purposes of investigation, investigators may submit a direct request to immigration officials to prevent or detain a person suspected of committing a crime. According to Article 32 Paragraph (4) of Police Chief Regulation No. Regulation No. 14/2012 stipulates that officials authorized to submit a letter requesting prevention or deterrence according to the level of jurisdiction of the investigation are as follows:

1. Director/Deputy Director at the Criminal Investigation Unit of the Indonesian National Police;
2. Director/Deputy Director of the Criminal Investigation Unit of the Regional Police;
3. Chief of Police;
4. Chief of Sector Police.

According to Article 32 Paragraph (5) of Regulation No. 14/2012, officials submitting a letter requesting prevention or deterrence as referred to in paragraph (4) must report to the Chief of Police no later than 20 (twenty) days for confirmation through a Decree of the Chief of Police. The Chief of Police's decision can be delegated to designated officials. Article 33 of Regulation No. 14/2012 states that arrests are made by investigators or assistant investigators against individuals strongly suspected of committing a crime based on sufficient preliminary evidence. Investigators or assistant investigators making arrests must be accompanied by an arrest warrant signed by the investigator's superior as the investigator. An arrest warrant signed by an official, with a copy of which must be sent to the suspect's family and/or legal counsel after the suspect is arrested. Arrest procedures and procedures are carried out in accordance with statutory provisions. Article 34 of National Police Chief Regulation No. 14/2012 states that in the event of a red-handed arrest, an arrest may be made by an officer without

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an arrest warrant or a duty order. After making an arrest, the officer immediately hands over the suspect and evidence to the nearest police investigator/assistant investigator. After receiving the suspect and evidence, the investigator/assistant investigator must prepare a report of the receipt/transfer and the arrest report. In the event of a red-handed arrest by an investigator/assistant investigator, the investigator/assistant investigator must immediately prepare an arrest report.

Article 35 of National Police Chief Regulation No. 14/2012 states that investigators/assistant investigators may make an arrest upon request for assistance from:

1. A National Police unit outside their unit based on a wanted list;
2. Another authorized agency;
3. A request from a member country of the International Criminal Police Organization (ICPO)-Interpol.

A request for assistance with an arrest must include the suspect's identity, the reason for the arrest, a brief description of the alleged crime, and the location where the suspect will be questioned. Investigators are required to immediately hand over the arrested person to the agency requesting assistance with the arrest, along with a report of the suspect's surrender. If a suspect is believed to be abroad, investigators can coordinate with Interpol (the Indonesian National Police's Inter-Hubinter Division) to request a red notice.

A suspect on the wanted list has the right to file a pretrial motion. This is based on the right to file a pretrial motion under the Criminal Procedure Code (KUHAP), regardless of whether the suspect is in detention or on the wanted list. Pretrial motion is an institution within the Criminal Procedure Code. The term "institution" does not refer to an institution or structure within law enforcement, but rather to a body or entity with a clear purpose. Tolib Effendi explained that the purpose of pretrial motion, as stipulated in Article 1, point 10 of the Criminal Procedure Code, is that a pretrial motion is the authority of the district court to examine and rule, in accordance with the procedures stipulated in this law, on the legality of an arrest and/or detention at the request of the suspect, their family, or another party authorized by the suspect; the legality of the termination of an investigation or prosecution at the request of the suspect for the sake of upholding law and justice; and requests for compensation or rehabilitation by the suspect, their family, or another party authorized by their attorney, whose case has not been brought to court.

Pretrial motions are conducted with the intent and purpose of upholding the law and protecting the suspect's human rights during the examination, investigation, and prosecution stages. To ensure the successful investigation of criminal acts, the law authorizes investigators and public prosecutors to employ coercive measures, including arrest, detention, seizure, and other measures. Coercive measures

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violate the law and constitute a violation of the suspect's human rights. Therefore, an institution authorized to determine the legality of coercive measures imposed on suspects, known as the pretrial institution, is required. This pretrial institution is authorized by law to perform the following functions:

1. Examining and deciding the legality of an arrest and detention.
2. Examining the legality of a termination of an investigation or a termination of a prosecution.
3. Examining claims for compensation.
4. Examining requests for rehabilitation.

A request for a case review filed in a pretrial proceeding arises from a conflict between the parties to the case, including law enforcement officials (prosecutors or police) and the suspect, defendant, or perpetrator of a crime. This conflict arises when one party feels aggrieved and requires a pretrial motion to secure justice and legal certainty. One of the most important principles in criminal procedure law is the presumption of innocence. The presumption of innocence principle states that in the criminal justice process, suspects/defendants are obliged to obtain their rights. Every person suspected, arrested, detained, charged, and/or brought before a court must be presumed innocent until a court decision declares their guilt and has obtained permanent legal force. As a person who has not been declared guilty, they have rights such as: the right to be immediately examined during the investigation stage, the right to be immediately examined by the court and receive the fairest possible decision, the right to be informed of what is suspected/accused of them in a language they understand, the right to prepare their defense, the right to have an interpreter, the right to receive legal assistance, and the right to have their family visit them. If a person is subject to arrest and/or detention, and he believes that the arrest/detention was carried out illegally, that is, did not meet the requirements stipulated in the law, then the suspect/defendant or his/her family or another authorized party, namely his/her legal counsel, can file an objection to the district court through a pretrial to request a judge's decision regarding the legality of his/her arrest/detention. In addition, the reporting party can file an objection to the district court through a pretrial, if the reported criminal case is stopped from investigation or prosecution to obtain a judge's decision regarding the legality of the termination of the investigation or prosecution. Pre-trial proceedings do not only concern the legality of an arrest or detention, or the legality of a termination of an investigation or prosecution, or a request for compensation or rehabilitation, but pre-trial proceedings can also be carried out in the event of an error in confiscation that does not include evidence, or a person who is subjected to other actions without a reason based on law, due to a mistake regarding the person or the law applied, or due to other actions that cause losses as a result of illegal entry into a house, searches and confiscations.

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Pretrial motions are often filed by suspects or their families through their legal counsel by filing a lawsuit/application against the police or the prosecutor's office in the local district court, the substance of which questions the legality of the arrest or detention or the legality of the termination of the investigation or prosecution. However, in fact, pretrial motions can also be legally filed by the police against the prosecutor's office, and vice versa, as stipulated in Articles 77 to 83 of the Criminal Procedure Code which regulate pretrial motions not only grant the suspect or his family the right to file a pretrial motion against the police and the prosecutor's office, but also grant the police the right to file a pretrial motion against the prosecutor's office and grant the prosecutor's right to file a pretrial motion against the police. The authority for pretrial proceedings following Constitutional Court Decision No. 21/PUU-XII/2014 concerning the constitutionality of Article 77 of Law No. 8 of 1981 concerning the Criminal Procedure Code, which fundamentally concerns pretrial matters, is regulated by Article 77 of the Criminal Procedure Code. The regulation regarding pretrial proceedings, as stipulated in Article 77 of the Criminal Procedure Code, is the authority of the district court to examine and decide, in accordance with the provisions stipulated in the law, regarding:

1. The legality of an arrest, detention, termination of investigation, or prosecution.
2. Compensation and/or rehabilitation for a person whose criminal case is terminated at the investigation or prosecution stage.

The Constitutional Court officially incorporated the norm of the validity of suspect determination as an object of pretrial proceedings to ensure fair treatment for individuals undergoing criminal proceedings. This is in consideration of the fact that suspects are legal subjects with equal dignity, status, and standing before the law.

In full, following the Constitutional Court's ruling No. 21/PUU-XII/2014, Article 77 of Law No. 8 of 1981 concerning the Criminal Procedure Code, based on the 1945 Constitution, determines the validity of arrests, detentions, termination of investigations, or prosecutions, including the determination of suspects, searches, and seizures.

The above provisions demonstrate that the determination of suspects as objects of pretrial motions by the Constitutional Court recognizes these human rights in the criminal justice process, a principle that must be upheld by all parties, especially law enforcement agencies. The Criminal Procedure Code, as the formal law in the criminal justice process in Indonesia, has formulated a number of rights for suspects/defendants as protection against potential human rights violations. As a result of the Constitutional Court's ruling No. 21/PUU-XII/2014, many witnesses or suspects who have been named as suspects by the police have filed pretrial motions to determine the validity of their suspect determinations. This also provides a space for suspects to provide explanations during pretrial proceedings. Enforcing human rights principles as applied within the criminal justice system is essential. The Indonesian Constitution, which establishes Indonesia as a state of law as stipulated in Article 1 Number (3) of the 1945 Constitution, requires that the Indonesian state provide a sense of security for its citizens. This sense of security from the state is intended to be equally distributed to all citizens, including those not undergoing legal proceedings and those undergoing legal proceedings (at the police, prosecutors, and judicial levels).

The Criminal Procedure Code (KUHAP) prior to Constitutional Court Decision No. 21/PUU-XII/2014 did not have a specific checks and balances system to regulate the process of determining suspects by investigators. This was because the KUHAP at that time did not provide provisions regarding the mechanism for testing the validity of evidence acquisition and did not apply the exclusionary principle to evidence obtained illegally. In fact, in this modern era, Indonesia really needs a mechanism for testing the validity of obtaining evidence and the application of the exclusionary principle. The expansion of pretrial proceedings to include suspect determination is intended to uphold the rule of law and protect the human rights of suspects/defendants during investigations and prosecutions. This aligns with the principle of acquisitiveness adopted in the Criminal Procedure Code, which places the suspect/defendant's position at every level of investigation as a subject, not an object. Therefore, suspects/defendants must be treated as human beings with dignity and self-respect. Due to the large number of suspects suspected of absconding and being placed on the wanted list, who subsequently filed pretrial motions, Supreme Court Circular Letter No. 1 of 2018 concerning the Prohibition of Filing Pretrial Motions for Suspects Who Have Absconded or Are on the Wanted List (hereinafter referred to as Circular Letter No. 1/2018). Circular Letter No. 1/2018 states that in recent judicial practice, there has been a tendency for pretrial motions to be filed by suspects on the wanted list, but this has not yet been regulated by law.

To provide legal certainty in the pretrial motion process for suspects with DPO status, the Supreme Court has issued the following guidelines:

1. If the suspect has absconded or is on DPO status, a pretrial motion cannot be filed.
2. If the pretrial motion is still filed by legal counsel or family, the judge shall issue a decision declaring the pretrial motion inadmissible.
3. No legal action may be taken against this decision.

SEMA Regulation No. 1/2018, when viewed, indicates an attempt to close a legal loophole in Indonesia. In practice, there are several loopholes commonly exploited by DPOs, namely:

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1. DPO status by the investigation, but still able to use pretrial motion to challenge coercive measures;
2. DPO status at the prosecution level, but still able to use regular legal remedies (appeal and cassation);
3. DPO status at the prosecution level, but still able to use judicial review.

From another perspective, the issuance of Circular Letter No. 1/2018 represents a legal development in Indonesia, and it also closes the gap for suspects to file pretrial motions. Various speculations regarding the issuance of Circular Letter No. 1/2018 among the public have generated both pros and cons, as described above. Summarizing the pros, the issuance of Circular Letter No. 1/2018 closes the gap for suspects named on the wanted list to pursue pretrial motions and to respect the Indonesian judicial process. However, the cons, the issuance of Circular Letter No. 1/2018, restricts the rights of suspects. Circular Letter No. 1/2018, which prohibits suspects who have fled or are currently on the wanted list, essentially states that suspects named on the wanted list cannot file a pretrial motion.

## 4. Conclusion

The legal provisions governing the determination of Wanted List status by police investigators are not specifically regulated in the Criminal Procedure Code (KUHAP) but are regulated by National Police Chief Regulation Number 14 of 2012 concerning the Management of Criminal Investigations. If a suspect has been summoned three times for questioning but fails to appear and whose whereabouts are unknown, the suspect can be designated as a fugitive. The determination of Wanted List status by police investigators allows an individual to file a pretrial motion, which aims to uphold the law and protect the suspect's human rights during the investigation stage and to remove the suspect from the wanted list for reasons that are invalid and unlawful.

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